

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

**Investigation into a complaint against
Salford City Council
(reference number: 19 002 111)**

29 August 2019

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

Mrs W The complainant

Report summary

Adult care services

Mrs W complains the Council has not reviewed or updated her care and support plan since 2013. She also complains the Council has not implemented autism-specific training for its staff, despite it being statutorily required, and about the Council's handling of her complaint.

Finding

Fault found, causing injustice, and recommendations made.

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. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice caused, we recommend the Council should immediately arrange to review and update Mrs W's care and support plan. It should also pay Mrs W £1,200. The Council has accepted these recommendations.

The Council has also agreed to undertake a number of service improvements. It will

- undertake an audit of all adult social care service users in its area, to ensure they have appropriate and up-to-date care and support plans;
- arrange training for all relevant staff to ensure they understand their responsibilities in assessing and creating care plans; and
- arrange training for all relevant staff in autism awareness.

The Council also says it has undertaken a review of the provision of adult social care by one of the two bodies to which it has delegated this function, and is arranging for briefings to be given to its Chief Executive, Cabinet, and the Boards of the two delegated bodies.

The complaint

1. Mrs W is autistic, and has a number of health needs which cause her to need support. She complains about the Council's handling of her care and support plan and the funding of her care, and its handling of her complaint.

Legal and administrative background

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*)

Care Act 2014

4. Sections 9 and 10 of the Care Act 2014 require local authorities to carry out an assessment for any adult with an appearance of need for care and support. They must provide an assessment to all people regardless of their finances or whether the local authority thinks an individual has eligible needs. The assessment must be of the adult's needs and how they impact on their wellbeing and the results they want to achieve. It must also involve the individual and where suitable their carer or any other person they might want involved.
5. The Care Act 2014 gives local authorities a legal responsibility to provide a care and support plan. The care and support plan should consider what the person has, what they want to achieve, what they can do by themselves or with existing support and what care and support may be available in the local area. When preparing a care and support plan the local authority must involve any carer the adult has. The support plan may include a personal budget which is the money the council has worked out it will cost to arrange the necessary care and support for that person.
6. Section 27 of the Care Act 2014 gives an expectation that local authorities should conduct a review of a care and support plan at least every 12 months. The authority should consider a light touch review six to eight weeks after agreement and signing off the plan and personal budget. It should carry out the review as quickly as is reasonably practicable in a timely manner proportionate to the needs to be met.
7. Everyone whose needs the local authority meets must receive a personal budget as part of the care and support plan. The personal budget gives the person clear information about the money allocated to meet the needs identified in the assessment and recorded in the plan. The council should share an indicative amount with the person, and anybody else involved, at the start of care and support planning, with the final amount of the personal budget confirmed through this process. The detail of how the person will use their personal budget will be in the care and support plan. The personal budget must always be an amount enough to meet the person's care and support needs.

Statutory guidance for Local Authorities and NHS organisations to support implementation of the Adult Autism Strategy 2015

8. The Autism Act 2009 required the government to produce statutory guidance for NHS and local authorities on working with autistic people. The guidance was originally published in 2010, and was updated in 2015. At paragraph 1.4, it says:
In line with the 2010 statutory guidance, local authorities should be providing general autism awareness to all frontline staff in contact with adults with autism, so that staff are able to identify potential signs of autism and understand how to make reasonable adjustments in their behaviour and communication. In addition to this, local authorities are expected to have made good progress on developing and providing specialist training for those in roles that have a direct impact on and make decisions about the lives of adults with autism, including those conducting needs assessments. This expectation remains central to this updated statutory guidance.

How we considered this complaint

9. We reviewed Mrs W's correspondence with the Council, her care plan and associated documents, and the Council's case notes.
10. We produced this report after examining relevant documents and interviewing the complainant and relevant employees of the Council.
11. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

Findings

12. Salford City Council has delegated its adult social care functions to two local trusts, the Salford Integrated Care Organisation and the Greater Manchester Mental Health NHS Foundation Trust respectively. Mrs W's care is arranged by the latter.
13. However, while the day-to-day work may be undertaken by people employed by the NHS, the Council retains ultimate responsibility for it.
14. For the sake of clarity, in this report, we will refer only to actions being taken by 'the Council', except where it is strictly necessary to differentiate.
15. Mrs W's complaint to the Council covered two entirely separate issues – her care plan, and its handling of a safeguarding referral. The safeguarding referral has been subject to separate investigation by us, and so we will not include any details of it here.

Background

Care and support plan

16. This element of Mrs W's complaint relates to the care plan itself, and its funding. Mrs W's care plan was last issued in 2013, and has not been updated since. Under the plan, Mrs W was to receive support with some domestic tasks, such as managing her medication and dealing with mail, as well as to help her access the community.

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17. We will discuss the implications of that in our analysis, but the Council has provided a chronology of related events from the beginning of 2018. We will detail that here as background.
 18. The Council says the agency providing care to Mrs W contacted it on 22 January to chase payment. On 23 January, the agency sent the Council an invoice.
 19. On 22 March, Mrs W contacted the Council to say she had been told the agency's expenses had not been paid. The Council recorded it called back, but received no answer and could not leave a message.
 20. On 13 and 17 April, an occupational therapist (OT) contacted Mrs W to arrange an appointment for her. Mrs W attended appointments with the OT on 1 and 8 May, to complete a needs assessment.
 21. On 31 May, the Council recorded Mrs W was due to attend an appointment with the Community Mental Health Team (CMHT) to discuss the outcome of the OT assessment and her care needs.
 22. On 10 October, Mrs W contacted the Council to discuss a letter she had received from the care agency, saying it would terminate its service to her on 31 October. This was because its expenses had not been paid since February. The agency's letter said it had made "numerous" attempts to contact the Council about this since April, but had had no response.
 23. The Council recorded Mrs W was confused about this, as she had not used her support worker "excessively" during the year and so should not have incurred any expenses.
 24. On 29 October, the Council began looking for a replacement care provider for Mrs W.
 25. On 13 November, a new care agency visited Mrs W to assess her.
 26. On 21 November, the Council recorded the new agency had called to say Mrs W had refused to complete the assessment, due to a dispute over mileage expenses and because her care plan was not correct.
 27. On 25 January 2019, the Council recorded it had had a phone conversation with Mrs W, where she had expressed difficulty with leaving home to go food shopping without support. Mrs W said the new agency had said it charged 70p a mile expenses, which she described as "robbery", and that the law states service users should not be required to pay an agency direct, but should instead pay the local authority.
 28. On 26 February, Mrs W contacted the Council again to discuss her care and support. The Council then recorded that it had explored the possibility of allowing Mrs W to pay expenses to it, rather than her care agency, but this would need to be subject to a written agreement, detailing the payment arrangements, mileage rates, and action which would be taken on non-payment. Mrs W would need to sign this agreement.

Complaint handling

29. It is not clear exactly when Mrs W made her initial complaint. She complained on 25 May 2018, citing a breach of data protection laws (which related to the safeguarding matter), but she has provided me with a copy of a more comprehensive complaint letter dated 19 June. The Council, however, has told us Mrs W's initial complaint was on 1 June.
30. In either case, the Council's first complaint response was on 25 July.

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31. The complaint response went some way to address Mrs W's complaints about the safeguarding referral. However, it did not refer, nor give any response to, her complaint about her care plan.
 32. Mrs W had also complained the Council had no-one trained in autism to undertake needs assessments, which was in breach of the Autism Strategy 2010 and the Care Act 2014. Again, the Council's response did not address this point.
 33. Mrs W contacted the Council to express dissatisfaction with the complaint response on 31 July. The Council held a meeting with her on 9 August, and the Council agreed a new Terms of Reference for Mrs W's complaint on 21 August.
 34. After further discussion, an updated Terms of Reference was agreed on 26 September, and further amendments agreed on 31 October. At this point, the Council said it would aim to provide her with a response by 3 December.
 35. The Council subsequently extended its target date for response to 18 January 2019, and then again to 6 February.
 36. On 6 February, the Council visited Mrs W at home, to verbally explain its complaint response. It then produced a written response, dated 28 February.
 37. The Council conceded it did not currently have any autism-trained staff to complete assessments. However, it had appointed an autism 'development worker', who had accompanied the Council's complaint investigator when she visited Mrs W to provide support.
 38. The Council also addressed Mrs W's complaint about her care plan. It noted she had a copy of her plan dated 2013, with an addendum from 2015, but that this included information which was out-of-date.
 39. The response acknowledged Mrs W needed support to access the community and with medical matters, and that she was "in further discussion" about the costs of mileage and wanted the Council to complete a financial assessment.
 40. The Council said Mrs W's care plan needed to be reviewed "as a matter of urgency", and this would happen on its next visit. A new support plan had been created in 2018. However, the Council said that letters it had sent to Mrs W's GP counted as her care plan.

Analysis

Care plan

41. Mrs W has provided me with a copy of her care and support plan from 2013, with an addendum from 2015 which documents a change of agency. The plan sets out her needs and diagnoses, the risks these present to her, the support which will be provided and the outcomes this support aims to achieve. The plan also sets out her personal budget and funding arrangements.
42. Under the Care Act 2014, authorities have a duty to review care and support plans at least every 12 months. The review should ensure the plan accurately reflects a person's up-to-date needs and desired outcomes, as well as planning the appropriate support. It should also include up-to-date budget information.
43. The Council acknowledges that Mrs W's care plan was created in 2013. However, it says Mrs W receives regular reviews at a nurse-led clinic, after which a letter is sent to her GP with up-to-date information, which "count as her care plan".

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44. The Council has provided me with two letters to Mrs W's GP – one from April 2017, and one from March 2019. Each letter describes Mrs W's demeanour during a recent appointment and her current medication. They also give, under the title 'Management/Care Plan', a brief description of an aim for her – for example, "for [Mrs W] to continue to use community facilities".
 45. We do not agree these letters are a substitute for a proper care plan. They do not explain Mrs W's needs, the risks and difficulties her needs create, the support she needs to manage her needs, or when and how this support will be provided. The letters also make no mention whatsoever of how the support will be funded. They do not provide a care and support plan within the meaning of the Care Act. Of particular significance, Mrs W's needs have not been assessed under the framework of the Care Act, which took effect April 2015.
 46. Furthermore, even if these letters did count as a reviewed and updated care plan, they should have been provided at least once a year. A single letter from 2017 and a single letter from 2019 do not meet this requirement.
 47. So, in the substantive sense, the last proper care plan produced for Mrs W was in 2013, as she says. This is a very significant fault.
 48. Unfortunately, it is difficult to gauge accurately the injustice arising from this fault.
 49. The care provision set out in the 2013 plan was for Mrs W to receive support to access the community, with some domestic tasks and with organising her medication.
 50. Mrs W says an element of the 2013 plan was about her using a particular medication. However, since then, Mrs W has been diagnosed with a serious illness, which means she can no longer use that medication.
 51. This is an example of the importance of properly reviewing and updating care plans. But there is no suggestion Mrs W mistakenly used that medication when she should not, or that any other relevant party was misled by the failure to remove this element from her plan. So we do not consider this represents a substantive injustice, although – as the care plan was so out of date - it has arguably placed her at increased risk of harm.
 52. Mrs W also says the 2013 plan does not provide the appropriate support for her current needs. For example, using the support worker's hours to attend hospital appointments, because of her serious illness, means the other support she needs is sometimes neglected. Alternatively, she has missed hospital appointments because she has had no support to attend them.
 53. It is for the Council to decide what care and support Mrs W needs. It is not for us to say what a properly updated plan would include, and so we cannot say precisely what care and support Mrs W should have been receiving and when.
 54. However, we can say the Council would have at least had the opportunity to properly consider Mrs W's new needs, if it had reviewed and updated the care plan.
 55. Further to this, the support agency terminated Mrs W's package in October 2018.
 56. The reason the agency gave for terminating was the failure to pay its workers' expenses. This is not the same as its actual fees – that is, the money it charges for its services.
 57. The Council has explained that, when the package was originally arranged, it was paying both the fees and the expenses. This is reflected in the 2013 care plan.

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58. Since then, the Council changed its commissioning arrangements, which meant providers would now recover expenses directly from service users. This, in itself, is not fault.
59. However, we cannot see any evidence to suggest this was ever explained to Mrs W. She told me she has never had a financial assessment, and the Council has confirmed this. It appears she was not aware, until the agency's letter of October 2018, there was an issue about the payment of expenses.
60. The financial assessment process is supposed to determine how much a person should contribute to their actual fees, and so it does not appear this would necessarily have clarified the issue of expenses.
61. But either way, if Mrs W was expected to pay the agency's expenses, this should have been documented in her care plan, and explained to her. It is therefore possible to make a direct link between the support agency's termination of the package, and the failure to review and update Mrs W's care plan.
62. We note there has been some effort put into arranging a new provider for Mrs W, but there has been a dispute over mileage costs. It is not for us to decide what the agency should and should not charge in expenses, and so we cannot comment on this.
63. However, accepting this, it appears clear there would be no need to find a new package if the issue with expenses had not arisen. Mrs W has explained to me the problems she has accessing the community without support, meaning she has even had difficulty shopping for groceries. That she has been left in this position for more than six months now is a serious injustice.
64. More generally, the errors in Mrs W's case are a possible indicator of wider failings in the NHS Trust's handling of the Council's delegated social care functions.
65. Mrs W has also complained about the lack of autism training amongst Council staff.
66. The 2015 statutory guidance places a requirement on local authorities to provide general autism awareness training for all frontline staff, as well as specialist training for those in particular roles, including those undertaking needs assessments.
67. The Council has confirmed it has not yet implemented this. This is fault.
68. To identify a personal injustice to Mrs W from this, we would need to see evidence of a specific action or decision being taken, which affected her directly, and which may have been handled differently if the staff member(s) responsible had received training. A general lack of understanding by staff about autism does not, in itself, represent a personal injustice to Mrs W which we could remedy.
69. While it is of particular importance that staff undertaking her needs assessments have autism training, Mrs W has not had a meaningful needs assessment since her 2013 care plan was produced. There is no evidence of a significant personal injustice to Mrs W from the lack of autism training
70. However, it is a significant concern that this training has not been done, as other vulnerable people could well have been negatively affected.

Complaint handling

71. It is not clear why the Council has said Mrs W's initial complaint was made on 1 June. We have not seen any letter or other correspondence from her with this

date, and by Mrs W's own statement, her initial complaint was 19 June. However, we accept this may simply be a recording error.

72. The Council's initial complaint response was on 25 July. This appears to have been reasonably prompt.
73. Much of Mrs W's complaint related to the safeguarding matter, which we have not discussed here. However, she also clearly raised her complaint about her care plan, and the lack of autism training, in this complaint, and yet the response makes no attempt to address these matters. This is fault.
74. The handling of the second complaint was much more drawn out. After initially expressing her dissatisfaction with the first response on 31 July, the Council did not produce a formal written response until 28 February.
75. However, while this was very protracted, we note the Council met with Mrs W several times during the process, and made a particular effort to agree a Terms of Reference with her. This is good practice.
76. We also consider the content of the second response to be more helpful. It upholds her point about the autism training. It also accepts that her care plan was created in 2013, although it is here the Council says its letters to Mrs W's GP count as her care plan, which was not an appropriate response.
77. Mrs W says the Council has not investigated her complaint as she made it.
78. As stated, we accept the Council made no attempt to address Mrs W's complaints about the care plan or autism training in its first response, but the second response does cover these points. Given, especially, the effort it made to agree the Terms of Reference with her, we are satisfied the Council addressed the complaints as raised.
79. We do accept the delays in providing the response caused some frustration to Mrs W. Even discounting the period before the Terms of Reference were agreed, it still took from 31 October to 28 February for the Council to investigate, approximately four months.
80. We note the termination of Mrs W's package did not occur until after she had originally made her complaint about the care plan. However, as we have said, there is a clear link between these two issues.
81. This being the case, it appears more likely than not a meaningful investigation of Mrs W's complaint at the outset may have helped prevent the termination of the package and the consequent loss of support.
82. So we consider there is an additional injustice to her arising from this fault.

Conclusions

83. Mrs W's care plan has not been subject to a meaningful review or update since 2013. This has indirectly led to her care package ending, because of a lack of clarity over payment of her support workers' expenses. This is significant fault causing a serious injustice.
84. And this fault is evidence of the Council's commissioned service failure to adhere to the most fundamental parts of the Care and Support Statutory Guidance.
85. The Council has also failed to provide autism training to staff, as required by the 2015 statutory guidance. This is fault but it has not caused an injustice to Mrs W.

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86. The Council's first complaint response was poor. Its second was better but came after a long delay. This fault has compounded the injustice arising from Mrs W's loss of support, causing an additional injustice.
87. We gave the Council an opportunity to respond to our initial draft findings and recommendations in this case.
88. In its response, it accepted the findings and agreed to provide the remedies and service improvements we recommended. It also said it would undertake some additional work to ensure its services were fit for purpose. These are detailed in full in the 'Recommendations' section below.
89. The Council's response to our draft findings has been very positive. It is particularly encouraging to see an authority making proactive steps to improve its service, above and beyond the recommendations we have made. We consider this evidence the Council fully accepts the seriousness of the faults we have identified here.

Recommendations

90. 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*)
91. To remedy the injustice identified in this report, the Council has agreed to reinstate Mrs W's previous care and support plan, including the payment of her expenses, while it arranges to reassess her. This assessment will be carried out by a social worker with training and experience in the needs of autistic people. The Council will then provide Mrs W with an updated care and support plan, in line with the requirements of the Care Act 2014, and will also undertake a financial assessment of her ability to contribute to the costs of her care.
92. The Council has also agreed to offer to pay Mrs W £1,000 to reflect her distress at the loss of her support package, and an additional £200 to reflect her time and trouble pursuing her complaint.
93. The Council has given us evidence it is in the process of completing Mrs W's re-assessment, and that it has provided her with the agreed financial remedy.
94. The Council has agreed to undertake a number of service improvements. It will:
- undertake an audit of all adult care recipients in its area, to ensure their care and support plans have been appropriately reviewed and updated within the last 12 months. It will update the Ombudsman at the end of the review and explain what steps it is taken to rectify any issues the audit uncovers;
 - arrange training so that NHS staff carrying out the Council's adult social care functions are up-to-date on their responsibilities around carrying out assessments and writing care plans; and
 - begin to make arrangements for all relevant staff to receive autism awareness training, in line with the statutory guidance.
95. The Council also says:
- it has commissioned a review of the provision of adult social care by the Greater Manchester Mental Health NHS Foundation Trust;

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- it will provide a full briefing to the Chief Executive and Cabinet of our report; and
 - it will arrange for similar briefings to be provided by the directors of the Salford Integrated Care Organisation and the Greater Manchester Mental Health NHS Foundation Trust to their respective Boards.
96. The Council has given us evidence it has begun to implement these improvements.

Decision

97. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mrs W. The Council has agreed to take the action identified in the 'Recommendations' section above.