

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

**Investigation into a complaint against
Westminster City Council
(reference number: 19 007 605)**

10 September 2020

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

Mr F the complainant

Mr E Mr F's representative

Report summary

Adult social care

Mr E, a legal representative at the Royal National Institute of Blind People (RNIB), complains for Mr F that Westminster City Council (the Council) reduced Mr F's care hours in August 2018 and did not take into account information from his GP when reviewing his care and support plan after a hospital admission.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, the Council should, within three months of the date of this report:

- apologise to Mr F;
- pay Mr F £2,000, to be offset against any outstanding care charges he owes the Council;
- review all the cases of those blind adults receiving adult social care funding to ensure that where they have an eligible unmet need for support to access the community, that there is provision in their personal budget and care and support plan to meet that need; and
- remind relevant staff to check there is funding in a person's care and support plan to meet each identified unmet eligible need.

We welcome that the Council has accepted our recommendations.

The complaint

1. Mr E, a legal representative at the Royal National Institute of Blind People (RNIB), complains for Mr F that Westminster City Council (the Council) reduced Mr F's care hours in August 2018 and did not take into account information from his GP when reviewing his care and support plan after a hospital admission.
2. Mr E says the Council's fault compromised Mr F's physical, mental and emotional wellbeing. He would like the Council to organise an independent assessment, apologise and make a payment to reflect Mr F's avoidable distress.

Legal and administrative background

The Ombudsman's role and powers

3. 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*)
4. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

Relevant law and guidance

5. A council must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
6. An adult with care needs can ask for their GP or a district nurse to be contacted to provide information relevant to their needs. (*Care and Support Statutory Guidance, paragraph 6.9*)
7. The Care Act spells out the duty to meet eligible needs (needs which meet the eligibility criteria). (*Care Act 2014, section 18*)
8. An adult's needs meet the eligibility criteria if they arise from or are related to a physical or mental impairment or illness and as a result the adult cannot achieve two or more of the following outcomes and there is or is likely to be a significant impact on wellbeing.
 - Managing and maintaining nutrition
 - Maintaining personal hygiene
 - Managing toilet needs
 - Being appropriately clothed
 - Making use of the home safely
 - Maintaining a habitable home environment
 - Accessing work, training, education

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- Making use of facilities or services in the community
 - Carrying out caring responsibilities

(Care and Support (Eligibility Criteria) Regulations 2014, Regulation 2)

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)*
11. Statutory Guidance explains a council should review a care and support plan at least every year, on request or in response to a change in circumstances. The purpose of a review is to see how a care and support plan has been working and to decide if any revisions need to be made to it. The council should act promptly after receiving a request for a review. *(Care and Support Statutory Guidance, Paragraphs 13.19-21 and 13.32)*
12. A council should revise a care and support plan where circumstances have changed in a way that affects the plan. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult about how to meet those needs. *(Care Act 2014, sections 27(4) and (5))*
13. The Supreme Court approved a previous Court of Appeal judgment (Savva) that a council must provide adequate, brief reasons for how it worked out that the sum of money it had offered as a personal budget would meet the cost of care. It would be adequate to list the required services and assumed timings together with the assumed hourly cost. *(KM v Cambridgeshire CC [2012] UKSC 23)*

How we considered this complaint

14. We produced this report after examining relevant documents and interviewing the complainant and relevant employees of the Council.
15. We gave the complainant and the Council a confidential draft of this report and invited their comments. We took any comments received into account before the report was finalised.

What we found

16. Mr F is blind and has physical health problems. He is eligible for social care and support and receives funding from the Council for this.
17. An occupational therapist (OT) carried out an assessment of Mr F in April 2018. She observed Mr F in his flat performing daily activities. The OT recommended Mr F's daily living and personal care needs could be met with 15 hours care a week. She included personal care, meals on wheels, housework, laundry and shopping in this allocation of time.
18. Mr F's care and support plan of August 2018 (started in May 2018) noted Mr F's view that he needed four calls a day to prepare fresh meals, keep his home clean

plus support twice daily with personal care and dressing and three hours a week for carers to shop, do laundry and support him to access the community. The plan noted an OT had assessed Mr F and his GP and district nurse had also been consulted for records about his medical conditions. The district nurse said he had a daily injection and needed to eat within 20 to 30 minutes and must eat frequently throughout the day. The plan set out Mr F's outcomes and the support he needed to achieve these outcomes.

19. The August 2018 care and support plan set out Mr F's personal budget and a breakdown of how the budget could be used to pay for his care, noting he could rearrange his care calls and have:
- one hour in the morning for a shower, breakfast and housework;
 - 45 minutes at lunch for meal preparation;
 - one hour in the evening for a shower, supper preparation and housework;
 - an additional three half hourly slots a week added to one of the daily calls to do laundry;
 - two shopping visits a week of one hour each.

This was a total of 22.75 hours a week of care and support.

Although the care and support plan said Mr F needed support to access the community, there was no provision for this.

20. Mr F went into hospital in September. He was discharged home and his care continued as previously.
21. A social worker contacted Mr F's GP in December 2018. She asked about Mr F's medical conditions and the GP provided a list of these.
22. Mr E also contacted the GP with a questionnaire about Mr F. The GP replied saying Mr F needed:
- fresh food daily and small fresh meals every three to four hours;
 - 30 to 60 minutes of assisted walking each day; and
 - the maximum help with care and feeding.

Mr E passed the GP's answers to the Council.

23. In April and May 2019, Mr E complained to the Council about the issues he raised with us and about other issues. The Council responded saying:
- if clinicians felt Mr F needed extra care after being in hospital, then they would have contacted the hospital social work team and asked for a review. The hospital discharge letter said Mr F had made a good recovery and there was no mention of any increased care needs;
 - the GP's responses did not provide medical evidence for why Mr F needed more care than the Council was already providing;
 - officers had contacted Mr F's GP twice for information and also discussed his case with other health and social care professionals. This information would assist in the review the Council would shortly complete.

24. Mr E complained to us in August 2019.

25. The Council completed a review of Mr F's care and support plan in October 2019. During the review, Mr F said he needed more care because his health had

declined. The review noted information from Mr F's GP including a telephone discussion with the GP who said Mr F needed care twice a day but could not explain why. The review described Mr F's needs and set out the extent to which the care and support plan met his outcomes. It also set out a plan of how Mr F could organise his care within the approved budget.

- One hour in the morning for breakfast preparation, support with personal care and dressing and tidying the flat.
- Half an hour at lunch time for meal preparation and tidying.
- Half an hour at teatime for meal preparation and tidying.
- One hour in the evening for meal preparation, support with changing clothes, putting away laundry and tidying.
- Weekly shopping call of one hour.
- Two one hour calls a week for support to do laundry.
- Weekly support of three and a half hours to access the community.

The total care was 28 hours a week.

26. Mr F's care and support plan set out his desired outcomes and the plan for achieving these. His personal budget was £481 a week. The plan said Mr F could organise the care hours as he wished, but gave him an example of how the care could be structured, repeating the suggested timetable set out in the last paragraph.

Findings: was there fault causing injustice?

27. As there was a dispute about the proposed personal budget for Mr F's care, then the Council needed to give an adequate explanation of how the budget could meet his care costs. We find the Council acted in line with the Supreme Court judgment described in paragraph 13 by setting out a detailed care schedule in the August 2018 care and support plan.
28. We are satisfied the Council took into account the evidence from Mr F's GP. While the GP can express a view on the care provision Mr F should have, this did not mean the Council had to agree with what the GP said. It was the Council's role to determine the funding required to meet Mr F's eligible needs and not the GP's. The Council explained in its complaint response that the GP did not provide any new information to explain why Mr F's medical condition meant he required additional care. We have no grounds to criticise the Council's action as it was in line with its requirement to consult with other professionals.
29. As well as giving an adequate explanation of the personal budget, when undertaking care and support planning, the Council also had to act in line with section 18 of the Care Act 2014: namely it had to meet Mr F's eligible needs. We find the Council was at fault in this regard. The care and support plan of August 2018 said Mr F had an eligible need for support to make use of services in the community. This means the Council should have included an allocation of time for supporting Mr F to access the community. The August 2018 care and support plan was therefore flawed as the weekly schedule did not contain a provision to meet an identified eligible need. This was a loss of service to which Mr F had a legal entitlement. As Mr F is blind, it meant he was denied the opportunity of getting out and accessing activities and services outside his home which would have been of benefit to him. We note in particular, the GP highlighted the importance of regular assisted walks for Mr F. Mr F was therefore denied the

physical and mental health benefits of this activity because of the Council's failings.

Recommendations

30. The Council must consider the final report and confirm within three months the action it has taken or proposes to take. The Council should consider the final 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*)
31. The Council carried out a review of the care and support plan in August 2019 as an outcome to Mr F's complaint. It then issued a revised care and support plan in October which included three hours of support to access the community. This was a partial remedy for the fault identified in the previous section.
32. Mr F was without weekly support to access the community between August 2018 and October 2019. This caused the injustice set out in paragraph 29. We welcome that the Council has accepted our recommendations to:
 - apologise to Mr F;
 - pay Mr F £2,000, to be offset against any outstanding care charges he owes the Council;
 - review the cases of all recipients of adult social care in Westminster who are blind to ensure that where they have an eligible unmet need for support to access the community, that there is provision in their personal budget and care and support plan to meet that need; and
 - remind relevant staff in the social care team of the importance of ensuring there is funding in a person's care and support plan to meet each of their identified eligible unmet needs.
33. We have not recommended an independent assessment because we consider the Council's review of August 2019 was completed without fault.

Final decision

34. The Council's care and support plan did not include provision to meet Mr F's eligible need for support to access the community. This was fault which caused him an avoidable loss of opportunity to access the community. To remedy the injustice, the Council will apologise and pay Mr F £2,000. It will also take action set out above to minimise the risk of recurrence in other cases.