

Report

on an investigation into
complaint ref no 07C03887 against
Bury Metropolitan Borough Council

14 October 2009

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Key to names used

Mrs M	-	the Complainant
M	-	the Complainant's Son
A	-	the Complainant's Son

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.

This report has been produced following the examination of relevant files and documents and interviews with relevant employees of the Council.

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.

Report summary

Housing

Two of Mrs M's five children are seriously disabled by a rare, genetic muscle-wasting condition. They have no mobility, are doubly incontinent and need 24-hour care and assistance with feeding, dressing, bathing and toileting. The younger of the two is also blind and has severe learning disabilities.

Mrs M complained about long and unreasonable delay before the Council provided housing appropriate to her family's needs.

The Local Government Ombudsman found that the Council knew from 1998 that the family would need a home with a ground floor bathroom and bedroom and from 2000 that this would need to be for two children. At that time the older of the disabled children was 11 and too heavy to be carried upstairs to the bathroom. In 2002 the family were moved to a four bedroom house with the intention of building a ground floor extension. The Council did not check that such an extension was feasible or develop a 'fall back' plan even though the architect expressed grave doubts about whether planning permission would be given and a trainee social worker communicated directly with the Director. In February 2004, 18 months after the family moved, planning permission was refused.

The Council then quickly found a site where a housing association could build a suitable property for the family. However, through no fault of the Council, the new property was not available until August 2006.

In the meantime, despite quite desperate representations from a care agency manager and a trainee social worker, the Council refused to provide interim adaptations other than providing a 'stairclimber'¹ and a hoist in the dining room. Paid carers were not allowed to help Mrs M get her doubly incontinent children to the bathroom. Arrangements for the older child to bathe at a nearby day centre were frustrated by lack of co-operation from the management there and the school transport service. His school withdrew the weekly bath there when the care agency asked to do a risk assessment. In October 2004 a Disability Resource Panel were informed that:

- The older child, now almost 15, had a rash that was getting worse as a result of not bathing regularly, painful feet from being dragged when lifted and was aware of and distressed by his body odour;

1 A stairclimber is a device similar to a wheelchair, and is used to move people with mobility problems up or down steps and stairways

- There was not enough space for Mrs M to move around him to clean him when faeces spread across his body and she had no option but to hose him down in the garden.

The Panel considered that this was “not acceptable and abusive” but offered her no alternatives or require the nearby day centre to co-operate.

In December 2004 an assessment described how the older child, now weighing 11 stone, could end up soiled to his neck by faeces; was petrified of using the stair climber because he had fallen from it three times and needed three people to lift him into it and gained no benefit from it as there was no hoist in the upstairs bathroom which was in any event, too small for him to be moved and handled. Mrs M was assessed as suffering from stress, diabetes arthritis, constant muscle pain from trying to lift and carry her disabled children and upset at being unable to give time to the others.

The trainee social worker contacted the Director to make sure she was aware of the position and to plead for the day centre to be made to co-operate with providing three baths a week but no effective action was taken. When solicitors representing Mrs M contacted the Council in January 2005 it denied that it was failing in its duties, claimed that Mrs M had refused alternative suitable properties and said, in error, that the new property should be available in September 2005.

The Ombudsman found that the Council acted with some specific instances of maladministration caused by ineffective management that she describes as “institutionalised indifference” not only to the disabled children’s needs and the mother’s plight but also to the Council’s duties and responsibilities. She praises a trainee social worker’s actions as “exemplary” and asks the Council to consider the impact on its ‘front line staff’ if no effective response is given when management attention is drawn to extreme needs and organisational failings.

The Council recognises that from Spring 2004 the Council pursued an ideal and sustainable solution in a purpose built property that the family moved into in the summer of 2006.

Finding

Maladministration causing injustice.

Recommended remedy

As a result of the Council’s maladministration the Ombudsman found that Mrs M’s disabled children spent three years in accommodation where she could only keep them clean by hosing them down in the garden, strip-washing them in a downstairs toilet, or

risking serious injury by getting them upstairs to a small and inadequately equipped bathroom.

This must have been degrading for the children and heartbreaking for their mother. In addition to a personal apology to Mrs M and her family, the Ombudsman recommends three annual payments of £6,000 each to Mrs M and her older disabled child and a fund of £5,000 for items and activities chosen by the other children in the family in recognition of the effect on them of the situation. She also recommends that the Council should review its procedures for dealing with disabled facilities grants and the leadership capacity in the relevant services.

Introduction

1. Mrs M complains that the Council delayed unreasonably in providing her family with appropriate accommodation. She has been represented 'pro bono' by Fazakerley Advice Bureau and Pannone LLP, and I want to record my appreciation of their assistance.
2. Mrs M has five children. Two of the children, M (now aged ten) and A (now aged 19) suffer from a rare genetic muscle-wasting condition. For A, this means decreased mental ability, no mobility due to muscle weakness, double incontinence, and assistance with feeding, bathing, toileting and dressing. A is wheelchair-bound, very heavy for his age, and has to be moved by manual hoist. M's condition is similar but worse. He is also blind and has severe learning difficulties. Both children require 24-hour care. Mrs M is their principal carer with daily support from agency workers funded by the Council. She suffers from depression, arthritis, high blood pressure and diabetes.

Legal and admin background

The Chronically Sick and Disabled Persons Act 1970:

- requires councils to assess the needs of and provide assistance to disabled persons;
- gives social services authorities powers and duties to arrange practical assistance in the home and any adaptations or to provide additional facilities designed to secure greater safety, comfort or convenience. This can be done by directly providing equipment, adaptations, loans or grants.

The Children Act 1989:

- places a general duty on social services authorities to safeguard and promote the interests of children in need;
- empowers social services authorities to provide a range of services in order to carry out this duty;
- defines a child as being 'in need' if:
 - he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority;

- his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- he is disabled.
- requires local authorities to provide services to minimise the effect on disabled children of their disabilities and give such children the opportunity to lead lives which are as normal as possible (Schedule 2 paragraph 6).

The National Health Service and Community Care Act 1990:

- if a council becomes aware that an individual may be in need of community care services it must assess those needs.

The Housing Grants, Construction and Regeneration Act 1996:

- places a duty on local housing authorities to approve Disabled Facilities Grants (DFGs) to help disabled people with the cost of adaptations to enable them to live as independently as possible in their homes, including:
 - providing a disabled person with an accessible room with a bath or shower, or enabling access to an existing bathroom;
 - providing an accessible lavatory, or enabling access to an existing lavatory;
 - *'...making the dwelling or building suitable for the accommodation, welfare or employment of the disabled occupant in any other respect'.*
- requires a council to assess what is necessary and appropriate to meet the applicant's needs, and reasonable and practicable bearing in mind the age and condition of the property (Section 24(3)).

Regulatory Reform (Housing Assistance) Order 2002:

- enables housing authorities to give discretionary assistance, in any form, (e.g. grant, loan or equity release) for adaptations in addition, or as an alternative, to a DFG, to deliver a much quicker remedy for urgent adaptations by avoiding the procedural complexities of mandatory DFGs (Article 3).

Delivering Housing Adaptations for Disabled People: A Good Practice Guide:

Government guidance on delivering housing adaptations for disabled people says:

- the individual end user and his or her carers should experience a seamless, joined-up service;

- there should be a corporate responsibility, binding on all partners involved in delivering the adaptations, to ensure that they are delivered sensitively, fit for the purpose identified by the end user and within a time-frame that is made explicit at the outset;
- local authorities should nominate a single point of contact, whom the client can contact for information throughout the DFG process;
- *'Local housing authorities should: liaise with the local planning department... develop procedures to assist applicants to obtain planning permission quickly... and develop procedures to resolve problems with planning permission where these arise.'* (Paragraph 7.17)
- if it will take a long time to provide the required adaptations *'... it is appropriate for interim help to be provided. This may be through the provision of equipment or temporary works. It is not acceptable that the disabled person and carers should be left for a period of weeks or months without such interim help when the timescale for the provision of an adaptation is foreseen to be lengthy. In addition to the problems an absence of interim measures may cause for the disabled person and for carers, it may result in additional costs for Health and Social Care authorities.* (Paragraph 5. 40)

Case law has established that a council has the duty (whether as a community care service or as a service to children in need) to provide accommodation when professionally qualified staff and advisors say larger accommodation is needed.

The events in Mrs M's complaint

3. Bury Metropolitan Borough Council's Children and Family and Adult Care Services were involved with the M family because of the boys' disabilities. In April 1998, when A was eight years old, his Paediatric Occupational Therapist recognised that the family needed a property with level access and facilities including wheelchair access and hoisting for A.
4. By September 2000, it was obvious that M's condition was similar to A's, but worse, and that he, too, would need living and washing facilities on one level. A Council Occupational Therapist concluded that the family home was too small for the boys' needs and could not be adapted or extended. In December 2000, when A was 11 and M was two, it was decided that Mrs M should apply to be rehoused to a property that was large enough to be adapted with a DFG.

5. It took over 18 months for the Council to find a four bedroom, semi-detached housing association property that, it said, could be extended. The lettings officer who had no planning qualifications or training did not check with planning officers or anyone else whether an extension was feasible or likely to be given planning permission. The family moved in to the property in September 2002.
6. In November 2002, Mrs M told Children's Services that she was having trouble carrying A, then aged 13, to the upstairs bathroom because he was so heavy and the agency carers were not allowed to help. The Council arranged for A to be bathed once a week at school and once a week at a nearby day centre for children with disabilities run on behalf of the Council by a children's charity. This arrangement lasted until July 2003.
7. Early in 2003 Mrs M applied for a DFG and the Council engaged an architect who died in May 2003. A second architect initially refused to produce plans for the extension, because he believed it was too large to get planning permission. The Architect explained this very clearly to officers from both Children's Services and Urban Renewal (the department responsible for DFGs). Mrs M's trainee social worker recorded that the architect:

'... is 90% certain that the plans will not be approved. He said that he has made everyone aware of this at the meeting at the house a few weeks ago and yet no one seems to be taking his point that the property is unsuitable for the planned extension. He said that he will complete the plans by the beginning of next week, but does not feel happy about the situation and feels that the family are being made to suffer, in that they think once the plans are drawn up then the extension will follow.'
8. Although the Council knew that Mrs M could not carry A upstairs to wash him, and his carers were not allowed to help her, it refused to fund temporary adaptations, such as a stair lift or a shower in the downstairs toilet, because a DFG application was in progress.
9. On 23 December 2003, Mrs M's trainee social worker sent an email to the Director responsible for Social Services, Health and Housing, explaining the family's history and circumstances, and her concerns about the effect on the family of further delays if the property could not be adapted. She asked the Director for help and advice on how to deal with the situation and her manager also sent a supporting email to the Director.
10. The Director passed both emails on to the Head of Tenants' Services who asked for further information that he passed on to the Team Leader for Access and Assessment.

11. On 6 January 2004, there was a 'Child in Need' meeting for A (now 14 years old) and M (nearly six years old). The minutes record:

'Both children are clearly at risk of injury whilst being cared for at home as they are physically lifted to have their basic needs met. A has had to be hosed down in the garden during summer to be cleaned, and has to rely on having baths at the Centre or at his short break carer's home. It was clear from the meeting that the children are being denied basic human rights in this current situation, and without support in the home immediately the family are at risk of breakdown and the children may need to become accommodated.'

12. The meeting agreed to submit a new housing application for the Ms as a contingency plan if planning permission for the extension was refused.
13. On 12 January 2004, the Architect, the Occupational Therapist, a manager from Urban Renewal, and a planning officer met to discuss the planning application. This is the first record of officers responsible for the DFG discussing the feasibility of the extension with a planning officer.
14. As predicted by the Architect, planning permission for the extension was refused on 3 February 2004 because it would be "*seriously detrimental to the residential amenities currently enjoyed by the neighbouring dwelling houses, by reason of its size and position*".
15. The Senior Planning Officer who refused planning permission says that if he had been asked for advice at the outset, he would have said that there was no chance of getting planning permission for an extension of that size at that property.
16. So, some six years after their accommodation needs were identified and 18 months after being moved to a property to be adapted, and having coped without any adaptations at all, the M family were, as their trainee social worker put it, back where they started.
17. The Care Agency Manager wrote to the Council setting out her concerns, including:

'There is a severe need for handling and lifting equipment within the home...the care package is at crisis stage, as Mum's health is continuing to deteriorate, and should she find herself needing to be hospitalised, the family unit would break down... There are at the present time, several breaches of health and safety, and basic Human Rights issues, and I am

supported by a qualified OT², the CDT³ manager and Family Community Worker.'

18. A's school also wrote to the Children's Disability Team, expressing concern that the problems were affecting his school life.
19. In April 2004, the Council provided a stairclimber⁴ so that A could be moved upstairs without being carried, and a wall mounted hoist in the dining room so that A could be moved more safely.
20. Later that month, the Service Manager for Children with Disabilities emailed the Chief Housing Officer giving a brief description of the family's situation and asking for assistance. She said she was concerned that the case history put the Council in a very bad light. Four days later, the Council identified a site where a housing association could build a home suitable for the family. The first potential housing association pulled out of the project in August 2004 and the Council quickly found another.
21. By September 2004, the Day Centre had offered to allow Mrs M to bathe A there on Thursday afternoons, but the School Transport Service refused to take him there after school. Mrs M found it difficult to wheel A over from home and wash him in the time allotted by the Day Centre. A's school had initially agreed to let him shower there three times per week, but then refused when it found out his care agency had to carry out a risk assessment. This meant that A was only able to have a bath when in respite care.
22. In October 2004, just before A's 15th birthday, he was assessed for a Disability Resource Panel⁵ meeting. Forms for that meeting state that he has "*no accessible bathing facility in the home...[and] requires a bath at least every other day*" and that:
 - Mrs M requires a fully adapted property;
 - A had a rash which is getting worse because he cannot bathe regularly and painful feet from being dragged when lifted;

² Occupational Therapist

³ Children's Disability Team

⁴ A stairclimber is a device similar to a wheelchair, and is used to move people with mobility problems up or down steps and stairways

⁵ The Disability Resource Panel is multi-agency, and is made up of representatives from the Council's Children's Services, the Primary Care Trust, and voluntary organisations. It is chaired by the Head of the Special Educational Needs and Disability Service. The purpose of the Panel is to co-ordinate and prioritise the allocation of support to children with disabilities and their families. The Panel looks at all cases put to it by social workers and prioritises those most in need of service allocation.

- A was aware of his body odour and would ask carers if he smells;
 - when A's faeces had spread across his body there was not enough space in the downstairs toilet for Mrs M to move around him to clean him and she had no option but to hose him down in the back garden, sometimes in the middle of the night;
 - Mrs M was under a great deal of stress and suffers from high blood pressure and pains because of lifting;
 - the other children were adversely affected by the situation.
23. The Panel was recommended to approve bathing for A at the Day Centre three times a week. Minutes of its meeting on 18 November 2004 record: '*Mrs M currently hosing A down in the garden which the Panel felt is not acceptable and abusive to A. It was stressed that hosing A down in the garden must **no longer happen...***' (original emphasis). The Panel did not offer any alternative means for Mrs M to clean A or agree to additional bathing at the Day Centre but decided that A could receive two baths per week at a different centre whilst further enquiries were made about adaptations and bathing.
24. In December 2004, the trainee social worker carried out core assessments for A and M, and a carer's assessment for Mrs M. A's assessment describes how he could end up soiled up to his neck by faeces. When this happened at home, Mrs M had to take the boy, now aged 15 and weighing 11 stone, to the back yard in a bear hug and wash him down helped only by other members of the family. An occupational therapist's report details the deficiencies of their current home including:
- the restricted space in the family dining room where A slept that made safe moving and handling impossible;
 - it would take three people to lift A who had fallen from the stairclimber on three separate occasions and was petrified of using it;
 - there was no hoist in the very small upstairs bathroom and no room for safe moving and handling; and
 - this resulted in A not being able to be showered, which was "*totally unacceptable*".
25. Mrs M was assessed as suffering from stress, diabetes, arthritis, constant muscle pain due to lifting and carrying the boys, and that she felt unable to give enough time to her other young children.

26. The trainee social worker again e-mailed the Director responsible for Social Services, Health and Housing asking for help and advice, saying:

'The biggest problem that Mrs M has is that she cannot give her 15 year old son A a bath in the home. I suggested that we take A to the Day Centre for a bath and Mrs M was perfectly happy to do this, but the Day Centre have done all they can to block this...It seems ridiculous that there is a provision on Mrs M's doorstep that will meet her son's needs and she is not being allowed to use it. The Day Centre is a purpose built Centre which should meet the needs of the disabled children who attend, it appears that A is being discriminated against because his need is not for a tea time break or social opportunities, but for a bath. Mrs M is not doing this for the fun of it she is at the end of her tether and could do without the stress of taking legal action, but when she was told that if she continues to wash her son in the back garden then this would be deemed as child abuse, this was really the last straw. If you could offer some support in getting A a bath at the Day Centre 3 x a week then Mrs M could cope in her present situation until the new house is built...please could you help regarding the Day Centre?'

27. The Director responded to this email saying that she had not realised this was the situation, and that she would ensure that the issue with the Day Centre was sorted out. The Centre immediately offered A bathing on any weekday morning between 9 and 9.30 am. However when Mrs M asked, a few weeks later, it refused her request to change the time to 9.30 am, because she had other children to get to school and found it difficult to get there by 9.00.
28. On 6 January 2005, Mrs M complained to the Council through her solicitor. The solicitors set out the history of the case to date, and alleged that the Council had failed to comply with its statutory duties. They asked the Council to provide a stair lift in the current property and to rehouse her as soon as possible.
29. The Council's legal department responded to this letter: denying that the Council was failing to comply with its legal duties and stating, without any supporting evidence, that the family refused other suitable properties before their present home⁶. The letter appears to blame Mrs M for not using the stairclimber and says that a stair lift would not solve the problem as the boys were too heavy, a mobile hoist would be unsafe, and the bathroom was not adapted. It also said that the Council expected the new home to be finished by September 2005 and the best arrangement until then was for A to use the offer of bathing three times a week at two different day centres.

6 My investigation found no evidence on the Council's files to show that Mrs M had unreasonably refused any properties the Council offered her.

30. Housing Services knew that September 2005 was unrealistic but did not tell the Council's Solicitor until after the letter had been sent, and did not respond to her offer to write again to correct any inaccuracies. As a result, Mrs M carried on believing that she would be rehoused by September 2005.
31. Like the Multi-Agency Panel, the officers responsible for this reply did not address how Mrs M was expected to clean her doubly incontinent sons when they soiled themselves at home at all other times.
32. In March 2005, the Housing Association pointed out that the Council did not have full title to the land for the new home and that contractors would not start work until June 2005. In June the Council started complicated negotiations to purchase the title to the land that lasted until October 2005. For the first time, the Council made Mrs M aware of a delay with the project.
33. At this point an exchange of emails began between officers and managers in the Housing and Children's Disability departments arguing about what different staff and departments were and were not responsible for in terms of the Ms' case and which budgets should bear the associated costs.
34. In September 2005, the Council refused to install drainage in the downstairs toilet, where Mrs M washed the boys and the floor would get very wet, because of the plans for the new house.
35. Contractors started work on the new house in October 2005 but did not finish until July 2006 because of delays caused by bad weather, unexpected ground conditions, vandalism and connection of essential services. Mrs M was finally able to move into a property suitable for her severely disabled sons when A was nearly 17 and M eight years old.

The Council's comments

36. In commenting on a draft of this report the Council said that it had pursued the planning permission because the property could not be adapted without it, and this was the preferred option for Mrs M. This comment misses the important point that the possibility that planning permission would be refused had been raised in early 2003 but the Council made no alternative plans and failed to make any interim adaptations.
37. The Council also said that Mrs M saw alternative accommodation as a last resort and refused the offer of a four bedroom property in 2000. The evidence of my investigation was that none of the properties offered to Mrs M were suitable and she had not been unreasonable.

Conclusions

38. For the Council to properly fulfil its statutory duties to Mrs M's children and meet their needs various services needed to take action. Despite most of the services being managed as part of one Directorate of Social Services, Health and Housing, there was inadequate communication, a lack of co-ordination, inattention and inactivity that left Mrs M and her family in an increasingly desperate situation for many years.
39. There can be no doubt that the Council acted with maladministration in this case. The accumulation of a number of failings resulted in protracted delay with serious consequences for Mrs M, her severely disabled sons and other children. It is accepted that some delay was caused by the Architect.
40. The underlying cause was ineffective management that can fairly be described as "institutionalised indifference" – not only to the boys' needs and their mother's plight but to the Council's duties and responsibilities.
41. Before planning permission was refused, the Director passed the issue to senior officers. There is no evidence that any of these senior officers:
 - took ownership of what was acknowledged as a "*pretty desperate situation*";
 - gave the trainee social worker the advice and support she was clearly asking for; or
 - delegated the task of resolving the situation and monitored it to ensure that this was done.
42. The trainee social worker acted in an exemplary way. The Council needs to give serious consideration to the impact on its 'front-line' staff working in an environment where no effective response is forthcoming to valiant attempts to focus management attention on extreme needs and organisational failings.
43. Mrs M's parenting skills and her commitment to care for her sons has never been in question. It was breathtaking insensitivity for the Panel to describe her actions in cleaning A in the garden as "abusive" and maladministration for the Panel to then fail to secure any immediate alternative.
44. The only aspect of the Council's handling of this issue to emerge without serious criticism is the way it proposed and pursued, from 2004, the obvious long term solution. The delays in completing the purpose built property were largely outside its control. Even this performance is marred by a failure to communicate accurate timescales to other Departments giving Mrs M the unrealistic expectation that she would move 12 months earlier than she could.

45. The specific failings and maladministration were:

- failure to give proper, comprehensive consideration to the accommodation that the family needed;
- leaving an unqualified and untrained lettings officer to select a property that would be adapted;
- failing to assess whether the selected property could be adapted and seek appropriate advice;
- failing to heed and respond to the architect's professional opinion that planning permission was likely to be refused;
- failing to address the Council's duties to A and M, and their mother and provide interim adaptations to ease the difficulties of caring for and cleaning them;
- failing to require the Council-funded Day Centre to make 'reasonable adjustments' to allow A to be bathed there regularly; and
- failing to make reasonable adjustments to the school transport service.

Injustice

46. It would be unrealistic to expect a council to be able to immediately provide accommodation to meet the needs of two severely disabled children in a larger than average family. Their needs and the difficulties in caring for them grew as they became older and would never diminish. The Council did not use the time when M was a baby and A was a small child to plan for their future needs.
47. As a result of the Council's maladministration, A and M spent three years in totally inappropriate accommodation where they could not be adequately bathed. The only way Mrs M could keep her sons clean was by hosing them down in the garden, or by strip-washing them in an unadapted downstairs toilet, or by risking serious injury to both herself and the boys by carrying them up the stairs and washing them in an inadequately adapted bathroom. This must have been degrading for the boys, and heartbreaking for their mother. A had to sleep and be cared for in the family dining room leaving his siblings with restricted and inadequate living space.
48. I acknowledge that the Council did eventually provide an ideal and sustainable solution to the family's unusually severe and complex needs.

49. To remedy the injustice, the Council should:

- arrange for a suitable representative at Director or Executive Member level to meet with the M family, and apologise for the Council's failings;
- commission and consider a report from its officers about the current procedures for delivering DFGs and how these compare with the check-list included in the Good Practice Guidance;
- commission and consider a report from its Chief Executive about the capacity of senior managers in the relevant services to provide leadership and a working environment that supports, values and responds effectively to 'front line' concerns about service failures and pressures;
- pay Mrs M and A each £6,000 per year (the threshold at which means-tested benefits would be affected) for the next three years (i.e. £18,000 each over three years – £36,000 in total) in recognition of the distress and indignity caused to them;
- create a fund of £5,000 to be spent on items or activities chosen by the other children in the family, in recognition of the effect on them of: the strain caused to their mother, their restricted living space, and witnessing their brothers' distress and indignity.

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14 October 2009