

Report by the Local Government Ombudsman

Investigation into a complaint against

Worcestershire County Council

(reference number: 16 002 395)

31 May 2017

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.

Investigation into complaint number 16 002 395 against Worcestershire County Council

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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

Mr B – the complainant

Mrs C – the complainant’s mother (now deceased)

Officer X – a social worker

Officer Y – a second social worker

Report summary

Adult Care Services - Charging

Mr B complains the Council withdrew funding for his late mother's nursing care despite knowing that no-one had authority to deal with her financial affairs.

Mr B also complains the Care Provider, Haresbrook Park Limited (part of the Capital Care Group), then increased the charges for his mother's care without good reason and failed to deliver the care charged for. He complains the Council did not intervene effectively to ensure it paid the increased charge or challenge the price increase.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend that within 20 working days of this report the Council should:

- a) apologise to Mr B for the failings identified in this investigation;
- b) pay Mr B £1000 in recognition of the distress caused by its actions;
- c) arrange with the Care Provider for it to re-issue invoices for the care provided to Mrs C for the period 1 March 2015 to the date of her death in August 2015 removing the £700 charge made for one-to-one care; the Council should ensure whatever credit appears on the account is refunded to Mrs C's estate (it is a matter between the Care Provider and the Council whether the Care Provider refunds the Council any money in turn).

In addition the Council should demonstrate it has learnt lessons from this complaint. We set out some minimum expectations of what those lessons should be in the body of the report below. We recommend the Council write to us within three months setting out the action it has taken or proposes to take further to any review it conducts into this matter.

The Council has confirmed it will comply with our recommendations to remedy the injustice.

Introduction

1. There are three parts to this complaint. First, we have investigated the circumstances following Mrs C's discharge from hospital in January 2015 to Haresbrook Park, a residential care home (operated as a limited company Haresbrook Park Limited which is part of the Capital Care Group and referred to below as 'the Care Provider'). In particular, whether the Council acted with fault in considering Mrs C as a self-funding resident from February 2015.
2. Second, we have investigated the actions taken by the Care Provider once the Council stopped funding Mrs C's care. In particular, its decision to increase the cost of Mrs C's care from £500 to £1,200 a week in April 2015 and to backdate that increase to March 2015.
3. Third, we have investigated the Council's response when Mr B alerted it to this increase in fees and whether the Council's intervention went far enough. In June 2015 it agreed to pay its 'usual cost' of residential care (between £408 and £417 a week) towards Mrs C's outstanding fees. But it would not pay the costs charged by the Care Provider in full. Nor did it challenge the increase in fees.

Legal and administrative background

4. The Local Government Act 1974 sets out the Ombudsman's powers and under which jurisdiction complaints are considered.

The Ombudsman's role and powers under Part 3 of the Local Government Act 1974

5. 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 action of these providers. (*Local Government Act 1974, section 25(7)*)
6. 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)*)
7. We normally name care providers in our decision statements and reports. However, we will not do so if we think someone could be identified from the name of the care provider. (*Local Government Act 1974, section 34H(8)*)

The law and guidance relevant to the complaint

8. The Mental Capacity Act 2005 provides a legal framework for acting and deciding on behalf of people who lack the mental capacity to decide themselves. The Act and the accompanying Code of Practice 2007 describe the steps to take when dealing with someone who may lack capacity to decide for themselves. The Code describes when a

person's capacity to decide should be assessed, how to do this, and how to decide on behalf of someone when they cannot.

9. Any staff involved in the care of a person who lacks capacity should make sure a record of the process is kept on the person's file, setting out:
 - how the decision was reached;
 - what the reasons were;
 - who was consulted;
 - what factors were taken into account.
10. Where an individual lacks mental capacity to manage their property and financial affairs then a third party will need legal authority to manage finances on their behalf.
11. One way such authority is given is if an individual holds an enduring or lasting Power of Attorney to manage the property and financial affairs of someone else. But for a third party to hold a Power of Attorney to manage another individual's financial affairs, requires the consent of the individual concerned. So it cannot be applied for if an individual has lost mental capacity to deal with their own financial affairs. In those cases application must be made to the Court of Protection for a Deputyship.
12. Individuals who have more than £23,250 in capital are not eligible for assistance towards care home costs from their local Council. However if an individual lacks capacity to manage their financial affairs and there is no Deputy or Attorney to manage their finances then the Council must ensure their care needs are met. Before April 2015 this duty arose from Sections 21 and 26 of the National Assistance Act 1948. These required the Council to assess an individual's care needs and make arrangements to meet those needs, which could include meeting needs through a registered care home. Government guidance stated "*if an authority is to end a contract and make the person 'self-funding' they should satisfy themselves that the person is able to manage their own affairs or has someone who can take over the arrangements on their behalf. Where the person is unable to manage their own affairs or has no one to act on their behalf it would be for the authority to continue to manage the contract*". (**Circular LAC(98)**)
13. This guidance was also incorporated into national guidance on Charging for Residential Accommodation (CRAG) which stated "*provision of services should not be delayed whilst applications are made to register an EPA/Property and Affairs LPA or to appoint a Property and Affairs Deputy or an Appointee*". (**paragraph 1.022 CRAG, 2014 edition**)
14. This guidance has since been superseded by that accompanying the Care Act 2014 which took effect from April 2015. This states, "*sometimes, a person with sufficient means to pay for their accommodation in a care home, who was intending to arrange their own care, may not be able to enter into a private agreement with a care home. If this is because they do not have the mental capacity to do so and they either have no attorney or deputy to act on their behalf, or another person in a position to do so, the local authority must meet their needs. Therefore if their assessed needs are required to be met by the provision of accommodation in a care home, the local authority must provide that*

accommodation (and it will do so by arranging for an independent care home provider to provide it) for which the authority may charge the adult". (Care and Support Act Statutory Guidance Annex H – paragraph 22)

15. If a Deputy is appointed by the Court of Protection the Council can seek recovery from them of any sums it has paid for care on behalf of the individual. Before this the individual receiving care is regarded as a 'full-cost payer' meaning the Council can arrange and pay for their care, but recover the costs.
16. During the events covered by this complaint the Council had a policy document for its staff which explained how finances are managed for service users who lack capacity to manage their own finances. It explained the law summarised above. It said "*all officers dealing with any representative of a service user must satisfy themselves that such representative has the legal authority to make decisions on the service user's behalf and this authority is supported by documented evidence*". The policy went on to explain that if a service user lacks capacity and there is no Deputy then the Council must continue to fund their care until those arrangements are in place.
17. Regulation 19 of the Care Quality Commission (Registration) Regulations 2009 states that:
 - (1) *Where a service user will be responsible for paying the costs of their care or treatment (either in full or partially), the registered person must provide a statement to the service user, or to a person acting on the service user's behalf-*
 - (a) *specifying the terms and conditions in respect of the services to be provided to the service user, including as to the amount and method of payment of fees; and*
 - (b) *including, where applicable, the form of contract for the provision of services by the service provider.*
 - (2) *The statement referred to in paragraph (1) must be-*
 - (a) *in writing; and*
 - (b) *as far as reasonably practicable, provided prior to the commencement of the services to which the statement relates.*
18. The Care Quality Commission (CQC) issues guidance to supplement the above Regulation. It says "*Providers must notify people of any changes to their terms and conditions, including increases in fees and give them sufficient time to consider whether they wish to continue with the service*".

How we considered this complaint

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

20. The complainant, Council and Care Provider 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

21. The Council's first involvement with Mrs C was in September 2014. At that time Mrs C lived in rented sheltered accommodation. Mrs C had been in hospital and both medical staff and family members, including her son Mr B, had concerns about her ability to continue caring for herself. In October 2014 the Council recorded Mr B and his brother helping Mrs C informally with her finances. They would collect cash for her, buy shopping and pay bills.
22. The Council arranged for Mrs C to have three visits a day from home care workers. The care workers encountered difficulties providing care to Mrs C. She would become agitated when they visited. Mrs C could not communicate verbally for reasons that were not known.
23. Between September and December 2014 the Council tried to engage with Mrs C to find out more about her care needs. It referred her case to Speech and Language Therapists to determine her level of communication and understanding. Then in December 2014, Mrs C experienced a fall and was admitted to hospital.
24. Mrs C did not receive a social work service in hospital. Her needs were assessed by clinical staff. Under policy then in force a clinical triage nurse assessed that Mrs C did not have capacity to make decisions about her care and accommodation. The nurse recommended Mrs C move to a nursing home as a DTA placement (standing for 'discharge to assess').
25. The Council describes a DTA placement as one for *"adults who have completed their acute episode of care in hospital but are unable to return home to their usual place of residence un-supported and require assessment of their long term care needs. The discharge to assess service is available for a maximum period of 28 days (35 days during the period in question). The service is funded by the Better Care Fund and is free of charge to the person"*.
26. The Council received notice of the hospital's decision via an instruction from a Discharge Liaison Nurse which asked it to find a place for Mrs C in a care home. The note recorded Mrs C had *"high dementia care needs"*. There is no record the Council was made aware of the capacity assessment undertaken in hospital. The Council comments that since this time its policy has changed and now as a matter of course a hospital social worker also reviews any decisions taken in hospital around capacity and care setting.
27. The Council identified the Care Provider would accept Mrs C as a DTA placement and she moved there in mid-January 2015. The Care Provider is registered with the Care Quality Commission to provide nursing care. The Council paid £500 a week for Mrs C's placement.

28. After Mrs C moved to the Care Provider's care the Council allocated her case to a social worker, 'Officer X', who worked out of a different hospital to that which discharged Mrs C. Officer X visited Mrs C around four weeks after she moved. Officer X did not keep any notes of her visit, although the Care Provider kept brief notes of the visit in Mrs C's daily care records. No formal assessment of Mrs C's care needs or capacity was undertaken at this time. The Care Provider told us that its assessment of Mrs C's needs was reflected in its daily care records.
29. The Care Provider's notes of the visit recorded that Mrs C would remain with the Care Provider at the end of the DTA placement and then she would fund her own care. Officer X told us that her visit to Mrs C was brief. She said this was because Mr B and the Care Provider both agreed that Mrs C needed nursing care. Officer X cannot recall the Care Provider alerting her to any problems it encountered caring for Mrs C. Mr B recalls the Care Provider saying that if Mrs C remained in its care at the end of the DTA placement it would charge her £500 a week for her care.
30. Officer X recalled Mr B saying that Mrs C had savings above the threshold for assistance with care charges. She also recalled Mr B saying he had taken legal advice and was in the process of obtaining a Power of Attorney to manage Mrs C's finances. Officer X told us that in those circumstances she did not think it necessary to offer Mr B any further advice on obtaining management of Mrs C's financial affairs.
31. So the Council treated Mrs C as self-funding her care from when the DTA placement ended. Around six weeks later (in early April 2015) the Care Provider told Mr B it would be increasing the price of care it charged for Mrs C's care. It said this needed to rise from £500 a week to £1,200 a week; i.e. an increase of £700 a week. The Care Provider kept a brief note of where it explained the increase in charges to Mr B. It said this was because Mrs C was prone to get out of her seat and wander around the care home and experienced a high number of falls (see below). Mr B agrees that when Mrs C first moved she was prone to restlessness and would try to get out of her chair. For that reason Mr B did not initially complain when the Care Provider increased the charge. The Care Provider said it calculated the charge on the basis of what it cost to employ a care assistant 12 hours per day for seven days a week (£840 a week). It then reduced the figure to make allowance for "*a percentage of care hours allocated in the team*".
32. The Care Provider therefore began to charge Mrs C £1,200 a week for care from the middle of April 2015. It also backdated this increase in care charges to 1 March 2015; meaning the higher charge took effect once the DTA funding stopped. We checked the Care Provider's staffing rotas and identified that from the third week in April 2015 an extra member of staff was on duty in the area of the care home where Mrs C lived. Before that time there was no difference in staffing levels.
33. We have reviewed the running record of Mrs C's time with the Care Provider. We noted numerous references to falls and restlessness. However, we also noted numerous other references to Mrs C being "settled". We noted that there appeared no pattern to Mrs C's falls; i.e. they did not necessarily follow a period of restlessness. We also noted that over

time, and especially after February 2015, references to Mrs C's restlessness became less frequent.

34. The Care Provider recorded Mrs C having 28 falls during February and March 2015. It recorded another resident in the home experiencing 22 falls during the same time. We asked the Care Provider if it also sought to increase fees for the other resident. It said that it did but that the other resident could not afford any extra charge for care. Consequently the Care Provider gave notice to that resident to leave. The Care Provider told us that it did not charge any other resident for one-to-one care as it did for Mrs C in the two years before she moved into its care.
35. We asked the Care Provider about the contractual basis for the increase in fee charges. It provided two contracts setting out its terms and conditions; one dated January 2015 and one dated from April 2015.
36. Both contracts were identical except for quoting the different costs of care. The terms and conditions include conditions relevant to the care home fees. Clause (4) says fees are invoiced four weekly in advance. It says they are subject to review annually. Clause (5) says the fee includes accommodation, full board, laundering of personal items and nursing care.
37. The contracts were sent to Mr B. He did not return them. This was because he could not sign to say he would meet Mrs C's care charges until he had control over her finances.
38. Just over a week after the Care Provider increased care charges Mr B contacted the Council to advise it of the price increase. He was worried about the implications for Mrs C's funding given how quickly her savings would reduce if she was paying £1,200 a week for care.
39. When Mr B got back in touch with the Council it checked with Officer X to clarify what assessment she had undertaken with Mrs C in mid-February 2015. Officer X said her understanding that Mrs C was "*self-financing*" her care and Mr B "*was in the process*" of obtaining Power of Attorney.
40. In late April 2015 the Council re-opened Mrs C's case and allocated it to a different social worker (Officer Y). She immediately referred Mrs C's case to the local NHS Clinical Commissioning Group (CCG) to see if Mrs C might be eligible for NHS funding for her care.
41. In mid-May 2015 Officer Y visited Mrs C and met with Mr B. She noted Mrs C's GP had by then assessed Mrs C on behalf of Mr B to see if she could consent to giving him Power of Attorney. The GP found Mrs C "*lacked capacity*" around finances.
42. Then in June 2015 Officer Y undertook an assessment of Mrs C's needs. This included another assessment of her capacity. Officer Y recorded Mrs C being silent throughout and not able to contribute. Officer Y concluded Mrs C had no capacity to manage her finances. The assessment noted that Mr B needed to apply to the Court of Protection to

become her Deputy. Around the same time there is the first record that Officer Y had alerted Council finance officers to Mrs C's situation.

43. The assessment noted Mrs C had suffered a rapid decline in her health since her hospital admission in December 2014. It said there was no formal diagnosis of Mrs C's health condition but she was thought to suffer from vascular dementia. The assessor, Officer Y, found she could not ascertain Mrs C's views or opinions during the assessment. It said Mrs C would sometimes become agitated and 'lash out' and she would sometimes try to get out of her chair. But it also indicated she was becoming more settled.
44. Around the same time as the assessment completed (late June 2015) Mr B contacted the Care Provider and Council saying he thought Mrs C was "*more settled and less agitated*". He asked the Care Provider to review Mrs C's needs as he did not think she needed one-to-one care. He also said that on his visits to the care home he had seen no evidence of one-to-one care in practice. Around the same time Mr B began applying to the Court of Protection to become Mrs C's Deputy.
45. The Council continued to regard Mrs C as a self-funder. The Care Provider sent bills for Mrs C's care to Mr B which he could not pay as he did not have access to her funds. By the end of June 2016 the Council had agreed to start paying again for Mrs C's care. However, it decided only to pay the Care Provider its 'standard rate' for residential care, which was £408 a week before April 2015 and £417 a week thereafter. A note kept by Officer Y said she discussed the funding with another officer who said the "*Council would not pay any top-up costs ordinarily and hopefully [the Care Provider] can negotiate this with son*".
46. At the end of July 2015 Mr B sent an email to the Council saying he had discussed Mrs C's care with the Care Provider who told him Mrs C could not be left alone and continued to need "*one to one support*". Mr B said when he asked for a record of what work support workers undertook with his mother each shift it could not provide any records.
47. The Council began looking at alternative placements for Mrs C. However, in mid August 2015 she passed away. At the time Mrs C passed away Mr B's application to become her Deputy had not completed. Consequently he still could not settle any invoices on her behalf. Mrs C died without leaving a will so Mr B had to obtain probate to manage her estate, which he obtained in February 2016.
48. When Mr B first complained about the charges for Mrs C's care, the provider agreed to deduct £850 from the bill as a 'good will gesture'. It said this was because in the last few days of her life Mrs C was no longer at risk of falls. However, in December 2015 it said Mrs C's estate still owed nearly £15,000 for her care. This was after deducting contributions of around £13,200 made by the Council (which included the money paid during the DTA placement).
49. In January 2016 the Care Provider sent Mr B a letter saying it would refer the outstanding debt to its solicitors. In reply Mr B explained he was still awaiting probate to settle any bills from his mother's estate. When we questioned the Care Provider about this it apologised

for any distress caused by this letter and said it would review collection procedures to take account of probate in the future.

50. When Mr B escalated his complaint to us the Care Provider waived £700 a week charges made to Mrs C from late June 2015 as this coincided with when Mr B requested it review Mrs C's care. This reduced the balance demanded from Mr B to around £11,300. In March 2016 Mr B made a payment of £9,834 to the Care Provider for Mrs C's care from her estate.

Conclusions

51. We are not critical of the initial social work service Mrs C received from the Council after her first hospital admission. But there were a series of failings from when Mrs C left hospital in January 2015.
52. First, after Mrs C left hospital the Council needed to assess her needs before ending the DTA placement. It did so in the most fleeting way. It did not obtain relevant information about Mrs C's capacity from the hospital. It did not keep any record of the assessment. It missed the opportunity to consider Mrs C's capacity to make choices about her finances in line with the Mental Capacity Act 2005. That was fault.
53. Second, because of the flawed assessment the Council wrongly regarded Mrs C as a self-funder. While Mrs C had savings above the savings threshold she could not self-fund her own care without either the capacity to do so or an Attorney or Deputy to manage her finances. By mid February 2015 it seems unlikely Mrs C had capacity to manage her own finances. The Council also knew she had no Attorney or Deputy. Yet contrary to the law, which it set out in its own policy document, it stopped funding Mrs C's care. That was fault.
54. Third, the Council had an opportunity to rectify this fault in early April 2016 after Mr B contacted it to alert it to the Care Provider's increase of fees. But it failed to correct its error. At this point there can be no doubt at all that Mrs C lacked capacity to manage her finances and so Mr B could not obtain a Power of Attorney. Yet even though the Council knew this, it failed to step in and take over the payment of Mrs C's care charges. That was fault.
55. Fourth, we note that eventually, from June 2015, the Council finally took some steps to ensure Mrs C's care was paid for. But these were not adequate. It did not assume responsibility to either pay for all Mrs C's care charges or challenge the Care Provider's increase in care charges. It ignored the large gulf between what it wanted to pay for Mrs C's care and what the Care Provider claimed it was owed. It should not have left Mr B unsupported as the Care Provider continued to invoice him. Its inaction here justifies a further finding of fault.
56. Turning to the actions of the Care Provider we have several concerns about its decision to increase the cost of Mrs C's care after the Council stopped funding her placement. First,

we question the evidential basis for the Care Provider increasing those charges. We note Mrs C experienced a high number of falls on moving to the care home. We also note she had periods of agitation and restlessness and sometimes hit out at carers. But reading her care notes as a whole we did not find these episodes were necessarily prolonged and there was nothing to suggest the Care Provider struggled to meet her needs. We note the Care Provider committed to provide nursing care and we think it reasonable to assume that this could include instances where individuals are restless or agitated. So we find the case the Care Provider put forward for increasing the charges was weak.

57. Second, there is no evidence the Care Provider alerted the Council or Mr B to any difficulties it had caring for Mrs C during the time she resided on a DTA placement. There is also no evidence the Care Provider sought any advice or assistance if it encountered challenges caring for Mrs C. For example, there is no record it undertook any falls review which might have looked at the reasons for such frequent falls or how they might be prevented. This further undermines the Care Provider's justification for increasing the care charges.
58. Third, there is no evidence the Care Provider considered if its terms or conditions allowed for the proposed fee increase. On an ordinary reading we find they did not. The terms and conditions set out that care fees may be annually increased. But they do not allow for an increase in the price for care in any other circumstances. They also do not allow for any backdating of charges. The Care Provider's departure from its own terms and conditions appears to run contrary to the Care Quality Commission (Registration) Regulations and accompanying guidance.
59. Fourth, more fundamentally the Care Provider could not enter into a contract with Mr B for Mrs C's care as he lacked the legal standing to enter into any such contract.
60. Fifth, there is no evidence the Care Provider thought to increase the cost of care before early April 2015 as that is when it is first documented. It justified the extra charge because of the falls Mrs C had in February and March 2015. The Care Provider said it was concerned at its inability to prevent the falls without extra staff. But when it applied the extra charge it backdated the increase to 1 March 2015. So it charged for one-to-one care for Mrs C that on its own account it had not and could not have delivered. The Care Provider therefore charged a vulnerable woman several thousand pounds for a service that for these weeks at least, it never delivered.
61. Sixth, we note no extra staff were on duty to meet Mrs C's needs until late April 2015. But even after that time there are no detailed records of what Mrs C's one-to-one care consisted of. There is nothing in its own notes or in records held by the Council, or in the NHS assessment of Mrs C's needs which suggests Mrs C needed such an exceptional level of care or that it was actively being delivered. We note here Mr B's own observation that on visiting his mother he saw no sign of one-to-one care in place. We accept Mrs C might have had challenging needs at times. But on balance we find there is not sufficient evidence to suggest Mrs C received the level of care which such an arrangement and charging implied.

62. We are also concerned about how the Care Provider sought to recover funds from Mr B in this case. It knew Mr B was not Mrs C's Attorney or Deputy and so could not make arrangements to meet any invoices until those arrangements were in place. It also knew that after Mrs C passed away Mr B could not settle any invoice owed by the estate until he obtained probate. Yet despite this the Care Provider put some pressure on Mr B to make some arrangement to clear the arrears, including using solicitors.
63. The Care Provider's actions set out in paragraphs 55 to 61 above justify a further finding of fault against the Council. We acknowledge the Council was not aware of all these actions when they first took place. But this was only because it had wrongly chosen to regard Mrs C as self-funding her care. The Council retained the legal obligation to arrange and pay for Mrs C's care throughout her time with the Care Provider. So during that time the Care Provider was acting as the agent of the Council in delivering Mrs C's care. If the Council had not wrongly tried to discharge that duty then it would reasonably have known of the Care Provider's actions detailed in paragraphs 55 to 61. It is also worth reiterating the Council had ample opportunity after Mr B contacted it in April 2015 to regain control of Mrs C's care and prevent the fault continuing.

Injustice

64. The faults by the Council identified at paragraphs 50 to 54 caused injustice to Mr B in the form of distress. Had the Council properly assessed Mrs C's capacity and finances before her DTA placement ended then Mr B would never have been exposed to the actions of the Care Provider. It would have treated Mrs C as a full cost payer and not someone self-funding her care. It then further failed to limit that distress when alerted to the Care Provider's actions in April 2015. The Council's inaction left Mr B in the position where he received invoices that he could not be expected to pay.
65. We find the Care Provider unreasonably increased the cost of care provided to Mrs C after the Council's funding of her placement ended for a service which on balance appears to have been not needed. In addition for at least some of the time it was charged, the service was not provided. This had a resulting impact on Mrs C's estate. It also caused distress to Mr B in making demands for money when it should not have done. These actions caused further distress to Mr B, which also flows from the faults of the Council identified above.

Decision

66. We have completed our investigation into this complaint. There was fault by the Council causing injustice to Mr B. The Council should take the action identified in the recommendations below to remedy that injustice.

Recommendations

67. To remedy the injustice caused, the Council should within 20 working days of the date of this report:

- apologise to Mr B for the failings identified in this report;
- pay Mr B £1000 in recognition of the distress caused by its actions;
- arrange with the Care Provider for it to re-issue invoices for the care provided to Mrs C for the period 1 March 2015 to the date of her death in August 2015 removing the £700 charge made for one-to-one care. The Council should ensure whatever credit appears on the account is refunded to Mrs C's estate (it is a matter between the Care Provider and the Council whether the Care Provider refunds the Council any money in turn).

68. In addition, the Council should demonstrate how it has learnt lessons from this complaint. We will not be prescriptive about what the lessons should be, but as a minimum the Council should:

- explore how it can best ensure that there are records of all involvement by hospital social workers in client's cases;
- ensure all social workers and other relevant frontline staff have a clear understanding of the law around the Mental Capacity Act and its policy where clients do not have capacity to manage their own financial affairs;
- reinforce advice to staff on what action to take if the Council identifies a service user without the capacity to manage their finances who has no Attorney or Deputy in place;
- review whether it remains appropriate to maintain placements with the Care Provider in view of the events covered by this complaint.

69. The Council should confirm to us in writing within three months of this report the action it plans to take and/or the result of any reviews it has carried out as a result of this complaint.

70. The Council has confirmed it will comply with our recommendations to remedy the injustice.