

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

**Investigation into a complaint against
London Borough of Croydon
(reference number: 16 013 606)**

5 October 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.

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
Ms C	The service user (complainant's daughter)

Report summary

Adult social care

1. Mr B complains the Council failed to provide support to his daughter, Ms C, for a year. Mr B provided support using his own funds over that year which meant his daughter missed out on services she should have had as he could not afford to fund the whole package of care the Council failed to provide. It also meant the family missed out on things as there was no spare money after paying for Ms C's care.

Finding

2. Fault found causing injustice and recommendations made.

Recommendations

3. To remedy the injustice caused we recommend the Council:
 - apologise to Ms C and Mr B for the faults we have identified;
 - pay £2,500 to Mr B which the family can use towards a holiday or activities that they have missed out on over the last year;
 - pay £750 to Ms C to recognise the distress and impact on her wellbeing over the last year;
 - pay £1500 to Mr B to recognise the distress, time and trouble its actions caused him over the last year including the time and trouble spent complaining; and
 - pay Mr B the missed direct payments to support him in his role as a carer since July 2016, and complete a carer's assessment as soon as possible.
4. The Council has accepted our recommendations.

The complaint

5. Mr B complains the Council failed to provide support to his daughter, Ms C, for a year. Mr B provided support using his own funds over that year which meant his daughter missed out on services she should have had. Mr B could not afford to fund the whole package of care the Council failed to provide. It also meant the family missed out on things as there was no spare money after paying for Ms C's care.

Legal and administrative background

The Ombudsman's role

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), as amended*)
7. 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 or Cabinet and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Care Act 2014

8. The Department of Health produced guidance for using the Care Act called 'Care and Support Statutory Guidance.' Chapter 20 covers continuity of care.
9. At 20.3 the guidance says:
 - *"The continuity of care chapter sets out the process local authorities must follow to ensure that the person's care and support continues, without disruption, during and after the move. These procedures also apply where the person's carer is receiving support and will continue to care for the adult after they have moved. In addition to meeting their responsibilities in these sections, authorities are reminded that the other requirements of Part 1 of the Act apply during this process, and authorities should refer to the guidance on wellbeing, prevention, information and advice, integration, assessment and eligibility, and care and support planning."*
10. At 20.4 the guidance says:
 - *"The aim of this process is to ensure that the person with care and support needs will be able to move with the confidence that arrangements to meet their needs will be in place on the day of the move. Local authorities are expected to achieve continuity of care by ensuring that the second authority has completed a needs assessment and developed a care and support plan for the individual prior to the day of the move. It is possible that the second local authority might be unable to complete a needs assessment prior to the day of the move due to the logistics of assessing a person a long distance away or because they want to assess the adult in their new home. If the second authority has not carried out the assessment prior to the move, it must continue to meet the needs and take into account outcomes identified in the adult's current care and support plan until it has carried out its own assessment."*

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11. Section 20.40 clarifies “*Where the full assessment has not taken place prior to the move, the second authority must put in place arrangements that meet the adult’s or carer’s needs for care and support as identified by the first authority. These arrangements must be in place on the day of the move and continue until the second authority has carried out its own assessment and put in place a care and support plan which has been developed with the person (see Chapters 6-10).*”

How we considered this complaint

12. We produced this report after examining relevant documents and discussing the complaint with Mr B.
13. 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.

What we found

14. Ms C is a young adult with life limiting conditions. Ms C also has autistic tendencies and Down’s syndrome; routine is very important to her ability to function and feel secure.
15. Ms C moved from one council area to another as she moved from living with her mother to living with her father, Mr B.

What happened

16. In December 2014 the previous council told Croydon Council that Ms C moved to Croydon at the end of June 2014 and it was now permanent. Croydon Council completed Ms C’s care assessment on 19 January 2015 and put the case to its funding panel. The funding panel deferred making a decision until the Council completed a carers assessment of Mr B.
17. The Council explains that Ms C’s case was transferred to two further teams, so this initial decision was not communicated to the new social workers and managers involved.
18. The previous council had continued to fund Ms C’s direct payments so Mr B had not realised he needed to chase Croydon Council. The previous council also paid direct payments to Mr B to support him in his role as a carer to Ms C. At the end of July 2016 Ms C’s direct payment account was empty; the previous council also stopped Mr B’s direct payment. Mr B contacted the previous council who said it had passed Ms C’s case to Croydon.
19. Mr B chased Croydon Council about Ms C’s support plan and direct payments; and meanwhile he funded what he could from personal savings.
20. In February 2017 Mr B made a formal complaint to the Council and met with it. The Council accepted fault; it did not act in accordance with the Care Act. The Council said it would repay the full amount of direct payments that it should have paid to Ms C to continue her existing support package. The Council confirmed in writing on 2 March 2017 that it would pay £21,052.08.
21. The Council asked Mr B to provide receipts to evidence what he had paid out since August 2016. The Council then reneged on what it had said it would do and said it would pay £11,672.92. That was the amount Mr B had paid over the year, minus Ms C’s assessed client contribution. The Council took no account of its responsibility under the Care Act to continue the previous support, or that the

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- amount Mr B had paid was based on what he could afford rather than on Ms C's assessed eligible care needs.
22. The Council paid £11,672.92 to cover August 2016 to end of March 2017 but put no support in place from April 2017. Therefore Mr B was once again funding Ms C's support from his own money, and had no support in his caring role.
 23. In response to our investigation the Council again accepted that it should have continued to fund the previously agreed support until it had its own support plan in place, in accordance with the Care Act. Therefore Ms C should have received roughly £30,000 in direct payments over the last year, minus her client contribution. The Council has now paid the remaining amount to Ms C (£18,735.64, minus her client contribution). Mr B should have received around £2,300 to support him in his caring role.
 24. The Council has now completed Ms C's support plan and she is receiving direct payments at the same level as before she moved.
 25. As a result of our investigation the Council has:
 - paid back the direct payments it should have provided to Ms C over the last year;
 - agreed and paid direct payments moving forward;
 - completed Ms C's support plan;
 - informed Panel members of the duty under the Care Act 2014 the local authority has to those that transfer in to its borough; and
 - updated its Standard Operating Procedures to include the duties where someone is transferring in to its borough.

Conclusions

26. The Council was at fault for not continuing Ms C's care and support after she moved to its area. The Council also failed to continue to support Mr B in his role as a carer for Ms C. The Council failed to act in accordance with the Care Act 2014, as detailed in paragraphs 9 to 11.
27. It has taken over two and a half years for the Council to complete Ms C's support plan, this is fault. There are no defined timescales for completing a support plan, but this is clearly too long. Until a support plan is in place the service user's needs may be unmet. The same applies to Mr B's needs as a carer.
28. Ms C became ordinarily resident in Croydon when she chose to move to its borough in June 2014. Croydon became responsible for her care from that date, and certainly from December 2014 when the Council was told Ms C's move was permanent. The Council has failed to meet Ms C's care and support needs following its assessment in January 2015, and Mr B's needs as a carer to Ms C.
29. The fault has caused injustice to Ms C, Mr B and Mr B's wife.
30. Ms C relies on routine. Due to the Council's failure to provide direct payments, or any other support in its place, Mr B could not keep to Ms C's normal routine. Mr B says Ms C has become withdrawn and her mental health has declined. Ms C has lost out on social time with people her own age, and activities that she enjoys. Given that Ms C has a limited life span, the impact on a year of her life is greater than for most.
31. Mr B has been under a lot of pressure to try his best to keep as many activities for his daughter as he could. Mr B used his own savings, and then had to borrow

money from friends and family which he says was embarrassing. Mr B came close to not being able to pay his mortgage and other bills, which he says was very stressful. Mr B had the time and trouble of chasing the Council. When Mr B thought the Council was on the right track to resolve Ms C's support the Council then reneged on what it had agreed, this caused further frustration. Mr B is left with a lack of trust in the Council to be able to adequately support his daughter in the remaining time she has.

32. Because of Mr B spending any spare money on Ms C's support there was no disposable income for anything else. The family lost out on a holiday or any enjoyable family activities over the year Ms C received no support from the Council.

Recommendations

33. 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 or Cabinet and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
34. To remedy the injustice caused, we recommend the Council:
- apologise to Ms C and Mr B for the faults we have identified;
 - pay £2500 to Mr B which the family can use towards a holiday or activities that they have missed out on over the last year;
 - pay £750 to Ms C to recognise the distress and impact on her wellbeing over the last year;
 - pay £1500 to Mr B to recognise the distress, time and trouble its actions caused him over the last year; and
 - pay Mr B the missed direct payments to support him in his role as a carer since July 2016, and complete a carer's assessment as soon as possible.
35. The Council has accepted our recommendations.

Decision

36. The Council failed to act in accordance with the Care Act 2014; this caused injustice to the complainants. We are satisfied the recommended action, and the actions already taken by the Council, are sufficient to acknowledge the impact of that fault and to prevent future problems.