

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

**Investigation into a complaint against
Northamptonshire County Council
(reference number: 16 002 410)**

15 December 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 X The complainant

Report summary

Adult Social Care

Mr X complains the Council failed to include appropriate day time support in his support plan. He considers his support plan does not include assessed needs from a specialist assessment completed in February 2016.

Mr X feels the Council has failed to understand his specific needs and it does not communicate with him appropriately taking these needs into account.

Finding

Fault causing injustice and recommendations made.

Recommendations

Within three months of the date of this report we recommend the Council:

- pays Mr X £750 to recognise the time and trouble he was put to when pursuing his complaint and the distress caused by the Council's failure to meet his eligible assessed needs; and
- pays Mr X's mother £350 to reflect the time trouble and distress the lack of care caused her; and
- to remedy the injustice caused by the failure to meet Mr X's daytime support needs, the Council should refund the sum Mr X and his parents paid to source care privately (less the support they arranged for daytime sleep which was not an assessed need). This was £17,344; and
- uses an independent assessor to carry out a re-assessment of Mr X's needs; and
- ensures its social workers receive training to enable them to conduct assessments on individuals like Mr X who are deaf and have other complex needs within three months of the date of our report.

The Council should also continue to meet the cost of Mr X's daytime and night time care needs until a reassessment is carried out/Mr X's needs change.

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*)

The law relevant to this complaint

The Ombudsman's role

1. 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*)

Care Act 2014

2. Section 18 of the Care Act places a duty on councils to meet an adult's need for care and support which meets the eligibility criteria.
3. Guidance on the Care Act 2014 states assessments can be carried out by a range of professionals. These include social workers, occupational therapists and rehabilitation officers. However, it also states local authorities should consider the impact of the assessment process itself on the individual and give consideration to the preferences of the individual with regards to the 'timing, location and medium of the assessment'. Local Authorities must ensure that assessors are appropriately trained and competent whenever they carry out an assessment.
4. Paragraph 6.78 of the guidance states "Where a person has both health and care and support needs, local authorities and the NHS should work together effectively to deliver a high quality, coordinated assessment".
5. Paragraph 6.87 of the guidance states "When assessing particularly complex or multiple needs, an assessor may require the support of an expert to carry out the assessment, to ensure that the person's needs are fully captured. Local authorities should consider whether additional relevant expertise is required on a case-by-case basis, taking into account the nature of the needs of the individual, and the skills of those carrying out the assessment. The local authority must ensure that the person is able to be involved as far as possible, for example by providing an interpreter where a person has a particular condition affecting communication – such as autism, blindness, or deafness".

How we considered this complaint

6. We spoke with Mr X using text relay and looked at the information he sent to us. We asked the Council for information and considered its actions and its reply to Mr X's complaint.
7. 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

Background

8. Mr X is profoundly deaf. He suffers from severe sleep apnoea and wears a mask at night as a result. The mask can slip off during the night and Mr X can stop breathing. Mr X also has mental health difficulties.

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9. We decided a previous complaint from Mr X in May 2016. We found there was fault in the way the Council assessed Mr X's needs in 2014/15. The Council initially found Mr X had no eligible care needs. It later accepted there had been flaws in the assessment process. As part of the remedy for the complaint we decided in 2016, the Council agreed it would arrange a fresh independent assessment of Mr X's needs.

Independent Assessment in February 2016

10. An independent assessment of Mr X's needs took place in February 2016. The assessment noted Mr X's sleep apnoea was severe. Also because Mr X is deaf, he could not hear smoke alarms, CO2 alarms, his telephone etc. Mr X has a hearing dog to alert him to these during the day but it cannot wake Mr X at night. The assessment acknowledged the combination of sleep apnoea and deafness meant Mr X was very frightened and anxious.
11. The assessment noted in the past Mr X had left bath taps running causing flooding and he left the gas on while cooking, both after falling asleep. Because he was frightened of falling asleep, Mr X was unable to cook at home and he needed support to prepare meals.
12. The assessment report stated Mr X's mental health had declined in recent years and he needed constant support, encouragement and prompting to manage his personal hygiene and support to attend appointments. It recorded that Mr X had a history of self harm. The assessment stated Mr X needed to be accompanied to access the community and to do shopping. It noted Mr X had suffered panic attacks in busy and crowded areas and he could not use public transport.
13. Under "Being able to make use of your home safely" the assessment stated Mr X was not able to live safely at home unless someone was with him. This was for a number of reasons. These included his deafness, mental health issues, anxiety, depression and sleep deprivation. It stated:

"Because of the levels of stress and anxiety [Mr X] experiences at night time...[Mr X] feels very vulnerable about being left on his own (or even the thought of being left alone) at night time. Currently there seems no suitable telecare / telehealth / fire alerting equipment that would meet [Mr X's] needs to support him so that he feels safe at night alone".
14. Elsewhere, the assessment noted Mr X relied heavily on other people to keep a check on him when he is asleep because he is deaf. Mr X could not be woken by a vibrating alarm pad. Mr X's parents had been monitoring his sleep four nights a week at their home and his carer monitored sleep for the other three nights at Mr X's home.
15. The assessment stated Mr X's needs varied on a daily basis and if he is mentally well and has slept well his needs would be lower than other days. However, it noted Mr X gets very little sleep due to severe sleep apnoea. It stated Mr X was very tired most days and at risk of falling asleep when doing tasks.

Mr X's complaint

16. Mr X complains that when his care and support plan was created in April 2016, the Council failed to include appropriate support for his daytime support needs.
17. The support plan set out what Mr X's assessed needs were. These included:

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- support, encouragement and prompting to manage his personal hygiene;
 - support and encouragement to go out and to get changed out of night wear;
 - comprehensive support to reduce his vulnerability and anxiety at night;
 - support to develop and maintain relationships and access the community; and
 - support to use his home safely, during the day and at night. This is because Mr X is prone to falling asleep and due to his sleep apnoea at night.
18. However, where the plan set out the support Mr X would receive to meet his needs, it only showed a personal assistant (PA) would be required to sleep-in between 10pm and 8am, every night.
 19. The Council told me when Mr X's care plan was agreed in April, it asked Mr X how he would like to have his identified eligible needs met. The Council says he felt if he was rested during the night, he would feel able to meet his own needs during the day. For this reason Mr X chose to use his personal budget to purchase support at night.
 20. Mr X told me, unfortunately, his advocate was not able to attend the meeting in April. However, he agreed to go ahead with it with an interpreter to help him.
 21. Mr X says at the meeting, the social worker did not explain what needs had been identified by the assessment. She asked Mr X what his top priority was. He said that he needed night support to allow him to live independently, without his parents watching over him every night. However, he did not expect this to eliminate his anxiety or meet all his other needs. Mr X says he was confused when he was not offered any day support but the Council stated it would carry out a review in 6 to 8 weeks to see whether his needs were being met.
 22. Following the meeting, the social worker worked out the cost of providing night time care. The Council stated Mr X's indicative personal budget was £613. However, in order to provide the night time care Mr X required, the budget had to be increased to £733.75.
 23. Mr X complained at the end of April about the lack of daytime care provision. The Council responded in May 2016. Its complaint response referred to a passage from a care assessment completed in April 2015. This stated Mr X had identified night time care as his top priority at that time. It stated Mr X felt he would be more alert and feel more motivated to complete his daily tasks if he had night time care and a good night's sleep.
 24. The Council acknowledged Mr X wanted support during the daytime. It stated a review was planned for June and it could be used to review day time care. It suggested that one option might be to reduce Mr X's night time care to 9 hours a night to allow 1 hour of daytime care to be provided each day.
 25. A review meeting took place in August 2016. Mr X stated that since the night support was introduced it had worked well and he had got his independence back in his own home. However, his needs during the day had not improved as a result of the night support. He remained tired during the day and needed prompting to look after himself and his home. He also still needed support to maintain relationships and access the community.
 26. Mr X's parents also contributed to Mr X's review by letter. They stated Mr X was still tired during the day and slept between 2pm and 5pm. Mr X's parents monitored his afternoon sleep. However, they explained this was support they could not continue to provide for various reasons. They noted Mr X's social

worker had suggested cutting the night support to provide support for him in the day. They felt this was inappropriate. Mr X's parents asked the Council to provide three hours of support to watch over him when he slept during the day.

27. The social worker proposed a re-assessment. Mr X stated he did not want this. He found the assessment process stressful and he asked the Council to use the independent assessment completed in February 2016.
28. The Council told us it did not accept either night time or day time sleep monitoring (due to Mr X's sleep apnoea) were eligible social care needs. The Council stated it had only allowed Mr X to use his personal budget to fund night time care because Mr X was adamant this would enable him to meet his eligible needs during the daytime. Mr X refutes this and there is evidence he complained shortly after the April care plan was created explaining that he disagreed.
29. Mr X explained that his parents monitored his daytime sleep between February and May 2016. They then paid for his daytime care needs, including monitoring daytime sleep, to be met by Personal Assistants.

NHS/Health Needs

30. Social services carried out a Continuing Healthcare (CHC) screening in April 2016. In June the Council determined it should not carry out a full CHC assessment.
31. In September the Council reconsidered the CHC screening and on 5 October agreed a full assessment should be carried out.
32. On 8 November a full CHC assessment took place. Following this assessment Mr X was told his needs were not sufficiently complex, unpredictable, intense or of the nature to be identified as a primary healthcare need. For this reason Mr X was not eligible for NHS fully funded CHC.

Communication

33. Mr X indicated that council staff had not provided appropriate support for him to understand meetings and communicate properly with council officers. The Council explained that it made sure a British Sign Language interpreter or a Text Reporter was present at any meetings it held with him. The Council is also arranging further training with staff following our previous investigation.

Conclusions

Failure to meet Mr X's eligible assessed needs

34. The crux of Mr X's complaint is that the Council failed to include support in his care plan for eligible assessed needs that had been identified in the independent assessment from February 2016. The needs identified in the independent assessment are summarised in paragraphs 10 to 15 of this report.
35. The Council told us it met Mr X's "top priority" for support – his night time care. We recognise the Council hoped the night care would enable Mr X to meet his own needs, but it did not know this would be the case. The Council should have put in place support to meet Mr X's day care needs, until it knew Mr X was able to meet his own daytime needs. Otherwise there was a risk his daytime needs would not be met. It became clear in August that Mr X had not been able to meet his day time needs as a result of the night time support.
36. It was appropriate that the Council met Mr X's need for night time care, it was an eligible assessed need. However, the Council had clearly reached and

documented a decision that Mr X had eligible needs in both the daytime and at night, and as such it had a duty to meet those needs. While the Council sought to meet Mr X's "priority" need, service users should not be asked to choose which needs the Council should meet. The Council has a duty to meet all eligible needs. The focus solely on night time care, and failure to meet Mr X's daytime needs was fault.

37. Mr X provided us with invoices showing he paid for private care to meet his daytime needs. The cost of this care (not including support for sleep during the daytime) was £17,344 up until May 2016. The Council should meet this cost and continue to meet the cost of providing daytime and night-time care until such time as a re-assessment is concluded. It should then meet the assessed eligible needs identified in the reassessment.

The Council's response to Mr X and his complaint

38. When Mr X asked the Council to meet his needs during the day it indicated that funding would need to be taken from the night time care to monitor sleep during the day. The Council's own care and support plan shows that Mr X has eligible night-time **and day-time** care needs. Both were assessed needs. The Council should not reduce necessary support in one area in order to meet assessed needs in another. This was further fault. It is concerning that the Council should take this approach rather than seek to meet Mr X's documented needs.
39. Furthermore, the Council initially told us that it did not recognise monitoring of Mr X's sleep during the day or during the night was an eligible assessed need. While the independent assessment did not refer to Mr X's need for support to monitor sleep in the daytime, paragraphs 14 and 15 of this report explain why night time care was one of Mr X's eligible assessed needs. Paragraph 17 confirms it formed part of Mr X's support plan. It was clearly an identified eligible need. Indeed, the Council provided funding to meet this need.
40. It is acknowledged that Mr X finds the prospect of a re-assessment distressing and there have been difficulties with assessments in the past. However, the Council would need to re-assess Mr X to decide whether he has an unmet need for support to allow him to sleep during the day. In addition the Council stated there were other changes in Mr X's circumstances that would need to be considered as part of the re-assessment. The Council is entitled to re-assess Mr X under these circumstances. The Council should consider the most appropriate way to do this to keep Mr X's anxiety to a minimum.
41. Given Mr X's complex needs and the issues identified with assessments previously, the reassessment should be carried out by an independent assessor.

The Council's position

42. In April 2017 the Council accepted there had been fault, but it disputed the amount required to reimburse the cost of Mr X's daytime care. In August 2017 the Council changed its view and withdrew its acceptance of the fault. The Council felt Mr X may not have fully understood the situation so it agreed to make a goodwill payment of £250 to Mr X in recognition of any time, trouble and distress any uncertainty had caused him. The Council does not accept the care and support plan it created identified Mr X had both day-time and night-time eligible care needs.

Communication

43. The steps taken to enable Mr X to understand what is said and to enable him to contribute to meetings has been appropriate. The level of support required is a

judgement that the Council must make, taking into account Mr X's views and the requirements of the Equalities Act.

44. In Mr X's case, the Council should try to ensure they use straightforward language in communications with Mr X to help him to respond.

Injustice

45. Mr X and his parents were caused time, trouble and distress by the need to raise this complaint and to arrange and pay for care the Council should have funded to meet Mr X's needs. Unfortunately, while we were considering Mr X's complaint his father died, so it is no longer possible to remedy his injustice.
46. The lack of support provided to Mr X to meet his daytime needs meant his parents funded the daytime care needs by employing personal assistants. This would not have been necessary had the Council properly met Mr X's eligible day-time needs in addition to the night-time support it provided.

Recommendations

47. Within three months of the date of this report we recommend the Council:
- pays Mr X £750 to recognise the time trouble he was put to when pursuing his complaint and the distress caused by the Council's failure to meet his eligible assessed needs; and
 - pays Mr X's mother £350 to reflect the time trouble and distress the lack of care caused her; and
 - to remedy the injustice caused by the failure to meet Mr X's daytime support needs, the Council should refund the sum Mr X and his parents paid to source care privately (less the support they arranged for daytime sleep which was not an assessed need). This was £17,344; and
 - uses an independent assessor to carry out a re-assessment of Mr X's needs; and
 - ensures its social workers receive training to enable them to conduct assessments on individuals like Mr X who are deaf and have other complex needs within three months of the date of our report.
 - The Council should also continue to meet the cost of Mr X's daytime and night time care needs until a reassessment is carried out/Mr X's needs change.
48. 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*)

Decision

49. There was fault by the Council.