

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

**Investigation into a complaint against
London Borough of Ealing
(reference number: 16 018 733)**

18 February 2019

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

Ms B	The complainant and service user
C	Her son

Report summary

Adult social care and Children's services

The complainant, who we will call Ms B, says the Council failed to reassess her social care needs, and provide appropriate support, when her circumstances changed. Ms B says the Council failed to properly complete her July 2016 needs assessment and financial assessment. Ms B says the Council has unfairly removed her direct payments. Ms B complains that the Council will not consider other options to get her son to school, which she says are more reliable than a care agency.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused we recommend the Council:

- honour the agreement to pay transport and assistance to get C to school. The Council should pay the difference between the amount it paid into Ms B's direct payment account for this element of her support package, and the amount she paid out. This should cover September 2015 to December 2016, when the agreement ended. The Council has calculated this as nearly £12,000. This will be paid to the care agency to settle part of the debt that arose because of this error;
- apologise to Ms B for its failure to plan and provide assistance for contingencies, its failure to review her care and support needs in 2015, and its refusal of mediation. Pay her £2,000 for her distress, time, trouble and uncertainty; and
- review the collaborative working between Adults and Children's Social Services, and implement any identified improvements.

The Council has agreed to our recommendations to honour the agreement and to review the collaborative working, but not to the recommendation to apologise and to make the time and trouble payment. The Council feels the breakdown in service is because of a lack of co-operation from Ms B.

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, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The complaint

1. The complainant, who we will call Ms B, says the Council failed to reassess her social care needs accurately, and jointly assess her son's needs. Ms B says the Council did not capture her fluctuating needs and her child's needs. The Council provided no contingency planning or funds to meet emergencies. The Council did not provide appropriate support when her son started school.
2. Ms B and the Council have reached a stalemate about what is reasonable provision to meet Ms B's and C's needs. Ms B says the Council is unreasonable in not agreeing to the use of a childminder to get C to and from school, and to enable Ms B to meet her fluctuating needs. Ms B says this means she must either revert back to a chaotic situation which she would not be able to cope with (using a care agency), or continue the childminder service on her low benefits income, which would be unsustainable. Ms B says she has got into crippling debt maintaining the provision.
3. Ms B says because of this issue the Council has taken child protection proceedings for child neglect, when in fact she has been asking the Council for support all along and that her son have a child in need plan. Ms B says if the Council had provided appropriate support she would not be in this position.
4. Ms B says the Council failed to properly complete her July 2016 needs assessment, she does not accept the budget is sufficient to meet her needs and has not agreed the support plan. Ms B says the Council has also failed to properly complete her financial assessment. The Council would not revert to the previous services while agreeing Ms B's care plan, nor provide agreeable adequate interim services. Ms B says this has left her without adequate support, she has been prioritising getting her son to school which has left her in debt with the childminder and care agency.
5. Ms B says the Council has unfairly removed her direct payments.

Legal and administrative background

The Ombudsman's role and powers

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*)

Care planning and support

7. Section 9 of the Care Act 2014 (enacted April 2015) says where it appears to a local authority that an adult may have needs for care and support, the authority must assess whether the adult has needs for care and support, and if so what those needs are.
8. Section 12 says in carrying out the assessment, the local authority must have regard to the needs of the family of the adult to whom the assessment relates.
9. Section 14 says a local authority may make a charge for meeting needs, but it can only cover the actual cost incurred. To enable it to charge, the local authority must complete a financial assessment of the adult's financial resources and the amount (if any) which the adult can pay.

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10. Section 24 says where a local authority is required to meet needs it must prepare a care and support plan for the adult concerned, tell the adult which (if any) of the needs may be met by direct payments, and help the adult decide how to have needs met. The care and support plan must include the personal budget for the adult concerned. Where some or all needs are being met by direct payments, the plan must specify the needs which are to be met, and the amount and frequency of the direct payments.
 11. Section 25(5) says the local authority must take all reasonable steps to reach agreement with the adult about how the authority should meet the needs in question.
 12. A local authority may combine a care and support plan with a plan prepared for a child (including a young carer) if the child agrees, or where that is not possible, when the local authority is satisfied that combining the plans would be in the child's best interests.
 13. Section 27 says local authorities must review care and support plans. The associated guidance says this must be at least annually. When circumstances have changed in a way that affects the care and support plan, the local authority must carry out a needs assessment, carry out a financial assessment, and revise the care and support plan accordingly. It must do the same for the personal budget. It must advise the adult accordingly.
 14. Section 6.58 of the care and support statutory guidance, which accompanies the Care Act 2014, says "As the condition(s) of the individual at the time of the assessment may not be entirely indicative of their needs more generally, local authorities must consider whether the individual's current level of need is likely to fluctuate and what their on-going needs for care and support are likely to be. This is the case both for short-term fluctuations, which may be over the course of the day, and longer term changes in the level of the person's needs. In establishing the on-going level of need local authorities must consider the person's care and support history over a suitable period of time, both the frequency and degree of fluctuation. The local authority may also take into account at this point what fluctuations in need can be reasonably expected based on experience of others with a similar condition. It is important to recognise the benefit of adopting this comprehensive approach to assessment as the consideration of an individual's wider wellbeing may allow local authorities to provide types of care and support, or information and advice which delay or prevent the development of further needs in the future."
 15. Section 6.113 of the guidance says "Individuals with fluctuating needs may have needs which are not apparent at the time of the assessment, but may have arisen in the past and are likely to arise again in the future. Therefore, local authorities must consider an individual's need over an appropriate period of time to ensure that all of their needs have been accounted for when eligibility is being determined. Where fluctuating needs are apparent, this should also be factored into the care plan, detailing the steps local authorities will take to meet needs in circumstances where these fluctuate. For example, an adult with a mental illness, which has been managed in the past 8 months but which could deteriorate, if circumstances in the adult's life change. In such situations, local authorities must consider the nature of the adult's needs have been over the past year to get a complete picture of the adult's level of need."
 16. The Council's assessments before 2016 were before the Care Act 2014 came into force. The Department for Health guidance 'Prioritising need in the context of

putting people first: A whole system approach to eligibility for social care' was in force at the time. This guidance said, "Councils should ensure that a person's needs are considered over a period of time, rather than at a single point, so that the needs of people who have fluctuating and/or long-term conditions are properly taken into account."

17. Section 10.44 of the care and support statutory guidance says "the person may have fluctuating needs, in which case the plan should make comprehensive provisions to accommodate for this, as well as indicate what contingencies are in place in the event of a sudden change or emergency. This should be an integral part of the care and support planning process, and not something decided when someone reaches a crisis point."
18. The care and support statutory guidance says that the Council should take a holistic view of the person's needs and how they impact on family members. The Council must identify any children who are involved in providing care. If the assessment identifies the child is providing care the Council should offer an assessment of the young carer's needs.

Direct payments

19. An adult's personal budget sets out the amount required to meet their assessed care needs. The Council can pay this amount to them in a direct payment, this allows the adult choice and control over how to meet the needs set out in their care and support plan.
20. Section 12.24 of the care and support statutory guidance says the local authority must be satisfied that the direct payment is being used to meet the care and support needs set out in the plan, and should therefore have systems in place to proportionally monitor direct payment usage to ensure effective use of public money.
21. Section 12.67 of the guidance says direct payments should only be terminated as a last resort, or where the person has lost capacity to administer them. Local authorities should take all reasonable steps to address any situations without the termination of the payment. Effective, but proportionate monitoring processes will help local authorities to spot any potential issues before a termination is necessary.
22. Section 33 of the Care Act 2014 says a direct payment is made on condition that it be used to pay for arrangements to meet the needs specified in the care and support plan. In a case where this condition is no longer met, the local authority must terminate the arrangements for direct payments. Where the condition is breached the local authority may terminate direct payments and require repayment of the direct payment that has been misspent.
23. Section 12.68 of the guidance says if terminating a direct payment, the local authority must ensure there is no gap in the provision of care support. Where a decision has been made to terminate a direct payment, the local authority should conduct a revision of the care and support plan, or support plan, to ensure that the plan is appropriate to meet the needs in question

How we considered this complaint

24. We have produced this report following the examination of relevant files and documents, and interviews with the complainant.

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25. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

Findings

26. Ms B lives with her young son, C. Ms B has both physical and mental health needs. Ms B does not have any family or friends locally to support her instantly for her fluctuating needs and in an emergency. Ms B explains when she is feeling better she can manage to do more for herself and her son, but her abilities fluctuate and at times she needs more support.
27. The Council first started supporting Ms B in 2011, and provided a nursery place for her son, with transport by a care agency. This allowed Ms B some respite and recovery time. In 2013 the Council started providing direct payments for Ms B to manage her care and support needs.
28. Ms B says the Council failed to adequately assess her fluctuating needs, and have contingencies in place for emergencies such as caring for her son if she went into hospital.
29. Ms B takes strong medication and has chronic pain. While her son was at nursery she had respite until 6pm, which allowed her time to rest and recover, and she could attend any appointments later in the day. Once her son started school there was no respite after 3pm, so does not allow time for extra recovery on bad days or to attend appointments.

Assessments

30. The Council's care needs assessments for Ms B between 2012 and 2016 all took place on one day each year, rather than over a period of time as required in law and guidance for those with fluctuating needs. The assessments, and care and support plans, make no reference to fluctuating needs. Though the Council does refer to a 'normal day' and that on some days there is additional pain. In correspondence with Ms B's solicitor in November 2017 the Council says "the Local Authority acknowledges your client experiences fluctuating needs."
31. The Council has not included any provisions for fluctuating needs in any of the care and support plans it produced for Ms B. It has not provided any contingency in the event of a sudden change or emergency within Ms B's care and support plans. This is not in line with statutory guidance.
32. Ms B says due to her fluctuating abilities she used her direct payments as needed, so some months she used care support more than others. Ms B explains if she gets ill she needs support to supervise her son, and if her son is ill she may need extra support. Ms B says sudden illnesses can happen and don't fit around a care and support plan. As both she and her son have asthma, this poses a constant risk.
33. Ms B says in 2015 and 2016 she and her son both had bouts of flu and gastroenteritis so needed more care support at those times. There should have been a contingency sum in Ms B's care plan to cover this sort of scenario, but there was not.
34. Ms B says she has had to turn down hospital treatment and feels there should be an agreed plan for her child's welfare. This is something that should be covered by contingency planning, which the Council has not done.

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35. The Council says Ms B never told it C was carrying out any caring responsibilities, and that none of its assessments ever identified any need. However, the assessments do not show any questions about C's role or needs. The Council should consider the needs of the whole family. The Council has now completed assessments of C and Children's Services are involved. The Council should have documented its views on C's needs earlier, but we cannot say the outcome would be different given his role and needs may have changed over time as he got older.
36. The Council should review care needs and support plans at least annually, the Council failed to do this. The Council did not complete a review in 2015 due to staffing issues.

C starting school

37. When C was at nursery a care agency transported him there and back. Ms B says the care worker would often be late, but it wasn't an issue as there is no set time to arrive at nursery.
38. When C started school in September 2015 the Council assessed that a care agency could continue the transport. The Council completed this assessment three working days before C started school. Given C starting school was a known change of circumstances, we would expect the Council to have re-assessed sooner than this. The Council did not provide Ms B with a budget for this element of her care and support plan, but made the arrangements with a care agency.
39. Ms B explains it is not simply a need to get C to school, but also to give her respite in the day. There is no evidence to support how the Council assessed Ms B would be affected by the reduction in daily respite hours.
40. Ms B questioned the reliability of the care agency given past experiences of care workers turning up late or not at all. Ms B contacted the care agency who confirmed it could not guarantee reliability. Ms B researched all options, but found none were suitable. Ms B's findings were:
- care agencies are not reliable with timings, and cannot collect C in an emergency;
 - Ms B is medically unfit to take her child to/from school daily;
 - school transport was not available in the area;
 - special needs transport was not appropriate;
 - taxi firms will not carry minors under 11 years old not accompanied;
 - personal assistant sickness or holiday does not provide certainty; and
 - child-minders will generally not collect children from their client's home.
41. Ms B contacted the Council after her son started school and asked for alternatives to care workers taking C; she explained that care workers arrive late from their previous visit so C was late to school or waiting to be collected at the end of the day. Sometimes Ms B had been forced to take or collect C if the care agency cancelled, as there wasn't time to wait for a replacement and the school needs to know who is picking the child up. Ms B says driving at peak traffic times exacerbates her medical conditions and is against medical advice. Ms B is upset that on one occasion her son witnessed her have diarrhoea in the car.

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42. The Council advised Ms B to look for local child-minders who are OFSTED (Office for Standards in Education) registered and DBS (Disclosure and Barring Service) checked.
 43. On 12 October 2015 Ms B contacted the Council asking for urgent help as all the options she had researched for school transport were not viable. The Council responded to Ms B's e-mail by providing a list of child-minders.
 44. On 13 October Ms B contacted the Council to say only one child-minder was willing to take the job. Ms B set out the costs of the child-minder and taxi and that it totalled £51.60 per day; she asked the Council to urgently confirm she could pay this directly from her social care budget account. The Council responded that day and said "please go ahead and make the arrangements for transport with your preferred transport provider and personal assistant to start ASAP. Please note [the child-minder] can come in to [Council office] so we can support to complete the paperwork and sign up to the payroll company, so that you can receive the payslips and be informed of how much to pay her." On 15 October, the Council said Ms B could pay the transport provider via debit card from her direct payment account.
 45. The child-minder then decided she did not wish to proceed. On 6 November 2015 Ms B told the Council she had found another child-minder and was in the process of drawing up the contract. Ms B agreed a rate of £35 per day with the child-minder, plus a taxi on the morning costing £8 so a total of £43 per day. This was cheaper than the previous arrangement, and gave more flexibility as the child-minder could look after C until 6pm should Ms B need extra support at times. Ms B e-mailed the Council on 9 November to say she had agreed a fee of £35 daily, and would pay for a taxi on the morning to ensure they got to school on time. There is no evidence to show how the Council responded to this correspondence. Ms B says there was telephone contact in which the Council told her the child-minder should come in to the office with her documentation to set up payment. This would be consistent with the Council's advice about the previous child-minder, so it seems likely this happened. The Council should keep case recordings of important telephone discussions.
 46. Ms B says the care agency cannot meet her fluctuating needs, for example if her son was ill during the day and needs collecting and she cannot do so. Ms B says the support is regularly compromised, so is a child safety issue. The child-minder can keep C until 6pm as and when required. This allows Ms B more respite on days she needs it, and means she can attend medical appointments later in the day to fit around her fluctuating needs. Ms B says the child-minder therefore meets both C's need to attend school, and her fluctuating needs, so she was happy with this arrangement.
 47. We asked the Council for evidence of what was agreed regarding getting C to school, and it relied on support plans from 2013 and 2014 regarding getting C to nursery. We asked for information about the agreement for a child-minder and transport. The Council said it had no knowledge or records to support an arrangement of £51 a day for transport and child-minder; but this is incorrect as the Council sent us the October 2015 correspondence which confirms it.
 48. Ms B says the Council told her to pay the child-minder from the money in the direct payment account, and that after a care needs review it would pay a lump sum payment to cover the new arrangements. Ms B did this, but it meant there was not enough money in the account to then pay the care agency. The Council only paid in the amount to cover a care agency transporting C, which was less

than the sum it had agreed for the child-minder. This meant there was a deficit in Ms B's direct payment account and she could not pay the care agency; she has a debt of around £17,000. This total is not solely from the child-minder issue.

49. The Council failed to make clear the budget for school transport provision, following the change of circumstances in September 2015. The Council agreed Ms B could pay for transport and a child-minder from her direct budget account; that is what she did. Ms B understood from the October 2015 e-mails that she could fund up to the agreed £51.60 per day.
50. The Council failed to pay sufficient money into Ms B's direct payment account to cover the agreed cost of the child-minder. If the Council had made sufficient provision in Ms B's direct payment account, she may not have got into debt, or certainly not to the extent she has.

2016 assessment

51. Ms B moved to a new property in June 2016, which was adapted to meet her physical needs. After the house move the Council completed a reassessment of Ms B's care needs due to her change of circumstances.
52. Ms B disputes the content of the July 2016 care assessment. Ms B says the assessment did not capture all existing and future elements of need, and has no mention of fluctuating needs nor of her child's needs. Ms B says the Council officer failed to include that she is a British citizen born outside the UK and so the narrative is open to prejudice. Ms B says she asked the officer to change it, but was ignored. Ms B felt the Council officer was racially biased which made her feel uncomfortable.
53. The assessment starts with a section called 'Your personal background (including important events or changes in your life).' The section does not include that Ms B is a British citizen; the Council says it does not put citizenship in the narrative of an assessment. Ms B says this defines her identity, not just her nationality. As it was clearly important to Ms B, the Council could have included it in her assessment document. There is no evidence to support a finding of racial bias, or that the Council has treated Ms B any differently because of where she was born. There is also nothing to suggest that it affected the Council's assessment of Ms B's eligibility for care and support services.
54. The July 2016 assessment took place over one day and makes no reference to Ms B's fluctuating needs or how the Council has assessed these.
55. Ms B says a care planner visited in October 2016. A week later both the care planner and social worker who carried out the assessment visited to go through the care and support plan. A funding officer also attended about issues of cash budget usage. Ms B says she was not told the funding officer would be attending the meeting; this is fault. The Council should have checked that Ms B was happy to have three officers attend to go through various elements of her support package and funding. Given Ms B's needs, this was a lot to contend with.
56. The visit took place in the afternoon, which is not a good time for Ms B to concentrate due to her medication and chronic pain. However, there is no evidence the Council knew this, or that Ms B asked to rearrange the appointment. The Council failed to give Ms B a copy of the care plan to consider. Ms B challenged aspects, such as a lack of respite and how to get C to school. Ms B says the proposed budget of £21,000 per year is not sufficient to meet her needs, as it will barely cover getting C to school. Ms B feels the Council was not willing to

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- listen to her, and finalised the plan without her input. It was hard for her to concentrate, due to the time of day and not having a copy of the plan to study.
57. The Council finalised the care and support plan despite Ms B's objections, but did not put it into practice because Ms B did not agree with it. Ms B has tried to meet with the Council to discuss matters for several years, and has requested mediation which the Council has refused. The Council says it was open to mediation but felt it was too early for mediation as it would need to be based on the assessment that could not be agreed. However, the mediation might have helped the parties to agree on the assessment. The Council's approach does not comply with the Care Act requirement to take all reasonable steps to reach agreement with the adult about how the authority should meet their needs. This is fault.
58. The Council removed respite for school holidays. The Council says C spends some of the school holidays with his father so that meets his need to access community activities. However, this does not explain how Ms B is going to meet C's needs without any support for the remainder of the school holidays when he is with her. Having said that, because the 2016 care plan was never agreed and introduced, the Council continued to pay money into the direct payment account for this element as per the previous care package, until the direct payments ceased and it offered a managed package. Ms B was not financially disadvantaged, but this was one of the reasons she would not agree the assessment and her relationship with the Council broke down.
59. Ms B says she has never had to contribute towards her care and her circumstances have not changed, but in 2016 the Council assessed she would need to contribute over £7 a week. Ms B questioned the financial assessment; it took the Council seven months to reply; this delay was fault, it should not have taken longer than a month in the circumstances of this case. The Council explained the change was due to Ms B receiving benefits that were not previously included in her financial assessments. The extra benefit resulted in Ms B needing to contribute to her care. The Council explains Ms B may have previously received the benefit, but as the Council was not aware it was not included in previous assessments. The Council did not backdate any charges prior to the 2016 assessment.
60. The Council has a duty to complete a financial assessment to decide what, if anything, someone should pay towards their care support. The Council has correctly completed a face to face financial assessment and looked at Ms B's income and outgoings. As there is no fault in the assessment process we cannot criticise the Council's decision that Ms B must contribute. If Ms B is correct and her circumstances have not changed, that means she should have been contributing towards the costs of her care since 2011 and has not had to do so.
61. As it is over a year since the disputed 2016 care and support assessment a new assessment is due; the Council has contacted Ms B to arrange this.

Direct payments

62. In April 2013 Ms B signed an agreement with the Council to receive direct payments. The agreement set out how Ms B should manage her cash budget, it specifies it should only be used to buy support services detailed on the support plan.
63. The agreement says the Council may terminate the cash budget if it is being used inappropriately, for example not for the purposes intended in the support plan. It

says the Council will give four weeks' notice of termination, unless there are safeguarding concerns or financial management concerns that require immediate action.

64. In December 2016, the Council withdrew direct payments because it says Ms B mismanaged her account. Ms B borrowed money from the account to pay for something that was not part of her support plan. Ms B did tell the Council and did pay the money back. Ms B had also run up a debt with the care agency, as she had purchased extra support hours without notifying the Council or obtaining its agreement.
65. Ms B told the Council she had borrowed the money and was paying it back, but by that point she had already mismanaged her account. If she had told the Council in advance it would have had the opportunity to warn her of the consequences of such an action.
66. Ms B feels as this was a one off, and prior to this there had been no problems, the Council should have exercised some discretion and allowed her to continue with a cash budget.
67. The Council has offered Ms B a Council managed service, so it will purchase support to meet her needs. The Council has also offered direct payments but managed by the Council; which would still allow Ms B some choice and control. Ms B has refused these options because she says sometimes she may need extra support, and it is difficult to arrange that via the Council, especially out of normal working hours. Ms B also does not wish to accept the Council's offers, because both scenarios involve the care agency taking C to school as the Council will not agree anything else. Ms B has explained the care agency is not reliable to take C to school and she is not happy to accept that unreliable service.
68. The Council is not at fault for withdrawing Ms B's direct payments. The Council has valid reasons for doing so, in line with its direct payment agreement with Ms B. The Council has offered reasonable alternatives to meet Ms B's assessed eligible care needs. The Council has acted in accordance with the Care Act which says the Council must terminate the agreement if it is not used to meet the needs specified in the care and support plan.
69. The care and support statutory guidance says Local Authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into. The Council has said using a care agency to get C to school is appropriate because it is an arrangement that has been put in place for other service users and works well. The Council has not considered Ms B's specific needs, and has not shown any consideration of maintaining the support Ms B sourced to meet her need.
70. That is not to say it is fault to offer a care agency to get C to school. But Ms B has understandable concerns about the reliability of that service; which the care agency says it cannot guarantee. The Council should show how it considers a care agency is the most appropriate way to meet Ms B's assessed need and C's need for transport to and from school.
71. Ms B is responsible for ensuring her child attends school. By refusing the Council's offer of a care agency to get C to school Ms B put herself at risk of prosecution if C does not attend. Ms B has concerns about the reliability of care agencies arriving on time and C being late for school. By accepting the Council's offer of a care agency, Ms B can demonstrate she is cooperating with the Council and meeting her responsibility of getting C to school. Ms B can then clearly show

if it is not an appropriate method of meeting her and C's needs. Towards the end of 2018 Ms B agreed to the care agency taking C to school; the Council says it is working well and C has been attending school regularly.

Conclusions

72. The Council failed to complete assessments over a period of time, and make any reference in assessments to Ms B's fluctuating needs. The care and support plans make no reference to providing for fluctuating needs, or contingency. This is fault, as a result we cannot know if the Council has adequately identified Ms B's needs and is adequately meeting eligible needs. This leaves uncertainty. Ms B has purchased extra hours from the care agency, she says to meet additional needs at times of illness. This is exactly the sort of thing that should have been covered by contingency planning. We do not know whether all the additional hours purchased were used to meet needs and not wants, and whether they would have been authorised by the Council.
73. The Council failed to carry out annual care reviews as there was not a full review in 2015. The Council did not give Ms B a personal budget in 2015, which is not in accordance with statutory guidance. You would have to assume the personal budget remained the same, but there is no evidence this budget remained suitable given the change of circumstance in C starting school. This leaves uncertainty about what Ms B's needs were between 2014 to 2016 and whether the Council was adequately meeting those needs. The injustice is limited by the fact Ms B had a surplus in her direct payment account and was purchasing support as and when she needed it. There is no evidence that Ms B asked for additional support over this time.
74. The Council agreed Ms B could fund transport and a personal assistant to take her son to school. The Council failed to give a budget for this; the implication was an agreement up to the £51.60 per day that Ms B sourced. The Council failed to pay this amount. The Council says it should have paid around £12,000 into Ms B's direct payment account for this element.
75. Ms B has got a debt to the care agency because she used money in her direct payment account to pay the child-minder (as agreed with the Council), not knowing that the Council was not paying the correct amount into her account. This meant when the care agency bill came in she did not have enough money to pay it. Ms B has got into debt, which is partly the responsibility of the Council.
76. The Council delayed by six months when replying to Ms B's query on the outcome of her financial assessment. This caused Ms B distress, time and trouble.
77. As Ms B's care and support plan included elements to help her in her parenting role we would expect there to have been more involvement with Children's Services. The Council says it did not consider a young carer's assessment of C because it did not come up in Ms B's assessment that he was completing any caring tasks. However, the Council did not complete an assessment in 2015, and there is no mention in the documents we have seen about any questioning of C's caring responsibilities. Given Ms B's needs it was likely C was completing some caring role; the Council has now completed a young carers assessment. We cannot say the failure to involve Children's Services earlier caused any injustice to Ms B or C. The Council was meeting needs such as transport to school via Ms B's adult care support plan. Ms B tells us the Council has now passed the

transport to school element to Children's Services but that the outcome remains the same and it will only offer a care agency.

78. Ms B tried to meet with the Council and has asked for mediation. We also offered to arrange mediation. The Council previously refused, and did not reply to our offer. This is fault. The Council has not taken all reasonable steps to reach agreement with Ms B about how it should meet her eligible needs. This leaves Ms B frustrated, anxious and validates her feeling of not being included or listened to in the decisions about how to meet her needs. The Council says Ms B is not co-operating, whereas she feels she is and that it is the Council that is not listening to her. Mediation could have resolved the stalemate and helped move the case forward. There are ongoing child protection proceedings, which Ms B feels would not have happened if the Council had given her the right support and had listened to her.
79. Ms B is in debt with the child-minder. The Council was clear that it was withdrawing direct payments and only offering a care agency to get C to school. From this point it was Ms B's choice to continue using the child-minder knowing there was a risk she would not get the money from the Council to pay for this.
80. With regard the debt to the care agency, this partly resulted because the Council failed to make the correct payments for the child-minder, leaving a deficit in Ms B's personal budget account and she was unable to pay the care agency. However, it also arose due to Ms B asking for support over the amount available in her personal budget. Because of the poor care planning, we cannot know whether some or all of these hours might have been covered by contingency planning for fluctuating needs. There is no evidence to support what the hours were used for, and whether they were needs or wants. The care agency is no longer in business, so cannot provide any supporting evidence.

Responses to draft of this report

81. We have amended this report following responses from the Council and Ms B to a draft version.
82. We originally recommended the Council review the best way to get C to school. The Council has now done this, so we have removed the recommendation. The Council considers the care agency is the best way to get C to school; it has been in place since October 2018 and C has been successfully attending school.
83. We originally recommended the Council arrange an independent assessment of Ms B's care needs. This has taken place because of separate and ongoing court proceedings, unrelated to this complaint. But there is no point repeating the work undertaken, so we have removed that recommendation.

Recommendations

84. To acknowledge the impact of the identified failings, we recommend the Council:
- honour the agreement to pay transport and assistance to get C to school. The Council should pay the difference between the amount it paid into Ms B's direct payment account for this element of her support package and the amount she paid out. This should cover September 2015 to December 2016, when the agreement ended. The Council has calculated this as nearly £12,000. This will be paid to the care agency to settle part of the debt that arose because of this error.

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- apologise to Ms B for its failure to plan and provide assistance for contingencies, its failure to review her care and support needs in 2015, and its refusal of mediation. Pay her £2,000 for her distress, time, trouble and uncertainty; and
 - review the collaborative working between Adults and Children’s Social Services, and implement any identified improvements.
85. The Council has agreed to our recommendations to honour the agreement and to review the collaborative working, but not to the recommendation to apologise and to make the time and trouble payment. The Council feels the breakdown in service is because of a lack of co-operation from Ms B.
86. 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, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

87. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms B. The Council should take the action identified in paragraph 84 to remedy that injustice.