

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

**Investigation into a complaint against
London Borough of Barking & Dagenham
and Moreland House Care Home**

(reference numbers: 18 002 772 and 17 012 203)

11 March 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

Mrs A	the complainant
Mrs B	her mother

Report summary

Adult Social Care – charging

Mrs A complains about London Borough of Barking and Dagenham (the Council) and Moreland House Care Home (the Care Home). She says there were errors in charging which meant her mother Mrs B paid more than she should have done.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council:

- repays half the client contribution for Mrs B;
- ensures all clients have a care and support plan which contains a personal budget and offers a placement within the client's personal budget;
- ensures written top-up agreements between a third party and the Council are in place in all cases where a person is paying a top-up; and
- reviews its fee collection arrangements and ensures they are in line with the law and guidance described in this report.

The Council has accepted our recommendations.

We recommend the Care Home:

- pays Mrs A £250 to reflect her avoidable distress;
- stops entering into third-party top-up agreements where a council has arranged the placement; and
- removes references to third-party top-ups in its private contract.

The complaint

1. Mrs A complains about care home charges for her mother Mrs B at Moreland House Care Home (the Care Home). The charges relate to a period when London Borough of Barking and Dagenham (the Council) funded the placement and a later period of self-funding.
2. Mrs A considers there may have been errors in payments at the end of 2016. If there has been an overpayment, she would like a refund.

The Ombudsman's role and powers

Complaints about councils and organisations acting for councils

3. 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 actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
4. We investigate complaints about 'maladministration' and 'service failure' by councils. 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*)
5. The Council must consider this 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*)

Complaints about adult social care providers

6. We also investigate complaints about adult social care providers from people who arrange and pay for their care privately (self-funders). We decide whether the care provider's actions have caused an injustice, or could have caused injustice, to the person making the complaint. (*Local Government Act 1974, sections 34B and 34C*)
7. If an adult social care provider's actions have caused an injustice, we may recommend a remedy. (*Local Government Act 1974, section 34H (4)*)
8. The adult social care provider must consider our findings in this report and notify us within one month (or longer if we agree) of the action it decides to take, including whether it accepts any recommendations. If we are dissatisfied with a care provider's response, we may require it to publish an adverse findings notice. If we receive no response from an adult social care provider, we may publish an adverse findings notice. (*Local Government Act, 1974, section 34I*)

How we considered this complaint

9. We produced this report after examining relevant documents and speaking to the complainant.
10. We gave the complainant, the Council and the Care Home a confidential draft of this report and invited their comments. The comments received were considered before the report was finalised.

What we found

Relevant law and guidance

11. Where a council assesses a person's needs and agrees to provide care, it should set a personal budget in a care and support plan. A personal budget is a statement which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. *(Care Act 2014, section 26)*
12. Councils can charge people towards the cost of a care home placement. They complete a financial assessment, applying charging rules in regulations and guidance to determine how much a person pays. People who have over £23,250 (including property) pay the full cost. However, once their capital has reduced to under £23,250, they pay an assessed contribution towards their fees. *(The Care and Support (Charging and Assessment of Resources) Regulations 2014; Care and Support Statutory Guidance 2014 (CSSG))*
13. Guidance requires councils to make sure there is information and advice available in an appropriate format to ensure residents and their representatives understand charges. *(CSSG paragraph 8.3)*
14. When carrying out a financial assessment, a council must ignore the value of a care home resident's property for the first 12 weeks after their stay becomes permanent. This means the council will assist with funding of the placement for the first 12 weeks. Funding in this period is called a "12-week property disregard". *(CSSG paragraph 45(a), Appendix B)*
15. A council must arrange or provide a person with a placement in their preferred care home if:
 - the care and support plan specifies the adult's needs are to be met by accommodation of a specific type;
 - the preferred care home is of the same type specified in the care and support plan, is suitable and available;
 - the care provider is not the council and it (the care provider) agrees to provide the service on the council's terms.

If the preferred care home costs more than the adult's personal budget, then there must be another person willing and able to pay the extra cost ('top-up'). Guidance emphasises the requirement for real choice and that the council must ensure at least one care home is affordable within the personal budget. *(Care Act 2014, section 30 and Care and Support and After-Care (Choice of Accommodation) Regulations 2014, regulations 2 and 3(2), CSSG Annex A paragraph 12)*
16. Guidance requires a council to ensure the top-up payer can afford to meet the cost. It must enter into a written agreement with the payer. The agreement must include:
 - the additional amount to be paid;
 - the amount specified for the accommodation in the person's personal budget;
 - the frequency of the payments;
 - to whom the payments are to be made;
 - provisions for reviewing the agreement;
 - a statement on the consequences of ceasing to make payments;

- a statement on the effect of any increases in charges that a provider may make;
 - a statement on the effect of any changes in the financial circumstances of the person paying the 'top-up'. (CSSG, Annex A, paragraph 23)
17. Before making the top-up agreement, the council must provide the top-up payer with sufficient information so they understand it. (CSSG, Annex A, paragraph 24)
 18. Councils should avoid making care providers collect top-ups. Guidance explains *"if the arrangements for a 'top-up' were to fail for any reason, the local authority would need to meet the cost or make alternative arrangements, subject to a needs assessment Local authorities should therefore maintain an overview of all 'top-up' agreements and should deter arrangements for 'top-up' payments to be paid directly to a provider"*. (CSSG, Annex A, paragraph 25)
 19. Where a local authority is meeting needs by arranging a care home, it is responsible for contracting with the provider. It is also responsible for paying the full amount, including where a 'top-up' fee is being paid. However, where all parties are agreed it may choose to allow the person to pay the provider directly for the 'top-up' where this is permitted. In doing so it should remember that multiple contracts risk confusion and that the local authority may be unable to assure itself that it is meeting its responsibilities under the additional cost provisions in the Care Act. Local authorities must ensure they read the guidance at Annex A on the use of 'top-up' fees. (CSSG, paragraph 8.33)
 20. Guidance does not directly address responsibility for making payments of the client contribution. In the context of third-party top-ups, Guidance says *'the local authority is responsible for the total cost of the placement'*. (CSSG, Annex A paragraph 28)
 21. Any money owed to a council (whether a top-up or client contribution) is recoverable as a debt due to it. (Care Act 2014, section 69)
 22. Our focus report [Counting the Cost of Care](#) (September 2015) about our experience of handling complaints about care home funding highlighted common problems including poor or no information in writing, lack of choice of placements and councils abdicating responsibility for top-ups. We issued the focus report to remind councils of their legal responsibilities.

What happened

23. Mrs B moved into Moreland House (the Care Home) on 2 September 2016 for respite care following an illness. Until going into Moreland House for respite, Mrs B had been getting home care funded by the Council. Mrs A manages her mother's (Mrs B's) finances as her attorney. Mrs A arranged Mrs B's respite care in Moreland House without input from the Council and paid for it privately out of Mrs B's funds. The Care Home told us the weekly fee was £850, although its contract with Mrs A says £900.
24. Mrs A signed the Care Home's standard contract on 8 September. The Council was not a party to this. The contract says:

'where a service user is funded by a local authority, and the amount paid by the local authority is less than the weekly fee, the shortfall must be met by a top up payment... the third-party contributor will be required to enter into a third-party agreement with the service provider [the Care Home] if the third-party ceases payment of the third party top up, the service provider reserves the right to terminate the contract'.

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25. Mrs A also signed a third-party top-up agreement on 8 September. This was between the Care Home and Mrs A and the Council was not a party to it.
26. At some point in September, Mrs A approached the Council about Mrs B's future care as she felt her mother was not safe to return home. The Council carried out an assessment of Mrs A's care needs and a financial assessment, with the outcome being to provide Mrs B with funding for Moreland House under the property disregard rule described in paragraph 14. The gross weekly fee for the placement remained £850.
27. The Care Home entered into a contract with the Council. The Care Home sent us a copy of the signature sheet: it is not clear whether the Care Home received a full copy of the contract. The Council sent us a blank copy. Relevant clauses are summarised below.
- Clause 13.2: the client pays the Care Home the client contribution. If there are eight weeks' arrears, it tells the Council and can invoice the Council for the arrears.
 - Clause 13.3: if the client does not agree to pay the contribution to the Care Home, the Council pays the total price and will reclaim the contribution from the client. The third-party contribution is recorded as a separate contract between the third party and the Care Home. The contribution, with the client's agreement, is paid by the third party directly to the Care Home.
 - Clause 13.5: The Council will create a separate third-party contract with the person(s) making the third-party contribution. That contract will say:
 - that the third party will pay the top-up to the Care Home;
 - that the Council retains the right to terminate the contract, subject to consultation with the Care Home, if the third-party contribution is not kept up;
 - that the third party will continue to pay during any periods of temporary absence from the Care Home (such as the client going into hospital).
 - Clause 13.8: the Care Home will notify the Council in writing if payment of a third-party contribution has not been made within 14 days of the due date.
28. The Council told the Care Home it was contracting for Mrs B's care at £575 a week with a third-party top-up of £285 to be paid directly to the Care Home. The letter did not say anything about the client contribution.
29. The Council wrote to the Care Home again in October, saying the placement was £565 (this was an error, it should have been £575) a week and the Care Home would need to collect the client contribution. The letter did not say how much the client contribution was or anything about the top-up. The Council also wrote to Mrs A saying the gross fee for Mrs B's placement was £565 (again, this is an error, it should have been £575) with a breakdown of how it calculated Mrs B's client contribution of £382.01.
30. The Council wrote to Mrs A on 7 October explaining there had been an error in its letter and Mrs B's client contribution was £245.71 (as Attendance Allowance should not have been included in the financial assessment because it had stopped). The Council told the Care Home it would pay the fees net of the £245.71 client contribution and the Care Home would need to collect the client contribution from Mrs B.

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31. In January 2017, the Council wrote to Mrs A explaining Mrs B would become a self-funder after the property disregard period. It offered a deferred payment agreement, under which the payment of care fees is delayed and the debt accrues, with a legal charge on the person's home allowing the council to reclaim the money when it is sold. Mrs A declined a deferred payment agreement.
32. On 30 January, the Council wrote to the Care Home saying '*we will be paying the net care fees and you will need to collect the client contribution as follows: From 28 September to 12 February at £245.71 a week*'.
The letter instructed the Care Home to invoice Mrs B for the client contribution. The letter did not say anything about a third-party top-up.
33. The 12-week property disregard period ended on 31 January 2017. This was when council funding should have stopped according to the property disregard rule. However, the Council extended its funding to 12 February and sent Mrs A an invoice for '*residential care property debt of £2916.57 for the period 13 December to 12 February*'. (It is not clear what the phrase 'property debt' means in this case as there was no deferred payment agreement.) The invoice was on Council headed paper. It appears the Council was expecting Mrs A to pay this invoice directly to the Council.
34. Mrs A and a finance officer spoke on the phone. The finance officer confirmed in an email that the Council was extending council funding for Mrs B's placement to 12 February.
35. On 31 January, the Care Home sent an invoice for £4,844 to Mrs A, for Mrs B's client contribution of £245.71 a week for the period 28 September to 12 February.
36. From 13 February, Mrs B became self-funding. The total weekly fee for the placement was £850.
37. Mrs A completed paperwork in February to set up a standing order for Mrs B's charges, but the Care Home did not action it so the weekly fee was not paid for several months.
38. In April 2017, the Care Home emailed the Council's finance officer with queries:
- Mrs A was confused about the invoice for £2,916.57 she had received from the Council (see paragraph 33);
 - the Care Home was unclear about what client contribution to collect as it had received letters with different amounts.
39. The finance officer replied saying he had cleared up the confusion about the invoice with Mrs A directly and it had been resolved. He confirmed the weekly client contribution was £245.71.
40. In May, the Care Home wrote to Mrs A, enclosing a fresh standing order mandate. The outstanding balance was £14,650.
41. In September, the Care Home wrote to Mrs A. The letter:
- confirmed receipt of a payment for the first four weeks of Mrs B's stay (when she self-funded);
 - explained it collected the client contribution from 28 September to 12 February;
 - explained a contract for the third-party contribution had been signed and this had been paid;
 - said Mrs B became a self-funder again on 13 February at a fee of £850.

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42. In October, a Council finance officer emailed the Care Home confirming the total client contribution for the period of council funding was £4,844 and the total payment from the Council was £6,491.72. The email also said *'if you had a third party top up agreement with the family then this must be paid in addition to the £4844 client contribution'*.
43. Mrs A complained to the Care Home in October. The Care Home acknowledged its error and said there had been a delay of four months in setting up the standing order mandate so no payments had been made. It apologised and suggested Mrs A paid off the arrears by making additional payments.
44. A council finance officer wrote to Mrs A in June 2018, in response to a letter she sent in April. He explained the client contribution initially included Attendance Allowance but this was corrected and the contribution was adjusted (reduced). He confirmed Mrs A had paid the property debt invoice. (see paragraph 33)
45. The Council has provided us with a copy of a letter from Mrs A saying she agreed to pay a top-up, but it has not provided a top-up agreement with Mrs A.

Comments from the Council and Care Home

46. The Care Home told us:
- there was no formal contract with the Council for Mrs B's care. There was an individual placement agreement letter;
 - there was a clerical error which meant it did not action the standing order. It had apologised for this;
 - had it activated the standing order, there would have been an overpayment as Mrs A had put the wrong amount. Mrs A would have been getting monthly bank statements and could have picked up the payment was not going out;
 - it was still owed a significant amount;
 - most other councils it works with require it to collect client contributions;
 - some councils refuse to make top-up payments in the event of non-payment by the third party and some have also said that the top-up is not part of their contract. And councils may require the home to take steps to recover any debt. Without an obligation between the third party and the home, the scope for debt recovery is limited;
 - it is difficult for the home to keep track of payment calculation and administration when clients move between periods of self-funding and council funding.
47. The Council told us:
- its policy is to pay care homes net of client contributions and top-ups. This happens in all cases;
 - statutory guidance said it was liable for costs but did not specify that councils must make full payment and recharge the service user;
 - its contract said it was responsible in the event of default and would make the payment and take up the matter with the client/top-up payer;
 - payment of top-ups to a care provider was not the preferred approach but it was permitted;
 - it considered the Care Home made errors: the letter in September 2017 did not separate the client contribution Mrs B was required to make from the amount

paid by the Council. And there was a delay in setting up a standing order to collect client contributions;

- its letter to the Care Home in January made no reference to top-up payments, only to the client contribution;
- it could have provided clearer information to Mrs A and to the Care Home about the three elements of the care cost: the top-up, the client contribution and the Council contribution;
- there was inconsistency in the information Mrs A received. This led to confusion and a debt being created;
- Mrs A did not receive a payment reminder about Mrs B's client contribution until the debt reached about £5,000. She was faced with a large debt that could have been identified and addressed earlier. The Council would pay half of the debt;
- there were 340 others in residential care who pay their care home contributions directly to a care provider; and
- there were vacancies in seven different care homes at the time Mrs B was placed. These placements were at the Council's personal budget rate and so could have been provided without a third-party top-up.

Conclusions

The Council and Care Home's actions when the placement was council funded

48. The care charging framework is complex and can be difficult to navigate, particularly when people switch between periods of council funding and self-funding. Other councils pay care providers the full fee and bill the client and third party directly. Here, there is an additional layer of complexity because of the Council's arrangement with care homes to collect client contributions and top-ups.
49. The principles of Care and Support Statutory Guidance (CSSG) aim to:
 - avoid the risk of confusion caused by multiple contractual and payment relationships;
 - give people genuine freedom of choice and clear information to enable them to make informed decisions about payment arrangements;
 - provide assurance for the council that it is meeting its responsibilities to both the payer and care home as regards top-up fees; and
 - ensure no undue pressure is placed on top-up fee payers by a care home to increase the top-up.
50. CSSG strongly discourages councils from getting care providers to collect third-party-top ups on its behalf, although this is permissible if there is choice and all parties agree. CSSG only specifies this arrangement is allowed for top-ups and does not provide any similar discretion for client contributions to be collected by a provider. This makes common sense in terms of the intent as it is the care home resident who is likely to be most in need of the administrative protections the guidance envisages.

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51. We consider the Council and Care Home failed to offer the protection afforded by the statutory charging framework in this case and this was fault. Their actions fell short of standards in applicable law and guidance because:
- the Council contracted out the collection of client contributions to the care provider which is not permissible under CSSG. If it were allowed, CSSG would have said so;
 - the Council gave the Care Home and Mrs A inadequate, confusing and incorrect information about the different elements of the fee for Mrs B's care. This is not in line with paragraph 8.3 of CSSG or paragraph 24 of Annex A;
 - the Care Home did not invoice Mrs A for the client contribution until the end of January 2017. This was three months after the Council started funding the placement. The delay meant Mrs A received a large invoice for the client contribution;
 - the Council's standard contract with care homes allows for eight weeks of unpaid client contributions until the care home is allowed to invoice the Council for the unpaid money. This means a significant debt may be owed by the client and the care home is also out of pocket. It also means the Council does not have a full overview of fee payment, does no monitoring for eight weeks and cannot identify early on where a client may be in difficulty;
 - the Council did not set a personal budget for Mrs B and it did not prepare a care and support plan, which should have contained a personal budget. This is not in line with section 26 of the Care Act 2014;
 - the Council did not offer Mrs B a placement without a top-up. It says this was because Mrs A had already 'chosen' the Care Home, but we do not consider the family were offered a meaningful choice that was within the law. It is not enough for the Council to say that there were vacancies in other homes at the personal budget rate that would in theory have been suitable for Mrs B. The Council has to evidence that it set a personal budget and offered at least one such placement. It failed to do so and we conclude it did not act in line with section 30 of the Care Act 2014 and Choice of Accommodation Regulations;
 - the Council claims the letter from Mrs A saying she agreed to pay a top-up was a top-up agreement, but it was just a letter. The information prescribed in paragraph 23 of Annex A to CSSG was lacking. There was an agreement between the Care Home and Mrs A for the top-up. But this was also inappropriate because Annex A makes clear that the agreement should have been between the Council (not the Care Home) and the top-up payer. The position is further confused by the Care Home's top-up agreement starting before the Council commenced funding Mrs B's care: there should only be a top-up agreement between a council and third party for a period where a council funds a placement;
 - clause 13.3 of the Council's standard contract with care homes sets out a requirement that care homes have a written top-up agreement with a third party top-up payer. This is not in line with Annex A of CSSG as the agreement should be between the Council and third party;
 - top-up payers and care providers should actively agree to payments being made to the Care Home. The Council told us payments were made net of client contributions and top-ups in all cases. We consider the statutory framework envisages provision of appropriate information on charges and a choice of whether to pay the council or provider. There is no record in this case of the

Council consulting with Mrs A or discussing the different payment options. This is not in line with paragraph 8.3 of CSSG. The Council's actions did not give Mrs A the meaningful informed choice envisaged by the guidance;

- the Care Home's contract says it may end the contract if the third party does not pay the top-up. This is inappropriate and unnecessary because the Council retains responsibility for payment if the third party does not pay and so the Care Home should then look to the Council for payment of the debt. The Care Home should not need to rely on a contractual provision to evict residents for non-payment of top-ups because the statutory charging regime makes it clear that the Council is responsible for the whole fee;
- the council finance officer's email to the Care Home '*if you had a third party top up agreement with the family then this must be paid in addition to the £4844 client contribution*' suggests he was not aware of the law and guidance on top-up agreements which says the agreement should be between the Council and third party.

Actions by the Care Home when Mrs B was a self-funder

52. The Care Home issued a contract with Mrs A and a third-party top-up agreement when Mrs B first moved in as a self-funder. This contract had a clause allowing the Care Home to end the contract if the third party did not pay the top-up. This clause is inappropriate and should not be present in a private contract where there is no local authority funding: a third-party top-up is specific to a local authority funded placement only.
53. The Care Home should not have had a top-up agreement with Mrs A. The top-up agreement should have been between Mrs A and the Council.
54. The Care Home was at fault when it failed to action the standing order. This caused yet more confusion for Mrs A and meant three months' arrears accumulated.

Injustice

55. The Council and Care Home's actions caused Mrs A avoidable confusion and distress during a period when she was inevitably already distressed about Mrs B's ill-health.

Recommended action

Recommendations for the Council

56. Our recommendations aim to restore the person affected to the position they would have been in but for the fault and to minimise recurrence in similar cases. We do not always recommend reimbursement of care home fees a council is entitled to charge. In this case, we have taken into account:
 - the lack of a top-up agreement between Mrs A and the Council;
 - the lack of a care and support plan with a personal budget; and
 - the failure to evidence at least one placement offered at the personal budget rate.
57. The above factors mean in this case we consider there are grounds to recommend the Council reimburses Mrs A all the top-up payments she made for Mrs B's care. We consider the absence of due process around care planning and financial assessment; the defects in the arrangements for fees and contracts; the

absence of an affordable option; and the lack of meaningful, informed choice throughout mean that there is significant doubt about what the outcome might have been but for the fault. In this case, had the procedural safeguards been in place and had meaningful, informed choice been present, we can conclude that the outcome might well have been different, and a top-up might well not have been required. So we are satisfied that a full refund of the top-up in these circumstances is appropriate.

58. During this investigation, the Council offered to pay half the client contribution for Mrs A in recognition of the fault in its handling of the case and the distress caused. This is £2,422 and is an appropriate remedy. In addition, we recommend the Council, within three months of this report:
- undertakes a review and ensures care and support plans, with a personal budget, are provided as appropriate for all clients;
 - ensures clients requiring a placement are offered at least one care home place in accordance with their personal budget without a top-up. The records should clearly show the offer made; and
 - ensures it has top-up agreements with third parties in all cases where there is a top-up.
59. We also recommend the Council reviews its fee collection arrangements with care homes to ensure that they are in line with its responsibilities under the Care Act 2014 and CSSG. In particular, the Council should:
- amend its standard contract with care homes to remove references to top-up agreements between care homes and third parties;
 - take back responsibility for collecting client contributions for all care home placements it commissions (that is, ends the practice of care homes collecting client contributions);
 - ensure the Care Home's contract does not allow it to evict clients for non-payment of a top-up (because the Council is responsible for the full fee);
 - review other cases where there is a top-up and offer a remedy if other clients are similarly affected; and
 - ensure when it places people in care, that they are given the option to pay the top-up to the Council. We make this recommendation because the Council told us that payment to the provider happens in all cases. We consider the statutory framework envisages people having meaningful, informed choice and this means they should have the option to pay their council should they prefer.
60. The Council has indicated it accepts our findings and we welcome this constructive agreement to implement the recommendations. We recognise this is a significant change to the current system and the Council will need time to consider the actions needed and put in place a new fee-collection process. The Council's intention is to implement the necessary changes to collecting payments in stages and will put in place interim measures meantime, to avoid the risk of recurrence. It should update us with a more detailed action plan within three months of this report. This action plan should have timescales to address the recommendations in paragraph 59.

Recommendations for the Care Provider

61. The Care Provider's failure to action a standing order form for three months caused debt to accrue. The Care Provider has already apologised for this. To

reflect the avoidable distress and confusion to Mrs A, we recommend a payment of £250 within three months of this report.

62. In addition, within three months of this report, the Care Provider should ensure it does not enter into any third-party top-up agreements. And it should remove the clause in its private contract which allows it to terminate the service for non-payment of a top-up as this clause is confusing and unnecessary when there is no local authority involvement in a private placement.
63. We note the Care Provider's comments about other councils who place clients with it adopting the same or similar practice to this Council. We do not consider this justifies the Care Provider continuing with arrangements we have criticised in this case. We have issued this report to highlight our findings to other councils and care providers and would urge them to take steps to ensure their charging and payment collection arrangements comply with CSSG.
64. We note also the Care Home is still owed money in outstanding charges pending the outcome of this investigation and says it should not have to pay anything to Mrs A in light of the debt owed by Mrs B. Mrs A does not dispute that her mother owes some money, but the reason for her complaint was out of concern that her mother had overpaid and the lack of clear information about the charge. Our recommendation for the Care Home is to make a payment of £250 to Mrs A in reflection of her avoidable distress and confusion. That payment is to remedy her personal distress and confusion and is separate from any monies her mother owes. We see no reason to offset this payment against any debt owed by Mrs B.

Decision

65. We uphold Mrs A's complaint against Moreland House Care Home and London Borough of Barking and Dagenham because they did not act in line with law and guidance on charging. This caused Mrs A avoidable confusion and distress. To remedy the injustice, the Council and Care Provider should make the payments and take action described in paragraphs 56 to 64 of this report.
66. 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*)
67. Moreland House Care Home must consider our findings within one month (or longer, if we agree) and notify us of the action it decides to take, including whether or not it accepts any recommendations. If we are dissatisfied with the response, we may require it to publish an adverse findings notice. If we receive no response, we may publish an adverse findings notice. (*Local Government Act, 1974, section 34*)