Local Government & Social Care OMBUDSMAN

Report by the Local Government and Social Care Ombudsman

Investigation into a complaint against Bolton Metropolitan Borough Council (reference number: 17 017 535)

3 June 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 X	The complainant
Officer 1	Community assessment officer
Officer 2	Adviser from agency B
Officer 3	Manager dealing with Ms X's complaint for the Council
Agency A	the community alarm service
Agency B	the direct payment support service

Report summary

Adult social care (assessment, direct payments, care plan)

A woman complains about the lack of support she received to recruit a personal assistant, and about an assessment by the Council which reduced her support by over 60%.

Finding
Fault found causing injustice and recommendations made.

Recommendations
We welcome the Council's agreement to our recommendations to:

- apologise to Ms X in writing, and in an accessible format, setting out the faults we have identified and detailing the action it will take to put this right;
- pay Ms X £3,800 to acknowledge the significant and avoidable harm, distress, time and trouble it caused when it failed to provide sufficient support and repeatedly failed to listen to what she said;
- pay Ms X's longstanding, day time personal assistant, £500 in recognition of the unpaid, and on demand support she provided in the absence of other support;
- reinstate the personal budget for 67 hours immediately, pending reassessment;
- an experienced social worker with knowledge and understanding of sight loss to reassess Ms X's needs. Also, complete a Continuing Health Care checklist assessment and request a joint assessment with health;
- discuss with Ms X, and ensure the Council's records note, suitable reasonable adjustments for Ms X;
- review the services provided by agency B, to consider:
    a) complaints handling, and whether verbal complaints are captured;
    b) response times and prioritisation;
    c) the quality and timeliness of the information it provides to individuals needing to recruit personal assistants; and
    d) the quality of the advice it provides about arranging care from agencies in the absence of a personal assistant.
- review cases over the past 12 months where people with complex needs have complained about reductions in budgets, to ensure the reviews were in line with Care Act requirements;
- take action to ensure all assessments, reviews and support plans are completed in line with the Care Act in future. In particular, to ensure:
    a) the person's view is the starting point where possible;
    b) the assessment considers fluctuating needs, how to prevent needs developing or escalating, and takes a holistic approach;
    c) people have the opportunity to comment on the assessment.
- review its complaints process and take action to ensure responses to complaints are effective.

The complaint

1. The complainant, whom I shall refer to as Ms X, complains that the Council:
   - failed to provide sufficient support for her to recruit a suitable personal assistant for evenings, and weekends;
   - failed to provide sufficient support for her to recruit a suitable replacement for her daytime assistant while her regular assistant was on jury service;
   - reduced her care hours from 67 to 25 without properly considering her needs;
   - failed to allow her to appeal the decision; and
   - failed to deal with her complaint properly.
2. Ms X says her assessor and occupational therapist (OT) both said her hours would be reduced before she answered any questions. She says the assessment was “contradictory, highly inaccurate and misleading, full of basic and serious mistakes”. Her needs were increasing and she already had no support during evenings or weekends although she needed it. She became seriously unwell and says she has ongoing health problems associated with that time.

Legal and administrative background

3. 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)***
4. When a council commissions another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. So, although we found fault with the service of the commissioned organisation, we have made recommendations to the Council.
5. The Care Act 2014 sets out local authorities’ duties around adult social care. The Care and Support statutory guidance sets out how the Care Act should be applied.

Assessment, eligibility, and support planning

6. Sections 9 and 10 of the Care Act 2014 (the Act) require local authorities to carry out an assessment for any adult with an appearance of need for care and support. They must provide an assessment to all people regardless of their finances or whether the local authority thinks an individual has eligible needs. The assessment must be of the adult’s needs and how they impact on their wellbeing and the results they want to achieve. It must also involve the individual and where suitable their carer or any other person they might want involved.
7. The Council must carry out the assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep the person informed throughout the assessment.
8. The Care and Support (Eligibility Criteria) Regulations 2014 sets out the eligibility threshold for adults with care and support needs and their carers. The threshold is

based on identifying how a person's needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing.

9. Where local authorities have determined that a person has any eligible needs, they must meet these needs. It must also give the person to whom the determination relates a copy of its decision.

10. The Act gives local authorities a legal responsibility to provide a care and support plan. The plan should consider what the person has, what they want to achieve, what they can do by themselves or with existing support and what care and support may be available in the local area. When preparing a care and support plan the local authority must involve any carer the adult has. The plan may include a personal budget. This is the money the council has worked out it will cost to arrange the necessary care and support for that person.

11. Section 27 of the Act gives an expectation that local authorities should conduct a review of a care and support plan at least every 12 months. As well as the duty to keep plans under review generally, the Act puts a duty on the local authority to conduct a review if the adult or a person acting on the adult's behalf asks for one.

12. Where the local authority is to meet a person's needs, it must provide a personal budget as part of the care and support plan. The personal budget gives the person clear information about the money allocated to meet the needs identified in the assessment and recorded in the plan. The council should share an indicative amount with the person, and anybody else involved, at the start of care and support planning, with the final amount of the personal budget confirmed through this process. The detail of how the person will use their personal budget will be in the care and support plan. The personal budget must always be an amount enough to meet the person's care and support needs.

13. There are three main ways in which a personal budget can be administered.

    - A managed account held by the local authority with support provided in line with the person's wishes.
    - A managed account held by a third party (often called an individual service fund or ISF) with support provided in line with the person's wishes.
    - A direct payment. **(Care and Support Statutory Guidance 2014)**

14. The statutory guidance also says the following.

    - A supported self-assessment is an assessment carried out jointly by the adult with care and support needs and the local authority. The individual is in control of the assessment process and completes their own assessment form. Local authorities must offer individuals a supported self-assessment, "if the adult is able, willing and has capacity to undertake it".
    - In carrying out a proportionate assessment local authorities must have regard to "the severity and overall extent of the person's needs". An individual with more complex needs will require a more detailed assessment, potentially involving a number of professionals.
    - The local authority should "establish the individual's communication needs and seek to adapt the assessment process accordingly". Local authorities "must provide information about the assessment process in an accessible format".
    - "The local authority should provide in advance, and in an accessible format, the list of questions to be covered in the assessment. This will help the

individual or carer prepare for their assessment and think through what their needs are and the outcomes they want to achieve".

- Assessors must "always be appropriately trained and have the right skills and knowledge". "The training must be appropriate to the assessment, both the format of assessment and the condition(s) and circumstances of the person being assessed".
- "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". "Where the assessor does not have the necessary knowledge of a particular condition or circumstance, they must consult someone who has relevant expertise".
- Local authorities "should take a holistic approach" to considering the needs to be met. They should make "comprehensive provisions" to accommodate fluctuating needs, and detail contingencies for sudden changes or emergencies.
- "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".

15. The following requirements of the Act are also relevant to this case. Councils must:

- give the individual a record of their needs following their assessment;
- carry out assessments to the "highest quality";
- prevent needs arising or deteriorating;
- promote wellbeing when carrying out any care and support functions or making a decision about a person;
- assume the individual is best placed to judge their wellbeing;
- focus on the person's needs and outcomes they want to achieve;
- consider how to prevent needs developing or escalating at every interaction with a person;
- take a person centred approach to assessment and balance the person's own view with that of others; and
- complete a person centred and person-led care and support plan and provide a copy to the person. It must support the person to write their own care and support plan and ensure the principles of promoting wellbeing and preventing or delaying the development of needs is reflected in the plan.

Direct payments

16. Direct payments are made to individuals to meet some or all of their eligible care and support needs and enable people to commission their own care and support to meet their eligible needs. This might involve the person using an agency to provide support, or employing a personal assistant (PA). If someone receives direct payments the Council should support them to use and manage the payment properly.

17. The Council has an agreement with agency B, to provide direct payment support and a brokerage service. The service specification includes:

- advice and support in liaising with registered care providers;

- assistance in the development of contingency plans in case of a breakdown in the care and support arrangements;
- assisting the service user to mediate and resolve problems (as directed by the service user) and involve advocacy if required;
- supporting the service user to recruit personal assistants;
- signposting to appropriate recruitment sources;
- ongoing support liaising with care agencies as necessary; and
- ongoing support with making amendments to the support plan.

Continuing healthcare

18. Continuing healthcare (CHC) is a package of care arranged and funded solely by the health service. CHC is for people whose main care need is health related, who are not in hospital and who have complex ongoing health needs. It is fully funded by the health service and the person pays no contribution.

Telecare

19. Telecare refers to equipment which enables help and support from a distance using technology. This includes alarms, monitors and detectors which connect to a remote monitoring and support service.

Equalities

20. The Council has a duty to make reasonable adjustments to help disabled people **(Equality Act 2010).** Ms X has difficulty accessing information, completing forms and reviewing or reading documents, due to her sight loss and neurological symptoms.

How we considered this complaint

21. We produced this report after examining relevant documents and interviewing the complainant and relevant employees of the Council.

22. 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.

What we found

What happened

23. Ms X lives alone. She has many health conditions and disabilities which include sight loss, inflammatory bowel disease, and neurological conditions, which cause her significant difficulty with daily living. At the start of these events, her daughter lived at home and helped her.

24. In 2015, the Council assessed Ms X and gave her a personal budget to provide 67 hours of support for which she received a direct payment. She used this to employ three personal assistants (PA). When her daughter moved out, she tried to find another PA to provide support at weekends and evenings; she had no success with this. She told the social worker about the difficulties she was having with agency B, who the Council contracted to provide this support. She said they did not answer the phone, failed to send CVs for ages, and then sent CVs which were not appropriate. This meant Ms X had not been able to recruit a PA and did not have any support for evenings or weekends although the Council had

assessed that she needed it. The money for this support built up in her direct payment account because she could not use it. Ms X was reluctant to use agencies because of previous bad experiences due to staff not being trained around sight loss. Ms X says they were not aware of the hazards they created including leaving items in places where she might trip or fall over them. It also takes time for carers to get to know Ms X so they can provide the support she needs, and agency carers tend to change often.

Hospital admission

25. In May 2017, Ms X was admitted to hospital for surgery. The following day, the hospital alerted the Council, so it could arrange support for her to return home, if needed, once she was fit for discharge. Council records show the social worker went to the ward the next day, as family wanted to take her home, but Ms X was asleep. The social worker telephoned Ms X's daughter who advised carers were still in place and family would stay with her overnight until she recovered. While she was in hospital, Ms X phoned agency B as she needed extra support. Ms X was discharged four days later. While she was in hospital one of Ms X's two PAs left.

26. Council records note the social worker called and spoke to Ms X's family four days after discharge; they had no concerns. That day, Ms X was admitted to hospital again for another eight days as her stitches had burst. When she was discharged home, she was told to take it easy and she would need extra help. Ms X says, when she contacted agency B from the hospital to ask for urgent extra care, nothing happened and she returned home without any support for evenings and weekends. Within four days, she had to return to hospital again because her stitches had burst again; she was in the intensive care unit for several days and in hospital for several weeks. She says she had no strength in her arms or legs and she couldn't speak properly. She was not able to make a telephone call so was unable to ask for help before she returned home. She was told not to lift anything heavier than a mug, but without another PA she needed to make her own food and drinks during weekends and evenings. She says she spent most of the time in bed and struggled to get out of bed without help. Ms X feels strongly that the second and third hospital admissions were due to insufficient support during recovery. She says stress causes her symptoms to increase, and this increases the long term impact of some of her health conditions. Ms X arranged for a family member to fill one of the PA vacancies due to the difficulties she had recruiting. However, the family member lived a long way away and worked full time. This arrangement caused difficulty in their relationship and eventually, after a few months, it broke down completely and they ended the arrangement.

The assessment

27. In June, the social worker arranged a review and visited early in August. The social worker wrote that Ms X "has a multitude of health conditions…resulting in her needing support to maintain all her daily living needs". She contacted one of Ms X's medical practitioners to discuss the increased problems Ms X was having with swallowing and continence. The medical practitioner advised she had a urine infection and had been "so unwell" due to the surgery. He advised the problems should improve as the infection cleared and she should "return to her base line".

28. Ms X contacted agency B to try and arrange support to replace her PA who had advised she would be not be able to work for a while in October. Also, in August, Ms X had a telecare review and an occupational therapy assessment. The occupational therapist (OT) arranged some equipment and visited again in

September to complete a time task analysis "to inform on the current [direct payment] which is quite substantial".

29. The social worker was not well and had not written up her assessment; the case transferred to Officer 1. Officer 1 was an experienced assessor; she was not a social worker, and had no training in visual impairment.

30. In September 2017, Officer 1 met with the OT to discuss how many hours Ms X needed following the OT assessment.

31. On 12 October, Officer 1 made an internal call to ask about the process for reducing hours. The following day she made her first visit to Ms X. Ms X says Officer 1 told her the Council was reviewing all direct payment users and her hours would be cut to about four a day. Officer 1 says she does not recall saying this. Ms X had still not been able to recruit a PA for evenings and weekends.

32. Ms X says several lengthy meetings with Officer 1 followed, sometimes unannounced, and sometimes included an occupational therapist (OT). Officer 1 says there were several telephone calls and several visits, including one joint visit with the OT, but none were unplanned. She asked Ms X for a list of her medical appointments over the past year; Ms X struggled to get this done. She says she did not receive any extra support throughout the process and had to use her care hours so her PA could attend the assessment visits and support her with the process and paperwork. This meant that, although she was already not receiving the full amount due, she had to give up more support to take part in the assessment.

33. On 27 October, two weeks after the first visit, Officer 1 sent Ms X a self-assessment form in the post and called four days later to ask her if she had completed it. Ms X said she had not received it yet and so Officer 1 sent another.

34. In November, the Council's visual impairment team completed an assessment following the referral from the OT. It noted Ms X had not had a visual impairment assessment for over 10 years, when she had first been registered blind.

35. Ms X provided a list of appointments for the past year that her PA had collated. She said it was not complete as Ms X had not known that she would need to do this. She said:

- "There are periods when [Ms X's] condition flares up and the appointments are brought forward and become more frequent. Often these appointments have further investigations for x-rays, CT scans, MRIs and blood tests".
- Following Ms X's surgery in May, the PA had to pick up multiple prescriptions as they were too urgent to wait for delivery.
- A carer is required to be present during physiotherapy from the falls team. Every day, Ms X has approximately 40 minutes of supervised and assisted physiotherapy with her carer.

36. On 10 November 2017, the OT visited Ms X with some equipment and noted that Ms X was in a "great deal of pain". She noted "from her actions it was evident she was in pain".

37. Officer 1 called the community alarm service (agency A), who provide an alarm service to Ms X. Agency A advised Ms X had only called them out once in August after a fall. Ms X told us she avoids using agency A because they take too long to respond. The Council says it was not aware of a problem with responses from Agency A. Agency A said it answered the call in August 34 seconds after Ms X

triggered the alarm. Response staff arrived within 27 minutes of the call being answered. Officer 1 also called Ms X's GP's surgery to ask if the list of medical appointments she had submitted were accurate.

38. On 21 November, Officer 1 met with the agency that had provided support while Ms X's PA could not work. She noted Ms X had not requested any support for morning, evenings "which, incidentally she is receiving the funding for", or weekends. She wrote "The total hours she has managed with are 17.5 hours per week over five days" this is a "massive reduction" from the 67 hours she currently receives.

39. Officer 1 also noted she was still waiting for the self-assessment form. She wrote "I have rang and emailed in order to request this but she has failed to do so". She had also asked for the name of the GP or consultant who compiled the list of appointments and noted "again [Ms X] wasn't forthcoming". She wrote that Ms X had "failed to provide us with the necessary information" to assess her needs "fairly" and "we will now finalise the assessment with the revised hours". Ms X says she told Officer 1 that it would take a long time for her to complete the form and that she needed support to do this. Officer 1 says Ms X did not say this.

The assessment outcome

40. In December 2017, Officer 1 sent a letter to Ms X advising that her 67 hours a week were to reduce to 25 hours from 16 February 2018. The letter said that a surplus of £16,000 in her direct payment account evidenced an "over allocation of hours". Ms X received a copy of the assessment document which the Council had used to decide this reduction. She says the document was contradictory, highly inaccurate and misleading, omitting much information that she had given Officer 1 and the OT.

41. On 18 December, Ms X called Officer 1 to voice her concerns. Officer 1 noted that she was irate and upset and asked about her right of appeal but that "wouldn't be down to us". She offered to do a joint visit with agency B. Ms X told her that she had not been able to find support for three years. Officer 1 asked why her PA had not changed her hours, starting and finishing later. She noted Ms X "chose not to answer that question" and that PAs had been found but she "disapproved of them all and asked them to leave". Ms X says she told Officer 1 her PA could not work later. She also said she did not find any other suitable PAs; she hardly got any to interview. Ms X says she asked agency staff to leave because they were an increased risk to her.

42. Ms X says, in January 2018, she spent about eight hours working through the assessment document with her PA, correcting and adding information. On 6 February, she complained to the Council and sent a copy of the assessment marked with her changes and comments. Officer 3, a manager, investigated and responded to Ms X but did not uphold the complaint. Ms X says she was not contacted by the investigator. The response included a copy of the assessment which it had not amended and said Officer 1 would contact Ms X about the errors.

43. In February 2018, Officer 1 visited Ms X with Officer 2, from agency B. Officer 1 noted that when Ms X had ended a PA's employment, she had been without a PA "for quite some time" and had "seemingly managed" until her PA was recruited. We have not seen any evidence that anyone looked at the CVs Ms X had been given, or considered whether agency B had dealt adequately with her complaint. Ms X says she previously had family who had helped but this was no longer available to her. Ms X says she told Officer 1 that she was not managing at all.

44. Ms X was not happy with the Council's response to her complaint and she complained to us. When we made enquiries of the Council on 2 July 2018, the Council delayed sending the information we requested. We received the last of the information we requested on 19 December 2018. The delayed information was from agency B.

45. On 11 September 2018, Officer 1 visited Ms X. Ms X says she advised Officer 1 that she was struggling and having many more accidents and Officer 1 told her that there was no funding for more hours. Ms X also says she told Officer 1 it was eight months since Officer 3 told her someone would visit to correct the information. She says Officer 1 said she had not seen the assessment and the computer had made the errors. She agreed to return a week later to review the assessment. Ms X says she believes this meeting lasted two hours.

46. On 19 September, Officer 1 returned as agreed. Ms X advised Officer 1 that she would record the meeting as she was not able to take notes and her PA would be reading out the original assessment and their notes on it. Officer 1 had arrived without a copy of the assessment so Ms X's PA gave her one. This meeting lasted one and a half hours. Ms X and her PA went through the assessment line by line setting out what was wrong and why; we have listened to Ms X's recording of the meeting.

47. Ms X said the assessment gave the wrong religion, language and health conditions despite previous discussions with Officer 1. Officer 1 said this information had been on the system 13 years and, although they had discussed it, Ms X had not said anything before that. Ms X said she hadn't been given a copy before. Officer 1 explained they don't send out the assessment, only the care plan.

48. Ms X advised Officer 1 that many other records were not accurate and asked for changes. Ms X's carer says Officer 1 made notes on tiny scraps of paper as usual.

49. On 2 October 2018, Officer 1 emailed Ms X; she wrote "can I just check what biographical changes are needed. I know I wrote it down but I would prefer clarification then we have the correct information. Religion, preferred language etc. Any other changes which are needed. Hope you are well. I haven't finished the assessment as yet". This was a year after Officer 1's original visit.

50. Ms X provided a log of accidents for almost a year from February 2018 that her PA compiled from the records. This listed 75 accidents including:

- numerous falls and faints, both indoors and out, causing bangs on the head, bruising, sprains, cracked tooth;
- bruises bumps and scalds from dropped cups, plates and dishes, due to faints, dizzy spells, and numbness, or pins and needles;
- several cuts from broken glass and knives;
- burns while cooking;
- apron caught fire while cooking;
- slips on spills and debris not adequately cleared after items had been dropped or after having repair work to her home work completed; and
- a bang on the head from the sink when trying to pick up toothpaste she had dropped.

51. The log notes the PA worked 33 additional hours between February and July, sometimes during her time off. From 1 July 2018, she added additional hours to her timesheet and these were paid for from the direct payment surplus as agreed with Officer 1. Ms X says the extra 33 hours were just the tip of the iceberg and does not include occasions when Ms X needed extra care because her symptoms had flared up.

Assessment and support planning

52. The assessment document from 2015, completed by a social worker, noted Ms X's fluctuating and deteriorating health. It said she was having difficulty recruiting a PA for weekday evenings despite extensive advertising, also that she had muscle spasms in her throat affecting her breathing, speech, and ability to swallow. It said, "She is at risk of choking during these incidents" and noted the speech and language therapist (SALT) was involved.

53. The OT assessment in August and September 2017, noted similar issues to the 2015 assessment. It said she could walk around 7ft outdoors with help using her cane, and was having physiotherapy from the falls team to improve her balance and reduce the risk. It also noted Ms X:

- Needed all equipment and food stored in specific order so that she can find what she needs.
- Could no longer self-propel her wheelchair and struggled to pull herself to sitting and to pull her leg out of the bath because of reduced strength.

54. The OT noted "At weekends, [Ms X] does not take the boxed medication" to help with nerve pain, tremors, spasms and inflammation. By Monday she is "in pain and much more". When prescribed steroids, she cannot feel the tiny tablets.

55. When the OT asked how Ms X managed at weekends, she said she didn't manage, and said the last five ambulance calls were at weekends. The OT wrote, "the issues client experiences currently at the weekends does need to be considered when reviewing the support required overall".

56. The self-assessment completed by Ms X at the end of 2017, includes the issues mentioned above and also the following.

- Bathing affects my blood pressure significantly and I am at risk of fainting so my PA listens out for me.
- "I often miss medication in my blister pack" so my PA has to put it in an egg cup and supervise me taking it as "I struggle to feel the smaller tablets".
- Communication can sometimes be a problem as spasms cause my voice to be "barely audible" or to disappear. I may have no voice for up to three weeks when severe. Ms X also says on these occasions she relies on her PA to communicate on her behalf, including at medical appointments.
- "I am constantly burning myself, having accidents that require professional medical assistance, banging my head" causing concussion.
- Spasms in my throat "can shut off air". Food and pills can get stuck. "When I am eating, my PA has to supervise and be ready to act". "When my throat closes, it does so rapidly and without warning". "If there is no one present to watch and monitor whilst eating, I tend to stick to liquids".
- "I unfortunately lost my evening PA a while ago and have had no support from agency B in securing another".

- “The visual assistance technology is brilliant and makes a huge difference to my life, but once again, it requires a sighted person to set it up and maintain it”.
- “I struggle to pick up items which I regularly knock over” which become a trip hazard, or to clean up spills which are a slip hazard.
- My PA is responsible for making sure I turn off the gas after cooking, maintains stock of fridge contents, makes shopping lists and makes sure food is not out of date.

57. Officer 1’s assessment from October 2017, included the following comments.

- Ms X would like evening visits after her PA leaves at 5pm. “This isn’t needed. As [Ms X] has been without these hours since the increase she has been unable to recruit a PA”. It would be a reasonable request that the PA could change her shifts to accommodate”.
- “she does report she suffers with tremors occasionally but this was not observed on assessment visits”.
- Ms X “can get in and out of the bath independently”.
- “[Ms X] has chosen not to use her current personal assistant to participate in social activity and there has been enough time allowed for this in her current payment”.
- Ms X can administer her own medication “but one of her tablets needs cutting in half and she states she is unable to do this”.
- Ms X “is independent with her personal hygiene and values her privacy and independence in this area”.
- “no eligible need” around going to the toilet.
- “no eligible need” around being safe in and around my home. Agency A reported only one call out since 2009.
- “The outcome of this assessment has established that [Ms X] has eligible needs, however, what is not established is the justification for 67 hours per week”.
- “Information gathered in the assessment” confirmed that, in the absence of her current personal assistant, Ms X “organised her own replacement and commissioned only 17.5 hours over 5 days”.
- “A self assessment form was sent out in the mail on 27/10/17 to ensure [Ms X’s] own views about her needs were incorporated into this assessment. I rang her to enquire if this had been received. As she denied receiving it through the post I sent it out again 31/10/17. I rang straight after sending, she confirmed that she had received it and would begin to fill in”.
- “It is anticipated that due to the reduction in her Direct payment [Ms X] will be unhappy about this as she was actually asking for more time to be provided to her”.
- Ms X has been going “over her hours” on occasion and it is unclear what the funds have been used for as she has failed to employ another PA for the evening that she requested for social activities.

58. The assessment identified the need for a weekly total of 25 hours “a considerable reduction” from 67 hours a week.

59. At the meeting on 19 September 2018, Ms X asked for changes to include the following: She:

- no longer had family available to support her;
- had weakness in both sides, particularly the right; also pins and needles;
- had pain which caused her to faint;
- was not always able to identify when it's safe to eat and drink;
- was not entirely independent with shopping and needs a sighted person to check stock and dates, and that items do not contain relevant allergens;
- was not able to get out of the bath on a bad day; she could not use the leg lifter if her arms were affected. She was also at risk of fainting in the bath as it affected her blood pressure;
- needed a lot of baths due to the symptoms of her medical conditions;
- needed steroids but didn't take the amount she should because she knew she wouldn't get the care afterwards if she ended up in hospital;
- had severe neurological pain after some repetitive activities like vacuuming and peeling a potato or apple caused a numb arm; and
- was not able to manage her finances and household correspondence independently due to her sight loss. Her PA had to read things, identify the coins or notes, read the card number and other similar tasks.

Direct payment support

60. In response to our enquiries, agency B provided copies of twelve CVs it had sent Ms X. Ms X believes this is likely to be the last batch she received, in 2017. She says she had not received any for some time before that. We have looked at these CVs and found they were all inadequate. Despite this Ms X invited two candidates for interview, but they did not turn up.

61. On 23 August, Ms X called agency B. The person she "usually" dealt with was not available all day. Ms X said her PA had to take a week off and she needed a replacement. She said she was having a lot of falls at the moment and asked if agency B had any carers on bank. The call taker advised they didn't have a bank of carers and she would probably need an agency; she would get someone to call back and advise. We have listened to the recording of this call.

62. Later the same day, Officer 2 called Ms X to advise. We have listened to the recording of this call. Ms X said she needed someone from 9:30am to 5:30pm Monday to Friday and she really needed cover as she was having lots of accidents at the moment. Officer 2 said the funding from the Council for PAs was considerably less than an agency would charge. She said that meant Ms X may not be able to have that full number of hours but she could reduce the hours so she could get support from an agency. Ms X said she was supposed to have evening staff as well so had a lot of hours unused. Officer 2 said Ms X should look at the hours allocated on a weekly basis and make sure the agency won't charge above that. "Then you'll be fine, within your budget". Officer 2 offered to send details of agencies who deal with direct payments so Ms X could check availability. She said the agency would send an invoice and Ms X just needed to pay it.

63. Ms X arranged agency support within her weekly budget as advised. This meant she received fewer hours than usual because the cost of agency staff is higher.

Complaint handling

64. Ms X raised the difficulties she was having with agency B with several Council officers but they referred her back to agency B and did not recognise the scale of the problem.

65. When Ms X told Officer 1 she wanted to appeal, Officer 1's own notes show she did not respond appropriately. She did not advise Ms X of the process but gave her the impression it was not possible.

66. Ms X complained in January 2018 and says the Council did not contact her during the investigation.

67. Officer 3 (a manager), responded in February 2018. Her comments included:

- "despite your concerns" it is our view that "ample time" has been allowed for eating and drinking. Your assessment "has not identified any evidence to support difficulties with swallowing or choking". You "are not currently known to speech and language therapy". "You have also been allocated one and a half hours per week for assistance with shopping";
- "you note your needs have deteriorated but there is no evidence from your assessment to support this";
- Bolton Council does not "commission services to be around in case someone faints or needs urgent medical assistance". "Other support services are used such as telecare aids or agency A. I am unable to comment on your complaints about agency A but suggest you raise your concerns with them again";
- "there are many ways that visually impaired people can maintain their independence with dressing".

68. As previously mentioned, Ms X was known to speech and language therapy and this was noted in the Council's records. There was also evidence in the Council's records to support that Ms X's needs had deteriorated. Ms X says her problems with dressing are not related to her visual impairment but her neurological conditions; this is also detailed in the Council's records.

69. We have not included detail of all the areas where Ms X felt her needs were not fully reflected in the assessment as these were extensive. However, we considered the full range in coming to our decision.

Reasonable adjustments

70. Ms X has disabilities which severely impact on her ability to engage with the assessment process and more generally with the Council. She advised Officer 1, and others, that she needed time and support. We have not seen any evidence it considered how it could adjust its processes to make sure she was able to engage with the process adequately. Ms X had to use her care hours to engage in the assessment and complaints processes.

71. Ms X also told Officer 1, and others, she could not access the emails sent through the Council's encrypted service. The Council did not consider how it might adjust its use of emails to ensure Ms X could access the information it sent. This meant her PA had to access these emails and convert them to an accessible format using Ms X's care hours.

72. In response to our enquiries, Officer 1 said she believed Ms X had enough flexibility in her hours to provide support with written correspondence. She did not specify this in the assessment.

Conclusions

Assessment and support planning

73. The Council was at fault when it failed to assess Ms X's needs on returning home from hospital in May 2017. It spoke to her family but it needed to speak to her. We cannot say this was the reason for her two readmissions to hospital. However, we have concluded, on the balance of probability, the failure to ensure Ms X had adequate support put her at an increased risk of harm. It potentially contributed to the two readmissions to hospital and the serious implications for her health.

74. We are clear that when Officer 1 became involved in September 2017, she began Ms X's assessment with an intention to reduce hours; the Council was at fault here. The amount of support and budget should not be considered until the care and support planning stage; after the assessment is complete.

75. Officer 1 failed to listen to Ms X, and did not take heed of information her colleagues had gathered. She did not consider fluctuating needs or the cumulative impact of Ms X's various conditions. She contacted health colleagues only to check Ms X was being honest, and not to ask for input to the assessment. She used Ms X's difficulty recruiting a PA, to justify reducing her support. The Council was also at fault here.

76. The assessment did not record the full impact of health conditions and disabilities on Ms X's day to day life and the Council questioned her account. This was despite clear information provided by Ms X and her PA, both verbally, and in writing and clear information recorded by the social worker and OT. Officer 1 had an amended copy of the assessment with Ms X's comments and amendments in January 2018 and spent some time discussing the assessment with Ms X and her PA in September 2018. Over a year after the assessment began Officer 1 asked Ms X to put her changes in writing. Ms X had spent more than 10 care hours telling the Council why the assessment was flawed and many more in assessment visits, yet the assessment remained flawed. The Council used this flawed assessment to reduce Ms X's support by over 60%.

77. During the time at weekends when she did not get support, Ms X was not able to keep herself safe and properly medicated. We consider, on the balance of probability, that the stress caused by these events made her symptoms worse. Also, not being able to access her medication properly was harmful to her health and wellbeing. The Council was at fault here causing Ms X considerable, and avoidable distress, time, trouble, and harm. The Council is also at fault in not ensuring people can comment on their assessments. It should give people a copy of the finalised assessment before moving to care and support planning.

78. The Council took more than a year to complete the assessment. The lack of support to Ms X and Officer 1's gaps in knowledge and understanding contributed these delays. This is fault, and caused avoidable and significant distress to Ms X.

79. We have concerns about the approach the Council took to reducing Ms X's support. The Council should consider whether this approach has been used with others. If so, it needs to consider whether there are others who have been similarly caused significant injustice and what training it needs to implement to address this. If not, it needs to consider why it treated Ms X in this way.

Direct payment support

80. The information on the CVs we saw, suggests they were long out of date when agency B passed them to Ms X. They were inadequate, and inappropriate, for the level of support Ms X needed.

81. Agency B also failed to provide adequate advice when staff advised her to reduce her hours and did not suggest she approach the Council to approve the change in cost. This meant Ms X had even fewer care hours while her regular PA was not available.

82. The Council was at fault here as it was responsible for the service agency B provided. This contributed to the distress, harm and time and trouble caused to Ms X.

Complaint handling

83. Officer 1 did not appropriately deal with Ms X's request to appeal.

84. Officer 3 did not investigate and properly listen to Ms X's complaint. She did not investigate or address each of her points adequately and took Officer 1's account at face value.

85. The Council repeatedly referred Ms X back to agency B despite her continued concerns. As a service commissioned by the Council, it is ultimately the Council's responsibility to ensure it provides an adequate service. It should have investigated the problem.

86. Throughout the events described here, the Council did not hear Ms X's voice; this was not one member of staff, but several, time after time. The Council was at fault in the way it dealt with Ms X's complaint and this also contributed to her distress, harm, and time and trouble.

Reasonable adjustments

87. When Ms X explained the difficulties she had engaging with the assessment process, Officer 1 did not offer any support. She even chased Ms X for the substantial self-assessment document, knowing Ms X had no support with it, and that she had posted it only four days before.

88. Ms X also said she could not access emails the Council sent through a secure system, but it did not consider how it might send her information that she could access. It continued sending emails she could not access without support which it had not provided.

89. The Council was at fault here too. This added to the avoidable distress, time and trouble it caused to Ms X.

Recommendations

90. 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)***

91. In addition to the requirements set out above the Council has agreed to take the following action to remedy the injustice identified in this report.

- Apologise to Ms X in writing, and in an accessible format, setting out the faults identified above and detailing the action it will take to put this right.

- Pay Ms X £3,800 to acknowledge the significant and avoidable harm, distress, time and trouble it caused when it failed to provide sufficient support and repeatedly failed to listen to what she said.
- Pay Ms X's longstanding, day time personal assistant, £500 in recognition of the unpaid, and on demand support she provided in the absence of other support.
- Reinstate the personal budget for 67 hours immediately, pending reassessment.
- Arrange for an experienced social worker with knowledge and understanding of sight loss to reassess Ms X's needs. Also, complete a Continuing Health Care checklist assessment and request a joint assessment with health.
- Discuss with Ms X, and ensure the Council's records note, suitable reasonable adjustments for Ms X.
- Review the services provided by agency B, to consider:
  a) complaints handling, and whether verbal complaints are captured;
  b) response times and prioritization;
  c) the quality and timeliness of the information it provides to individuals needing to recruit personal assistants; and
  d) the quality of the advice it provides about arranging care from agencies in the absence of a personal assistant
- Review cases over the past 12 months where people with complex needs have complained about reductions in budgets, to ensure the reviews were in line with Care Act requirements.
- Take action to ensure all assessments, reviews and support plans are completed in line with the Care Act in future. In particular, to ensure:
  a) the person's view is the starting point where possible;
  b) the assessment considers fluctuating needs, how to prevent needs developing or escalating, and takes a holistic approach;
  c) people have the opportunity to comment on the assessment.
- Review its complaints process and take action to ensure responses to complaints are effective.

92. We will require evidence to show the Council has carried out these actions. Suitable evidence would include:

- an action plan;
- a copy of the apology letter and confirmation of payment;
- a copy of the reassessment; and
- the outcomes of:
  a) the review of services.
  b) the review of cases.
  c) the review of its complaints process.

93. The Council has accepted our recommendations and advises it has already:

- amended its processes and paperwork to make sure that staff ask people about communication needs and any adjustments they may need;
- reviewed its complaints policy, and added another stage;
- held complaints training for all adult social care managers;
- reinstated Ms X's personal budget; and
- reviewed complaints over the last 12 months and found no other complaints highlighted reductions in care.

94. We welcome the action the Council has taken to learn from this complaint and avoid similar problems in future.

Decision

95. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms X and her carer. The Council has agreed to take the action identified above, to remedy that injustice.