

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

**Investigation into a complaint against  
North Yorkshire County Council  
(reference number: 19 010 955)**

**7 February 2020**

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## The Ombudsman's role

For more than 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
Mr and Mrs X	Her parents, who represent her

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## Report summary

### **Council: assessment**

Mr and Mrs X complain on Ms X's behalf. They complain that the Council took 15 months too long to complete a financial assessment it agreed to carry out to remedy an earlier complaint we upheld. This has delayed the resolution of Mr and Mrs X's concerns about the Council's calculation of disability related expenditure.

### **Finding**

Fault found causing injustice and recommendations made

### **Recommendations**

To remedy the injustice caused by the fault found, within a month of the date of this report, the Council will apologise to Mr and Mrs X for its failure to complete the assessment for 15 months after the deadline it agreed with us.

We welcome the Council's offer to pay Mr and Mrs X £250 for their unnecessary time and trouble in pursuing a matter that should have been resolved more than a year earlier. The Council will make this payment, within a month of the date of this report, independently of any amount owed by either party as a result of the financial settlement or any ongoing complaint about it.

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*)

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## The complaint

1. The complainant, whom I shall call Ms X, is represented by her parents, Mr and Mrs X. They complain on Ms X's behalf that the Council failed to complete a financial assessment that it agreed to carry out to remedy an earlier complaint upheld by us against it. This has delayed the resolution of Mr and Mrs X's concerns about the Council's calculation of disability related expenditure (DRE).

## Legal and administrative background

2. 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*)
3. Councils must assess a person's finances to decide what contribution he or she should make to a personal budget for care. If a person incurs expenses directly related to any disability he or she has, known as disability related expenditure (DRE), the Council should take that into account when assessing his or her finances. (*Care Act 2014 Department for Health, 'Fairer Charging Guidance' 2013, and 'Fairer Contributions Guidance' 2010*)
4. Disability Living Allowance (DLA) is a benefit payable to disabled persons. It has two components, one of which provides help with mobility. This is paid at one of three financial levels. DLA is currently being replaced with personal independence payments for people aged between 16 and 64 (PIPs).
5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this report with Ofsted.

## How we considered this complaint

6. We have produced this report after examining the relevant files and documents provided by both parties. Both parties have had the opportunity to comment on a draft of this report and we have considered their comments.

## What we found

7. We found fault by the Council in a previous complaint ([14 017 083](#)) by Mr and Mrs X on Ms X's behalf. Among other things, the Council agreed on 13 June 2018 to carry out a fresh financial assessment for Ms X within one month. This was to include her housing costs and consider if her transport costs exceed the lower level DLA mobility component.
8. The Council confirmed to us that it had visited Ms X to assess her needs. We have seen evidence that this happened on 25 July 2018. We confirmed on 17 September 2018 we were satisfied it had implemented the remedy.
9. Mr X contacted us on 13 September 2019. He said the Council had still not shared the assessment with him, despite him asking for this more than once.
10. Mr X later provided a copy of an email exchange with the Council in the form of questions and answers dated 23 September 2019. This stated the financial

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assessment had been held up because “colleagues in the benefits and charging team haven’t been able before now to agree the DRE information relating to transport.” It said it had told Mr X of this issue on 18 October 2018. The email exchange also said two successive workers allocated to the case had left the Council. It apologised that Mr X “went for such a long period without any contact with a member of our social care team.”

11. When we contacted the Council at its request on 27 September 2019, it confirmed it had not completed the financial assessment. It said it would offer Mr and Mrs X £250 for their time and trouble.
12. The Council sent us the completed financial assessment on 11 October 2019. Mr and Mrs X dispute the Council’s calculations and the basis on which the Council made them.

## **Conclusions**

13. The Council accepted our recommendations in Mr and Mrs X’s previous complaint that it would carry out the fresh financial assessment within one month of the decision date (13 June 2018). Despite visiting the family on 25 July 2018, which was already slightly late, it failed to produce a calculation until October 2019. We find the Council at fault for failing to implement part of the remedy it agreed in relation to complaint 14 017 083.
14. This has prevented Mr and Mrs X from challenging the calculation it has now made for 15 months longer than necessary. Financial matters between the parties are still unresolved. This means Mr and Mrs X have had unnecessary time and trouble.
15. We note both parties agree it is likely to be Ms X who will owe the Council money, not the other way around, so we do not find she has lost out financially.

## **Recommendations**

16. To remedy the injustice caused by the fault found, within a month of the date of this report, the Council will apologise to Mr and Mrs X for its failure to complete the assessment for 15 months after the deadline it agreed with us.
17. We welcome the Council’s offer to pay Mr and Mrs X £250 for their unnecessary time and trouble in pursuing a matter that should have been resolved more than a year earlier. The Council will make this payment, within a month of the date of this report, independently of any amount owed by either party as a result of the financial settlement or any ongoing complaint about it.
18. 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*)