

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

**Investigation into a complaint against
Hampshire County Council
(reference number: 19 016 357)**

6 November 2020

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

Mrs F	The complainant
Mr G	Her relative

Report summary

Adult Social Care – council assessment

Mrs F complains the Council has failed to assess Mr G's needs properly and has failed to provide him with a personal budget which is sufficient to meet his needs.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council:

- within four weeks of the date of this report:
 - backdates Mr G's initial personal budget to the date Mrs F told the Council his capital had fallen below £23,250;
 - backdates the additional funding agreed for the morning call in 2020 to the middle of September 2019;
 - pays Mr G £200 to remedy the injustice caused by the failure to meet his need for help with housework and domestic tasks;
 - writes to Mrs F apologising for the failings we have identified and pays her £250 for the time and trouble it has put her to in pursuing the complaint;
 - reassess Mr G's needs addressing the need for help maintaining a habitable home and update his care and support plan;
- within eight weeks of the date of this report:
 - report to us the action it has taken to ensure:
 - more joined up working between departments so that when someone reports capital falling below £23,250 they are referred for an assessment;
 - assessments address the need for help achieving the outcome of maintaining a habitable home without taking account of the support already in place and people are provided with the support they need and not told to pay for it themselves;
 - officers always produce and retain a care and support plan when required.

The Council has accepted our recommendations.

The complaint

1. The complainant, whom we refer to as Mrs F, complains the Council has failed to assess Mr G's needs properly and has failed to provide him with a personal budget which is sufficient to meet his needs. This left Mr G having to pay for some of his care himself.

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. The Care and Support (Eligibility Criteria) Regulations 2014 set out the eligibility threshold for adults with care and support needs. 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. To have needs which are eligible for support, the following must apply.
 - The needs must arise from or be related to a physical or mental impairment or illness.
 - Because of the needs, the adult must be unable to achieve two or more of the following outcomes.
 1. Managing and maintaining nutrition.
 2. Maintaining personal hygiene.
 3. Managing toilet needs.
 4. Being appropriately clothed.
 5. Being able to make use of the adult's home safely.
 6. Maintaining a habitable home environment.
 7. Developing and maintaining family or other personal relationships.
 8. Accessing and engaging in work, training, education or volunteering.
 9. Making use of necessary facilities or services in the local community including public transport, and recreational facilities or services.
 10. Carrying out any caring responsibilities the adult has for a child.
 - Because of not achieving these outcomes, there is likely to be a significant impact on the adult's wellbeing.
4. Although councils can address any other outcomes they consider relevant, they must address all the outcomes identified in the Regulations. The Care and Support Statutory Guidance ("the Guidance") says "*there is no hierarchy of needs*" (paragraph 6.114).
5. Section 24(3) of the Care Act 2014 sets out the circumstances for giving someone an independent personal budget (a statement which specifies what the cost would be to a council of meeting the adult's eligible needs for care and support).

However, as this section of the Act has not been enacted, there is no duty to produce an independent personal budget.

How we considered this complaint

6. We have produced this report after examining the relevant files and documents, and discussions with Mrs F.
7. We gave Mrs F and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before we completed the report.

What we found

8. Mr G has dementia. He lives alone.
9. The Council provided reablement care for Mr G in 2018, following a referral from his GP. It completed an assessment of his needs in October 2018. The assessment addresses Mr G's needs relating to:
 - physical wellbeing;
 - mental wellbeing;
 - medication;
 - daily living;
 - personal care;
 - meals and nutrition;
 - social inclusion;
 - environment;
 - mobility and transfers; and
 - money management.
10. For most of these issues the Council's assessment template invites the assessor to identify: the desired goal (outcome); possible risks; and the required actions. But it does not do this for daily living. The assessment says Mr G needs help with: medication; personal care; meals and nutrition; and money management. For daily living, it says family help with shopping, laundry and a private carer does some housework.
11. The assessment says Mr G has eligible care needs as he cannot achieve two or more of these outcomes without support:
 - managing and maintaining nutrition;
 - maintaining personal hygiene;
 - managing toilet needs;
 - being appropriately clothed; and
 - being able to make use of the home safely.
12. The assessment says Mr G needed help twice a day:
 - 45 minutes each morning to help with washing, dressing and medication; and
 - 30 minutes each evening to help with washing, undressing and medication.

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13. The assessment says:
 - Mr G's family helped with shopping and laundry;
 - a private carer did some housework;
 - the family visited every afternoon to give him his tea and leave him with a snack; and
 - Mr G had meals on wheels most days but went to his family on Sundays.
 14. Mr G had capital over £23,250 so had to pay the full cost of his care. The assessment says:
 - Mr G and his family knew there would be a £296 one off fee and £6 weekly charge if he asked the Council to arrange his care;
 - the family decided to arrange Mr G's care and said they would want direct payments when his capital fell below £23,250;
 - the reablement team would continue to visit Mr G until the family arranged care was in place; and
 - the family knew the Council arranged care would become chargeable on 5 November.
 15. The Council did not produce a care and support plan or give Mr G a personal budget. It says this was not necessary as he was self-funding.
 16. Mrs F contacted the Council when Mr G's capital fell below £23,250. The Council did a financial assessment and found Mr G's capital fell below £23,250 on 9 May. As part of the assessment of Disability Related Expenditure, the Council allowed £14.88 a week for the cost of employing a domestic cleaner. It said Mr G would have to pay £68.38 a week towards the cost of his care.
 17. On 11 July Mrs F told the Council they were using a care agency which charged £25 to £26 an hour to care for Mr G for one hour each morning and evening (the agency's minimum call length is one hour). She asked if the Council would fund this via direct payments. It said it would need to assess Mr G first. It also said it would check if another care agency could meet Mr G's needs for less than £25 an hour. It said Mr G or his family could fund any shortfall if they wanted to continue with the same care agency. Mrs F asked if the Council would backdate funding to May. It said that was unlikely, although it would consider the request.
 18. The Council visited Mr G to assess him on 16 August. The assessment contains much of the information from the previous assessment and, overall, Mr G's needs remained as in 2018. However, in the section on meals and nutrition, it says Mr G's family visited three times a week at tea-time and paid a neighbour to visit the other days to prepare and prompt eating and drinking.
 19. The Council has provided a care and support plan for Mr G which it says is from August 2019. The plan says family visited three times a week and a neighbour four times a week to prepare and prompt eating and drinking. It says the Community Reablement Team had assessed the morning call to take 45 minutes. It summarises "*the services to be provided from 16 August 2019 to 31 August 2020*" which therefore includes changes agreed at later dates:
 - 11 July to 31 August 2019 £181.64 a week;
 - 1 September 2019 to 25 May 2020 £200.27 a week;
 - 26 May to 25 June 2020 £340.62 a week;

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- 26 June to 31 August 2020 £402.99 a week.
20. Mrs F says the Council never sent her a copy of Mr G's care and support plan and just confirmed any changes to funding by e-mail.
21. The Council's case note for 16 September says it backdated the direct payments to 11 July, when Mrs F told the Community Team Mr G's capital fell below £23,250. It says the direct payments were to pay for 9 hours and 45 minutes of care a week:
- 45 minutes each morning to help with personal care;
 - 15 minutes four days a week to help with fluid and nutritional intake at tea-time; and
 - 30 minutes each evening to help with personal care.
- Assuming the Council paid £18.63 an hour (see paragraph 26 below), Mr G's personal budget will have been £181.64 a week.
22. On 19 September the care agency told the Council the morning call took an hour and a half as Mr G could be doubly incontinent overnight. This meant the carer would have to change the bed and clean the bathroom and floor. The care agency said the call did not include other domestic tasks or companionship. It said Mr G could be confused and anxious, requiring a lot of reassurance before completing tasks.
23. The Council visited Mr G on 23 September at 7am to observe his morning routine. The carer said she arrived at 6.45 and completed all the tasks by 8am. This included getting Mr G up, helping him to the toilet, washing him, dressing, providing breakfast, making the bed, prompting medication, cleaning the bathroom and kitchen, and turning the washing machine on. The carer said Mr G had his hair washed on Wednesday and his bed stripped on Fridays. She said some days a used pad may be left in the bathroom and the floor would need to be cleaned. The Council records say:
- Mr G needs 45 minutes to 1 hour;
 - extra time was needed to do housework and other domestic tasks, if this had been agreed the carers would need an hour and a quarter to an hour and a half;
 - carers were heating water in a kettle (which was slow to boil) because the immersion heater took 20 minutes to heat up.
24. Mrs F rang the Council on 4 November. She asked if the Council would increase Mr G's direct payment as:
- the tea-time call never took less than 30 minutes, as he needed prompting to eat and drink and can be incontinent;
 - the morning calls lasted between an hour and an hour and a half, if Mr G had soiled himself and the bed, bathroom and carpets needed cleaning.
25. The Council told Mrs F a Manager had been asked several times to consider her request but had not responded. Mrs F complained about the failure to respond to her concerns.
26. The Council replied to Mrs F's complaint on 18 December. It apologised for the delay in responding to her concerns. It said it had agreed to increase Mr G's personal budget to pay for 10 hours 45 minutes of care a week but failed to implement this. It said it would backdate the increase to 1 September. The

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- additional time (an hour a week) was to increase the length of the tea-time calls to 30 minutes. The Council said its hourly rate was £18.63 an hour, so this took Mr G's chargeable personal budget to £200.27 a week. It said the hourly rate was based on what it would cost the Council to commission Mr G's care.
27. The Council did not update Mr G's care and support plan to reflect this change.
 28. The Council's case note for 23 December says the care agency's minimum call length is one hour. It says it had advised Mr G's family that "*certain things such as cleaning*" could be covered by benefits (e.g. Attendance Allowance).
 29. Mrs F wrote to the Council on 27 December as she was unhappy with its response to her complaint. She asked why it was only providing support at tea-time four days a week, when Mr G needed help every day. She said the visit on 23 September had not been typical, as the carer did not have to clean the bathroom before helping Mr G wash and dress. She sent the Council copies of the carers' records of the visits from 1 August to 4 November 2019. She said these showed Mr G needed an hour visit in the morning, 30 minutes at tea-time and 30 minutes in the evening. Mrs F also questioned the hourly rate. She said she had only recently learned that the Council could negotiate lower hourly rates with care agencies than those on offer to people who contracted privately. She said no one would tell her how much Mr G would get when they first contacted the Council in 2018. She said they were reluctant to change care agency, given Mr G's dementia and the fact he has regular carers. She said they may have chosen a different care agency if they had known from the start how much Mr G would get.
 30. The carers' records for 1 August to 4 November show the length of the morning calls ranged from an hour to an hour and 45 minutes. The average call length was 1 hour and 23 minutes. However, the earlier calls were mainly in the 1 hour and 15 minutes to 1 hour and 20 minutes range. Towards the end they were mainly around 1 hour and 30 minutes.
 31. When the Council replied the same day, it said:
 - it provided funding for four tea-time calls because it understood the family was visiting three days a week;
 - it would fund services if family or community resources could not meet needs but had to look to them to meet needs as well;
 - it would reconsider the length of morning calls at the next review but the decision not to increase the length of the call in September was not just based on observation but also on experience;
 - it was sorry the hourly rate was not made clear at the start, but it could not commit to paying whatever a care agency charged. It was for the family to decide if they wanted to change care provider.
 32. When Mr G came out of hospital on 26 May 2020, the Council agreed to fund an additional 30-minute call at lunchtimes, to support Mr G with eating and drinking. On 15 June the Council confirmed it would fund two and a half hours of care a day from 26 May:
 - one hour in the morning;
 - 30 minutes at lunchtime;
 - 30 minutes at tea-time; and

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- 30 minutes at bedtime.

Mr G's care and support plan (see paragraph 19 above) says his personal budget is £340.62.

33. The Council's financial assessment says Mr G would have to pay up to £46.84 a week towards the cost of his care. This took account of disability related expenditure of £15.10 a week for domestic help.

Conclusions

34. In 2018 the Council had no duty to meet Mr G's needs as he had capital over £23,250 and his family did not ask it to arrange his care. Under the Care Act 2014, the Council did not therefore have to produce a care and support plan for Mr G, or give him a personal budget (see paragraph 5 above).
35. The Council knew Mr G's capital had fallen below £23,250 before Mrs F contacted it on 11 July 2019. The Council should have backdated Mr G's personal budget to the date that she told it his capital had fallen below £23,250. The failure to do so was fault by the Council. It needs to correct that error and make sure there is more joined up working between its departments in future.
36. The Council has not been able to provide a copy of Mr G's care and support plan from August 2019. It has only been able to provide an amalgamated document which reflects subsequent changes. It also failed to share the August 2019 plan with his family or subsequent updates to the plan. That is fault by the Council.
37. The Statutory Guidance says there is no hierarchy of needs (see paragraph 4 above). This means the need for help maintaining a habitable home is as important as the need for help managing and maintaining nutrition. The Council has failed to address Mr G's need for help maintaining a habitable home environment. Its assessments cursorily address issues relating to "daily living". They refer to the support provided by his family and a paid carer. However, the Guidance says: "*Authorities must only take consideration of whether the adult has a carer, or what needs may be met by a carer after the eligibility determination when a care and support plan is prepared*". Given the level of support Mr G needs in other areas, it seems likely he has an eligible need for support maintaining a habitable home. But the Council has failed to identify that need, which was fault. The Council needs to change the way it assesses people to make sure officers give proper consideration to the need for help maintaining a habitable home.
38. It appears the Council's usual practice is to tell people they should meet such needs by paying for support themselves (see paragraph 28 above). But the Council has a duty to meet eligible needs and cannot fulfil that duty by telling someone to pay for support themselves. A financial assessment is the mechanism which determines how much someone should contribute towards the cost of their care. The Council's failure to meet this need is fault. In 2019 the Council disregarded £14.88 for the cost of domestic help and £15.10 in 2020. While this reduced the impact of the Council's failure, it did not negate it as Mr G's personal budget provided for an hourly rate of £18.63. The Council needs to recompense Mr G for the extra costs incurred.
39. When the Council visited Mr G in September 2019 to watch his morning routine, his carer was with him for an hour and a quarter. The carer did nothing for him which he could have done for himself. However, the Council decided Mr G's needs could be met within 45 minutes to an hour, or an hour and a quarter to an hour and a half if there had been an agreement to fund housework and domestic

tasks. In December Mrs F provided evidence in the form of the carers' records, which showed Mr G's needs had increased by the middle of September, as they were spending longer with him. This should have triggered a review of Mr G's needs. But that did not happen until June 2020. This meant there was a delay in identifying the need for more time on the morning call. The Council therefore needs to backdate the additional funding to the middle of September 2019.

40. We cannot find fault with the Council for only providing funding for tea-time care four days a week in 2019. It is clear the Council had been told the family was providing support on the other three days. Nor can we find fault with the Council over its hourly rate. Under the Care Act, the personal budget must be "*the cost to the local authority*" of meeting the person's needs. The Council does not have to pay more than that if someone chooses a more expensive care provider. It can take account of costs and it has been established in the Courts that they do not have to pay more than it would cost them to meet someone's needs. There is not enough evidence to say Mrs F would have chosen a cheaper care agency if the Council had produced an independent budget at the start. This reflects the fact she chose an agency which had a one-hour minimum call length, despite knowing the Council had not assessed Mr G as needing calls of that length.
41. The Council's faults resulted in it not meeting all Mr G's eligible care needs. This left him paying for care which the Council should have been paying for.

Recommended action

42. 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*)
43. In addition to the requirements set out above, we welcome that the Council has agreed:
- within four weeks of the date of this report to:
 - backdate Mr G's initial personal budget to the date Mrs F told the Council his capital had fallen below £23,250;
 - backdate the additional funding agreed for the morning call in 2020 to the middle of September 2019;
 - pay Mr G £200 to remedy the injustice caused by the failure to meet his need for help with housework and domestic tasks;
 - write to Mrs F apologising for the failings we have identified and pays her £250 for the time and trouble it has put her to in pursuing the complaint;
 - reassess Mr G's needs addressing the need for help to maintain a habitable home and update his care and support plan;
 - within eight weeks of the date of this report:
 - reports to us the action it has taken to ensure:
 - more joined up working between departments so that when someone reports capital falling below £23,250 they are referred for an assessment;

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- assessments address the need for help achieving the outcome of maintaining a habitable home without taking account of the support already in place and people are provided with the support they need and not told to pay for it themselves;
 - officers always produce and retain a care and support plan when required.

Decision

44. The Council was at fault because it:

- has failed to do a Care Act compliant assessment;
- delayed in implementing Mr G's personal budget;
- failed to review Mr G's needs in September 2019;
- either failed to produce or failed to retain a care and support plan for Mr G in 2019; and
- failed to identify and therefore meet Mr G's eligible need for help maintaining a habitable home.