

Complaint reference:
16 000 488

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Council should have communicated clearly to Mr D and Ms D its decision to apply for a property and affairs Deputyship and should have promptly told Mr D and Ms D that the court had appointed the Council as Deputy for Mr C. The Council has suitably remedied fault by making changes to procedure to ensure that similar fault does not happen again and offering Mr and Ms D £250 to acknowledge distress and inconvenience.

The complaint

1. The representatives (Mr and Ms D) acting on behalf of Mr C complain that:
 - The Council failed to communicate clearly to Mr and Ms D its decision to apply for a property and financial affairs Deputyship for Mr C and failed to tell Mr and Ms D about the court's decision to appoint the Council as Deputy.
 - The Council acted improperly in relation to Mr C's financial affairs by closing a bank account and removing certain sums from Mr C's capital and income to pay for Mr C's residential care placement

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. The law says the Ombudsman cannot normally investigate a complaint when someone could take the matter to court. However, she may decide to investigate if she considers it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c)*)

How I considered this complaint

4. As part of my investigation I have:
 - Considered Mr and Ms D's written statement of complaint
 - Spoken on the telephone with Mr D
 - Considered documents the Council provided in response to Ombudsman enquiries
 - Considered relevant law and statutory guidance
 - Considered Mr and Ms D's and the Council's responses to the draft decision

What I found

Relevant legal and administrative background

5. Charging for Residential Accommodation Guide (CRAG April 2014) was relevant statutory guidance on council charging for residential care placements in the period 1 April 2014 to 31 March 2015. New statutory guidance on council charging - Care and Support Statutory Guidance - came into force on 1 April 2015.
6. Section 1.021 of CRAG 2014 says that 'social work staff should establish at the time of the assessment of care needs whether a resident has the capacity to consent to the care plan and any following financial assessment. If a resident appears to lack the capacity to consent to their financial information being given to the LA, while all practicable steps have been taken to help the resident, the LA should make enquiries as to whether there is a registered Enduring Power of Attorney (EPA), or registered LPA for Property and Affairs, or a Property and Affairs Deputy to manage the person's financial affairs, or an Appointee by the Secretary of State for Work and Pensions to manage the person's benefits.'
7. Section 1.021 of CRAG 2014 says that 'if there is no one acting in this capacity, (person managing affairs under a registered EPA/LPA or Deputyship), and if, following an assessment of capacity to make financial decisions, it is considered that the person does not have the capacity to manage some or all of their finances, the LA should satisfy itself under its duty of care that there are arrangements put in place which meet the requirements of the Mental Capacity Act 2005. Provision of services should not be delayed whilst applications are made to register an EPA/Property and Affairs LPA or to appoint a Property and Affairs Deputy or an Appointee.'
8. The Mental Capacity Act 2005 Code of Practice published in 2007 (Code of Practice) gives statutory guidance on the various provisions of the Mental Capacity Act 2005.
9. Paragraph 8.60 of the Code of Practice says the following: 'Sometimes the court will consider appointing the Director of Adult Services in England or Director of Social Services in Wales of the relevant local authority as a deputy. The court will need to be satisfied that the authority has arrangements to avoid possible conflicts of interest. For example where the person for whom a financial deputy is required receives community care services from the local authority, the court will wish to be satisfied that decisions about the person's finances will be made in the best interests of that person, regardless of any implications for the services provided.'
10. Paragraph 8.46 of the Code of Practice says that 'under section 19(9)(a) of the Act the court can ask a property and affairs deputy to provide some form of security (for example a guarantee bond) to the Public Guardian to cover any loss as a result of the deputy's behaviour in carrying out their role. The court can also ask a deputy to provide reports and accounts to the Public Guardian, as it sees fit.'
11. Paragraph 8.47 of the Code of Practice says that 'once a deputy has been appointed by the court, the order of appointment will set out their specific powers and the scope of their authority. On taking up the appointment, the deputy will assume a number of duties and responsibilities and will be required to act in accordance with certain standards. Failure to comply with the duties could result in the Court of Protection revoking the order appointing the deputy and, in some circumstances, the deputy could be personally liable to claims for negligence or criminal charges of fraud.'

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12. Paragraph 8.65 of the Code of Practice says that ‘the Court of Protection may give specific directions to deputies about how they should use their powers. It can also order deputies to provide reports (for example, financial accounts or reports on the welfare of the person who lacks capacity) to the Public Guardian at any time or at such intervals as the court directs. Deputies must comply with any direction of the court or request from the Public Guardian.’
 13. Paragraph 8.69 of the Code of Practice says that ‘Deputies are accountable to the Court of Protection. The court can cancel a deputy’s appointment at any time if it decides the appointment is no longer in the best interests of the person who lacks capacity.’
 14. Paragraph 8.70 of the Code of Practice says that ‘The Office of the Public Guardian (OPG) is responsible for supervising and supporting deputies. But it must also protect people lacking capacity from possible abuse or exploitation. Anybody who suspects that a deputy is abusing their position should contact the OPG immediately. The OPG may instruct a Court of Protection Visitor to visit a deputy to investigate any matter of concern. It can also apply to the court to cancel a deputy’s appointment.’
 15. Paragraph 8.71 of the Code of Practice says ‘the OPG will consider carefully any concerns or complaints against deputies. But if somebody suspects physical or sexual abuse or serious fraud, they should contact the police and/or social services immediately, as well as informing the OPG.’
 16. The OPG is responsible for maintaining and managing a register of LPAs and court orders appointing deputies. Paragraph 14.8 of the Code of Practice says that the OPG deals with representations (including complaints) about the way in which attorneys or deputies carry out their duties. The OPG also has a complaints procedure for complaints made against it.

What happened/background

17. The complaint concerns an adult in his early eighties (Mr C) who is now deceased. From July 2012 Mr C had significant personal care and medical needs associated with severe dementia. From 2012 Mr C was known to adult social care. In 2012 Mr C received domiciliary services under a Community Care and Support Plan. The NHS also provided a domiciliary care package (mental health intermediate care team).
18. Mr D is Mr C’s step-son. Ms D is connected to Mr C by marriage.
19. The Council says that in late 2012 Ms D told the social worker with case responsibility for Mr C that she was happy for the Council to make financial decisions on behalf of Mr C. Mr and Ms D say that the Council did not clarify what powers it was seeking in relation to management of Mr C’s financial affairs.
20. In late 2012 the social worker made a referral to Adult Care Financial Services (ACFS).
21. ACFS applied for a Property and Affairs Deputyship.
22. On 24 January 2013 Mr C entered a residential care home. Mr C lived at the care home on a continuous basis from 24 January 2013 to 4 November 2015 when he died. The residential placement cost the Council £540 a week in the first and second year (£28,155.60 pa). The placement cost the Council £548 a week from 6 January 2015 (£28,574.29 pa). Because of Mr C’s need for medical care while living in the care home, Free Nursing Care (FNC) payments of £109.79 a week were in place from January 2015.

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23. In January 2013 Mr D told a new social worker with case responsibility for Mr C that he was interested in taking responsibility for Mr C's financial affairs and was considering becoming Mr C's property and affairs attorney.
 24. In February 2013 Mr D paid adult social care (Income and Credit Control) for domiciliary services (meals on wheels) Mr C received in 2012 when he was living in his own home.
 25. Adult social care completed a Community Care Review and Support Plan (Support Plan) for Mr C on 5 April 2013. The Support Plan says that the Council had requested a financial assessment of Mr C on 27 February 2013 to determine Mr C's liability for paying for residential care. The Support Plan comments that Mr C's 'step-son is currently looking into LPOA to see if he can get this is place for Mr D'. The Support Plan did not reference the previous social worker's referral to Adult Care Financial Services and ACFS's application for a Property and Affairs Deputyship.
 26. On 11 September 2013 the Office of the Public Guardian (OPG) registered a Lasting Power of Attorney (LPA) to Mr and Ms D for management of Mr C's property and financial affairs.
 27. On 27 September 2013 the Court of Protection appointed the Council a property and affairs Deputy for Mr C. The Ombudsman notes that if a registered property and financial affairs LPA is in existence the court will not normally appoint a Deputy with the same area of responsibility. The Ombudsman notes that the Office of the Public Guardian must keep records of registered LPAs and Deputies appointed by the Court of Protection.
 28. In November 2013 Mr and Ms D closed Mr C's existing accounts and transferred funds to two new accounts (a current account in Mr C and Ms D's names and an ISA savings account in Mr C's name). Mr C's current account opening balance (11 November 2013) was £15,556.42. Mr C's ISA savings account opening balance (20 November 2013) was £10,641.90. Throughout its life Mr and Ms D managed the current account as a vehicle for receiving Mr C's state retirement pension (£823.56 a month) paying periodic sums to Broxtowe Council, paying money to Ms D (as repayment for informal loans Mr and Ms D made to Mr C and his wife from 2010) and as a type of savings vehicle for a substantial on-going balance.
 29. In January 2014 Mr D completed a statement of current financial situation for Mr C with details of income and capital. Mr D sent the form to Adult Care Financial Services. Mr D indicated that he had an LPA on the form.
 30. On 28 May 2014 the Council (Adult Care Financial Services/Client Money Team) closed the ISA account (statement closing balance - £10,701.15) and transferred the proceeds to the current account. The Client Money Team on the same day then closed the current account and put the proceeds (£20,353.80) into a current account with a separate bank.
 31. On 24 July 2014 the Client Money Team withdrew £14,689.82 from Mr C's current account to meet residential care charges (June 2013 to July 2014) which the Council believed Mr C was liable for.
 32. Mr and Ms D identified closure of the current account and reported this to the police. The police told Mr and Mrs D that the Council was responsible for closing the account.

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33. Mr and Ms D established that the Council was acting as a property and affairs Deputy for Mr C and also Appointee for Mr C's retirement pension.
34. Mr and Ms D On 7 August 2014 Mr and Ms D contacted the OPG to express concern about the Council's closure of Mr C's current account and the Council's decision in July 2014 to withdraw funds from Mr C's new current account.
35. In August Mr and Ms D complained to the Council about the closure of the current account. Mr and Ms D told the Council they were property and affairs attorneys for Mr C.
36. Mr and Ms D made a formal complaint to the Council in a letter dated 30 September 2014. The letter made the following points:
- The Council should have communicated clearly to Mr and Ms D its decision to apply for a property and affairs Deputyship, secured Mr and Ms D's consent, and should have promptly told Mr and Ms D that the court had appointed the Council as Deputy for Mr C.
 - The Council, before applying for Deputyship, should have asked Mr and Ms D to consider becoming Deputies themselves.
 - The Council should not have closed the current account in the joint names of Mr C and Ms D.
 - Mr and Ms D had informed the police about the Council closing the joint account.
- The letter suggested that an appropriate remedy would be the Council returning control of Mr C's finances to Mr and Ms D and putting funds into an account under their control matching the sums transferred on 28 May.
37. The Council responded to Mr and Ms D's complaint in a letter dated 4 November 2014. The letter made the following points:
- The Council had adequately communicated to Ms D a plan to manage Mr C's finances on his behalf. In September 2013 a social worker and Ms D agreed that a 'sensible option' was for the Council to take responsibility for Mr D's financial affairs. The social worker told Ms D in September 2014 that she had made a referral to ACFS.
 - A social worker with case responsibility for Mr C in early 2013 had advised Mr D during a telephone conversation that he could apply for an LPA if he wanted to manage Mr C's finances. The social worker was unaware that the Council was in the process of applying to become Mr C's Deputy. However, Mr D did not inform the social worker about conversations between Ms D and a previous social worker about responsibility for managing Mr C's finances.
 - The relevant department in the Council was unaware that Mr and Ms D were attorneys for Mr C until recently
 - DWP did not inform the Council that an LPA was in existence when the Council became an Appointee. The Bank should have contacted Ms D before closing the current account in joint names.
 - The Council withdrew £14,689.82 from Mr C's current account to meet unpaid residential care charges (24 June 2013 to July 2014) which the Council believed Mr C was liable for.
 - The Council was concerned about three payments to Ms D from the joint current account. The Council asked Mr and Ms D to explain the payments and provide

receipts for purchases made in relation to these outgoings from the current account.

- The Council would consider giving up Deputyship. However it would be necessary first of all for the Council to be satisfied that Mr and Ms D were managing Mr C's finances appropriately. The Council pointed out that it was 'legally bound to report to the Office of the Public Guardian any withdrawals of money from Mr C's account which cannot be explained'. The Council pointed out that the Court made the final decision on discharge.
38. Mr and Ms D sent a letter dated 23 November 2014 in response to the Council's stage 1 response. The letter made the following points:
- The social worker did not make clear to Ms D that the Council would apply for Deputyship.
 - The Council should have clearly communicated its decision to apply for a property and affairs Deputyship and should have told Mr D and Ms D promptly about the court decision to appoint the Council as Deputy
 - The social worker with case responsibility in early 2014 was aware that Mr and Ms D planned to manage Mr C's financial affairs under an LPA. By February 2014 staff in Adult Care Financial Services (Visiting Team) were aware that Mr and Ms D were attorneys.
 - Mr C's assets included a sum of money (£13,056) which Mr and Ms D loaned to Mr C and his wife. The withdrawal of £8,500 from Mr C's current account was a partial repayment of the loan. £4,556 remained unpaid.
 - The Council had failed to properly account for withdrawal of £14,689.82 from Mr C's assets. The Council should return the money it had taken from Mr C's capital and return control of Mr C's accounts to Mr and Ms D.
 - The Council should give up its Deputyship.
39. The Council sent Mr D a letter dated 5 December 2014. The letter said that the Council would send a referral to OPG to investigate 'unusual activity on (Mr C's) account and also 'to look into the circumstances that allowed both the Council's and your applications to proceed at the same time'. The Council would provide a further complaint response once the OPG investigation was finished. The Council sent a statement in relation to the withdrawal of £14,689.82 from Mr C's account.
40. In response to an email Mr D sent on 7 January 2015, the Council sent Mr D a letter dated 13 January 2015. The letter reaffirmed points made in the letter of 4 November 2014. The letter also said that 'when the application was approved, the Client Money Team were under no obligation to make you or anyone else aware they were now acting as deputy for Mr C'. The letter stated that the Client Finance Team were unaware that the current account closed on 28 May 2014 'was held in joint names or that the joint account holders also held Lasting Power of Attorney'.
41. The Council sent a referral to OPG regarding Mr and Ms D's management of Mr C's financial affairs.
42. The OPG began investigation in January 2015. The OPG sent Mr and Mrs C a letter asking Mr and Ms D to account for withdrawal of £8,500 from Mr C's assets.
43. In a letter to the OPG Mr and Ms D said that the withdrawal of £8,500 from Mr C's current account was partial repayment of a loan. Mr and Ms D stated that the Council had wrongly closed Mr C's current account and that the Council had

taken control of money (the 'balance of loans' to Mr C) which belonged to Mr and Ms D.

44. The OPG appointed a Special Visitor to assess Mr C's current capacity to make decisions about delegation of his financial affairs and his general understanding of finances. (The Visitor also reviewed the decision on whether Mr C had capacity made when the LPA was set up which he upheld.) In a report the Visitor concluded that Mr C did not have capacity in relation to finances and finance delegation decisions. However, Mr C had expressed preference for Mr D to manage his financial affairs.
45. In May 2015 the OPG finished investigation. The OPG made findings in the form of a witness statement to the Court of Protection. The witness statement said that 'the Public Guardian is satisfied with the account provided by Mr and Ms D in respect of the £8,500 in question.' The statement said that 'Mr C had capacity when making the LPA'.
46. In May 2015 the OPG applied to the Court of Protection for an order to discharge the Council's property and financial affairs Deputyship. The OPG's reason for the application was removal of a potential conflict of interest and putting Mr and Ms D in a position to 'continue to act in the best interests of Mr D without confusion'.
47. The Council has told the Ombudsman that it secured legal advice on conflict of powers and was advised that Deputyship took precedence over the LPA and that the Council must continue to exercise Deputyship for Mr C until the Court of Protection ordered discharge. The Council says that in 2015 it sent Mr and Ms D financial statements and invoices relating to Mr C's financial affairs.
48. Ms D sent an email to the Council saying that the OPG had concluded investigation and asking the Council to fully respond to their complaints.
49. The Council sent a letter dated 5 August 2015. The letter made the following points:
 - The Council was not responsible for a situation where powers overlapped. 'The OPG should have the necessary procedures in place to prevent a Deputyship application being approved if a person has a Lasting Power of Attorney (or vice versa). Therefore we do not consider the Council to be at fault in this matter'.
 - 'There was a failure in communication within Adult Social Care'. The social worker with case responsibility in early 2013 was unaware of the ACFS's submission of the Council application for Deputyship. Further, the Visiting Team and Residential Assessments Team should in January 2014 have spotted co-existence of an LPA and Deputyship and reported this to the Client Money Team.
 - To ensure that a similar situation would not happen again, the Council proposed to change procedure – improvement in record keeping and reminder to staff to remain vigilant to the possibility of an LPA running parallel to Deputyship.
50. The court made an order discharging the Council of its Deputyship on 14 September 2015.
51. Mr C died on 4 November 2015.
52. Following a further complaint by Mr and Ms D, the Council sent Mr and Ms D a letter dated 18 December 2015. The letter said the following:
 - The Council had already provided a thorough explanation of the decision to apply for Deputyship.

- The Council apologised for not informing Mr and Ms D that the court had granted Deputyship to the Council. The Council had now changed procedure. In future the Council would notify relatives of the court's decision.
- Financial assessments indicating Mr C's liability to pay £26,046.01 towards the cost of residential care from 24 January 2013 to 3 November 2015 matched invoices.
- Movement of funds to pay for Mr C's 'outstanding care charges' reduced Mr C's capital 'at that point' below the lower capital threshold of £14,250.
- The Council had charged Mr C for acting as his Deputy. The Council would refund the charges.
- The Council offered Mr and Ms D £250 'by way of compensation'.
- The Council apologised for administrative error and noted changes to improve procedure: 'I am sorry for any distress that the department has caused and I would like to assure you that practice has been improved since your involvement with the council.'

The letter enclosed copies of 'all the financial assessments which show how much Mr C had to contribute towards his care costs and the amount that Nottinghamshire County Council paid to the care home'.

53. In response to a letter dated 31 January 2016 from Mr and Ms D, the Council sent a letter dated 8 March 2016. The letter said the following:

- The Council had fully explained its decision to apply for Deputyship. The Council had apologised for 'failure to notify you when the Council had been granted Deputyship' and 'failure to contact you prior to making the application'.
- The Council had not been required to send Mr D copies of court documents when it had applied for Deputyship.
- Movement of funds from the current account to pay for Mr C's 'outstanding care charges' reduced Mr C's capital 'at that point' below the lower threshold of £14,250.
- Mr C's capital was reduced below £14,250 because Mr C 'had not paid any invoices for his care for 13 months. Mr and Ms D had been provided 'with copies of Mr C's financial assessment and the statement of account which confirmed the amount Mr C was liable to pay.'
- The Council did not owe money to Mr C's account/estate.
- The Council's offer of £250 as an acknowledgement payment for administrative fault was reasonable and proportionate.
- The Council had provided a clear and thorough explanation of events.

54. Mr and Ms D were unhappy with the response and complained to the Ombudsman. The Ombudsman considered the complaints procedure exhausted and agreed to consider the complaint.

Analysis – Council administrative errors

55. Mr and Ms D's view is that if the Council had clearly communicated its intention in September 2012 to apply for a property and affairs Deputyship, or had informed them at some stage in 2013 that an application for Deputyship had been submitted, they would have told the Council that they were willing to act as property and finance attorneys for Mr C (and that Mr C had capacity to agree to

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- the LPA) and that the Council would then have discontinued the application. They have expressed the view that if the social worker in September 2013 had fully explained the type of power (property and affairs Deputyship) the Council was planning to apply for, they would have told the Council they were happy to assume responsibility for Mr C's finances and seek a Lasting Power of Attorney. In their view if the Council had communicated clearly and consistently, it is unlikely that the Council would have progressed an application for Deputyship.
56. There is evidence of administrative fault by the Council. Given Mr and Ms D's status as Mr C's close relatives and their contact with adult social care about Mr C's affairs in late 2012 and early 2013, a Council officer, at some point in the first six months of 2014, should have clearly communicated to Mr and Ms D that the Council had applied for Deputyship. There is no evidence of the Council, for example, sending Mr and Ms D a letter informing them that an application for Deputyship had been made. Further a social worker in January 2013 should have thoroughly read through internal case notes about Mr C, including a previous social worker's record of telephone conversations with Ms D in September 2012, before discussing the issue of managing Mr C's financial affairs with Mr D. If the social worker had done so, it is likely that she would have been aware of the previous social worker's referral to ACFS. She would have pointed out to Mr D that the Council was in the process of applying for Deputyship and that it was the Council's view that Ms D was happy for the Council to do this.
57. The Council has acknowledged that it failed to communicate clearly to Mr and Ms D its decision to apply for Deputyship. It has also acknowledged that good practice would have been to notify close relatives of the existence of a Deputyship immediately following the Court of Protection's decision.
58. I am satisfied that the Council has carried out suitable actions to remedy complaints about lack of communication. To remedy fault the Council has carried out the following actions:
- Apologised in writing for fault
 - Offered to pay Mr and Ms D £250 to acknowledge distress caused by the Council's failure to communicate clearly
 - Improvement in record keeping (information about applications for Deputyship is highly accessible to relevant staff) and issuing a reminder to staff to be alert to anomaly (co-existence of Deputyship and an LPA in relation to same area of responsibility)
 - The Council will notify close relatives of the existence of a Deputyship immediately following the Court of Protection's decision
59. I am unable to investigate the consequence of the court's decision about Deputyship which was that the Council assumed responsibility for Mr C's financial affairs between September 2013 and September 2015 and made certain decisions about how his capital and income were used in that period. This is for the reason given in paragraph 60 below.
60. The Council has acknowledged that, after becoming Deputy, due to poor communication within adult social care (poor liaison between different teams within ACFS), the Council missed opportunities to identify that a property and affairs Deputyship and an LPA with a similar area of responsibility were in existence and bring this anomaly to the attention of the Public Guardian and Court of Protection. However, I note the Council's view that 'the Office of Public Guardian should have the necessary procedures in place to prevent a Deputyship

application being approved if a person already has a Lasting Power of Attorney (or vice versa).’ In my view the Public Guardian has the key responsibility to identify an anomaly of this type (creation of two powers which appear to overlap and potentially conflict with each other). I also note that once the anomaly had been identified the Council could not discharge its Deputyship without the approval of the Court of Protection.

Council’s performance as Deputy

61. The Ombudsman cannot investigate the broad thrust of Mr and Mr D’s complaint which is that the Council acted improperly in relation to Mr C’s financial affairs by closing a bank account and removing certain sums from Mr C’s capital and income to pay for Mr C’s residential care placement in effect overcharging Mr C for the cost of his care. The Ombudsman cannot investigate Mr and Ms D’s complaint that the Council took control of capital which belonged to them. The Ombudsman cannot investigate these complaints because the Council made these financial decisions as a court appointed Deputy accountable for its actions to the Public Guardian and the Court of Protection. Part of the Public Guardian’s role is to supervise Deputies and investigate allegations of misappropriation of funds by Deputies. My understanding is that Mr and Ms D made representations to the Public Guardian about the Council’s actions. The Ombudsman cannot provide any remedy in addition to that which may have already been achieved.

Final decision

62. The Council has acknowledged fault and suitably remedied fault. The Ombudsman cannot investigate the Council’s performance as Deputy.

Investigator’s final decision on behalf of the Ombudsman

Complaint reference:
16 002 738

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: There were serious failings in the care provided to Mr X's father by Ashlands (a care home). Because the Council commissioned the care it is responsible for the failings its own safeguarding investigation eventually identified. It has agreed to the Ombudsman's recommendations to address the injustice caused.

The complaint

1. The complainant, whom I shall call Mr X, complains the Council failed to safeguard his father (Mr Z) while a resident of Ashlands ("the care home"). A safeguarding investigation by the Council has already established failings in the care Mr Z received. Mr X complains that:
 - His father had to pay for care which the Council has agreed was poor.
 - The Council's response following its safeguarding investigation was inadequate.
 - He does not feel he has received an appropriate apology and does not know what steps have been taken following the Council's safeguarding investigation.
 - He is concerned the Council is still using the care home.

What I have investigated

2. I have investigated Mr X's complaint as set out against the first three bullet points. The final section of this statement contains my reasons for not investigating the final part of his complaint.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - the fault has not caused injustice to the person who complained, or
 - it is unlikely we could add to any previous investigation by the Council, or
 - there is another body better placed to consider the complaint.

(*Local Government Act 1974, section 24A(6), as amended*)

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5. 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*)
 6. In this case, the Council commissioned the care home to meet Mr Z's adult social care needs. The Council is therefore responsible for the service the care home provided.

How I considered this complaint

7. During my investigation I have:
 - spoken with Mr X and considered his original complaint;
 - sent enquiries to the Council and considered its responses;
 - considered relevant legislation and guidance as detailed below;
 - given Mr X, the Council and the care home an opportunity to comment on my draft decision and taken into account their responses.

What I found

Relevant legislation

8. The Care Quality Commission (CQC) is the statutory regulator of care services. It keeps a register of care providers who show they meet the fundamental standards of care, inspects care services and issues reports on its findings. It also has power to enforce against breaches of fundamental care standards and prosecute offences.
9. The Fundamental Standards are based on the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3). The CQC's Fundamental Standards are the standards below which a care provider must never fall. The CQC has issued guidance to help providers meet the fundamental standards and the regulations.
10. Councils play the lead role in co-ordinating work to safeguard adults. Safeguarding duties apply where a council has reasonable cause to suspect an adult in its area:
 - has needs for care and support (regardless of whether the Council is meeting any of those needs);
 - is experiencing, or is at risk of, abuse or neglect;
 - as a result of their care and support needs is unable to protect himself or herself against the abuse or neglect or the risk of it.
11. All safeguarding referrals made to Nottinghamshire County Council are received by its Multi-Agency Safeguarding Hub (MASH). Information on the Council's website says that once it receives a safeguarding referral it will manage immediate risk and gather information to decide whether to make further enquiries. If further enquiries are needed to safeguard an adult they are known as "Section 42 enquires" due to the relevant part of the Care Act. The aim of Section 42 enquires is to:
 - agree the desired outcomes from the referral;

- agree what practical steps are needed to enable the affected adult to reach their desired outcomes;
 - determine what (if any) other actions are required to protect the adult or others from the risk of future abuse or neglect and who is best placed to do this.
12. Once a council's Section 42 enquiries are complete, it will hold a case conference to consider the information gathered, if any allegations are substantiated and where appropriate, to agree a protection plan. If a Council puts a protection plan in place it should review it to ensure any actions agreed have been completed.
 13. The safeguarding process can be closed at any stage if it is agreed that an ongoing investigation / enquiry is not necessary or if an investigation / enquiry has been completed and a protection plan put in place.
 14. Typically, the safeguarding process is brought to a close at the case conference or following a review of the protection plan.
 15. The Council's safeguarding adults procedure says it is the responsibility of the safeguarding manager from the relevant team to ensure the referrer is given feedback.
 16. Safeguarding procedures are not always the correct response to reports of poor standards of care. Professionals have to judge whether there is an intentional or deliberate attempt to cause harm.

What happened

17. There is a large volume of correspondence and documents about this case. I have looked at all the information available and I have set out some of the key events below.
18. Mr Z first moved to the care home in December 2014. Mr Z suffered from health problems including dementia.
19. In August 2015 Mr X contacted the Council as he had concerns about the care his father was receiving. Mr X spoke with Social Worker B who had been involved in planning Mr Z's care. Mr X explained there had been a high turnover of staff at the care home and the manager had left.
20. Social Worker B visited the care home at the end of August 2015. The Council says Social Worker B felt Mr X was receiving suitable care and it was agreed the family would raise any ongoing concerns with the care home. Social Worker B recorded this on the Council's electronic system and that he would "*follow this up by the end of the month*" (by which I believe he meant the end of September).
21. On 01 September 2015 Mr X's sister (Mrs Y) wrote to the care home. Her concerns included poor communication with the family, issues with the medication given to Mr Z and whether residents were properly hydrated. Mrs Y asked the care home for a copy of its complaints procedure.
22. The Council says that Social Worker B was absent from work until 23 September 2015. The Council transferred Mr Z's case to Social Worker C on 29 September 2015. The Council says Social Worker C did not contact Mr Z's family and there was no further contact from Mr X until April 2016.
23. Mr X says the care home did not respond to Mrs Y's letter. He says that over the next eight months his family regularly raised concerns with staff at the care home about his father's care.

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24. The Council visited the care home in January 2016 to carry out its annual quality audit. In response to my enquires it said the audit did not identify *“significant concerns relating to poor quality.”*
25. On 08 April 2016 Mr X made a safeguarding referral to the Council following Mr Z’s admission to hospital. The issues raised by Mr X included:
- The care home had failed to call a doctor for Mr Z who had a chest infection.
 - Nobody from the care home accompanied Mr Z to hospital.
 - On admission to hospital it had been discovered Mr Z had bed sores.
 - Mr Z had previously fallen out of bed and staff at the care home had left him on the floor. The care home eventually called a doctor after 6 weeks who discovered Mr Z had chipped a bone in his arm. The care home had body mapped the wrong side of Mr Z’s body after the fall.
 - Mr Z’s teeth and hearing aids had gone missing.
 - Mr X often found Mr Z in bed wearing soiled clothes.
 - The care home left residents in chairs all day and there were no social activities.
 - The care home did not update care plans.
 - A lack of staff in the care home.
26. On 11 April 2016 Mr X referred his concerns to the CQC. I will not set them out here but they are in line with those shown above.
27. Records provided by the Council show it felt Mr Z was at risk of neglect. On 13 April 2016 it wrote to Mr X and confirmed it would be making Section 42 enquiries. Social Worker D would carry out the safeguarding investigation.
28. Social Worker D spoke with Mr X and Mrs Y on 18 April 2016 to discuss the safeguarding investigation. He visited the care home and met with the acting manager. During his investigation Social Worker D identified areas of concern including:
- Care plans and risk assessments for Mr Z had not been reviewed on a regular basis. Some contained conflicting information while others had clearly been produced following his admission to hospital.
 - Body maps and accident forms were not clear and were incorrectly dated.
 - Activities were recorded but they did not meet the minimum standard required.
 - Fluid intake records were *“disorganised”* and Mr Z had only been weighed four times in the first year of his stay. Between November 2015 and January 2016 Mr Z had lost 11 kilograms in weight but the care home had not taken any action. It had also incorrectly recorded his height meaning it had under-calculated his MUST (Malnutrition Universal Screening Tool) score.
 - Mr Z’s daily record did not accurately reflect his toileting patterns meaning the care home could not effectively manage this part of his care.
 - Mr Z’s chest had been declared as *“clear”* just hours before admission to hospital when paramedics described it as *“so rattly there was no need to listen through a stethoscope.”*
 - The care home’s system which recorded when residents were checked during the night was broken. This meant the care home could not evidence when checks had been undertaken.
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29. Social Worker D shared his concerns with the acting manager of the care home and made a number of recommendations to address the above. He then met with the owner of the care home who confirmed a new manager had been recruited and the care home would be supported by another of the owner's homes.
 30. Social Worker D also met with the nurse the care home said had examined Mr Z shortly before his admission to hospital. The nurse explained she had not seen Mr Z since March. The nurse confirmed Mr Z had been seen by a colleague on 06 April 2016. None of the advice given by the nurse had been recorded by the care home or passed to Mr Z's family. The nurse said she had serious concerns about the care home and had alerted the CQC.
 31. The summary of Social Worker D's safeguarding investigation recorded the case conclusion as "Substantiated – Fully".
 32. On 20 April 2016 Social Worker D made a referral to the Council's Quality Monitoring and Market Management Team (QMMT). The Council says the role of the QMMT is to monitor the quality of care provided by residential care homes the Council has contracts with.
 33. Social Worker D's referral said that *"it is likely that other residents of the care home may be put at risk due to a lack of management oversight which has led to a steadily deteriorating level of assessment and support resulting in the home not meeting its legal duty of care."*
 34. The CQC inspected the care home in April 2016. Its report published in June 2016 gave the provider an overall rating of "Requires Improvement".
 35. Mr X says the Council did not write to him with the outcome of the safeguarding investigation. On 18 May 2016 he complained to the Council. He said his family had raised concerns in August 2015 but they had not been investigated. The care home failed to provide adequate care and Mr X wanted a full investigation. I will not set out Mr X's concerns but they largely correspond with the issues highlighted by the safeguarding investigation. Mr X explained his father had recently passed away.
 36. The Council responded to Mr X on 28 June 2016. It set out the events above and explained that work was being carried out to monitor an action plan the care home had produced. The Council was doing this in partnership with the CQC. Mr X had asked for a copy of the Council's safeguarding report and the Council would send this to him.

Analysis

37. The role of the Ombudsman is not to question the professional judgement of council officers when they take decisions without fault.
38. Mr X and his family first raised their concerns with the Council in August 2015. The Council listened to his concerns and Social Worker B visited the care home. Social Worker B did not think there was enough evidence to treat the matter as a safeguarding issue.
39. The council audited the care home in January 2016 and did not identify any areas of "significant concern".
40. When Mr X made a safeguarding referral in April 2016 the Council acted quickly and I see no fault in the investigation Social Worker D carried out.

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41. But while Social Worker B and the Council's own audit team had not identified any safeguarding concerns, Social Worker D identified widespread issues with the care provided. His safeguarding report said that:
- "due to a gradual and continued deterioration in the quality of work undertaken...the home is now failing to provide an adequate level of care and support to Mr X and perhaps the whole resident group and is responsible for neglecting Mr X's needs...I feel that Ashlands care home is currently in a state of crisis and is not meeting the legal duty of care owed to residents. It is my view that the home requires immediate support to improve the service it is providing and to prevent residents from being exposed to unnecessary risk."*
42. Social Worker D's safeguarding investigation suggests the issues identified with the care home had been happening for some time – they did not suddenly start following Social Worker B's visit. The CQC's report published in June 2016 (based on an inspection in April 2016) referred to issues with risk plans, staff training, record keeping, limited social activities, systems to monitor care and safety, and residents not always receiving appropriate support from staff with their eating. These do not seem to be isolated incidents and instead reflect the way the care home operated on a daily basis.
43. During my investigation the Council accepted that Social Worker B's records were *"not thorough or robust or that he took any action in respect of any detailed enquiries."* I agree with the Council. Mr Z's family raised concerns with the care home in September 2015 but did not receive a response. These concerns were in line with the issues found by Social Worker D and the CQC. I therefore consider that on the balance of probability the issues eventually identified were present when Social Worker B visited the care home and that he failed to identify them. The Council also failed to identify them when it visited the home in January 2016. This is fault.
44. Because the Council commissioned the care provided to Mr Z, it is responsible for any fault in the provider's actions. As explained above, I consider the care to have been below an acceptable standard from the point Mr X first raised his concerns with the Council at the end of August 2015. The Council is responsible for the poor care Mr Z received until he left the care home in April 2016.
45. Social Worker B said he would contact Mr Z's family by the end of September 2015. In its response to Mr X's complaint the Council accepted this did not happen. It also said that if Mr Z's family had contacted the Council before April 2016 it could have taken action. I found it strange that Mr Z's family did not contact the Council until eight months after the first complaint. I asked Mr X about this and he told me he thought the Council was dealing with matters. I do not know what would have happened if Social Worker B (or his successor) had contacted Mr Z's family, but this did not happen. I consider this to be fault.
46. The injustice to Mr Z from the faults identified above is clear – he received a level of care below that to which he was entitled and to which he was contributing financially. If the Council had acted correctly when Mr X first raised concerns, or if it had identified issues in January 2016, then matters could have been addressed. There is also injustice to Mr X and the rest of his family who are now aware of the care home's failings and the poor care Mr Z received. They have also had to devote time and trouble to what is a distressing matter.
47. I turn now to the rest of Mr X's complaint.

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48. Mr X says the Council's response following the safeguarding investigation was inadequate.
 49. The Council's own safeguarding adults procedure says that it is the responsibility of the safeguarding manager to give feedback to the referrer.
 50. Mr X says he only received written details of the safeguarding report once he submitted a formal complaint. The information I have seen supports this.
 51. I accept there is nothing in the Council's safeguarding adults procedure which says the Council will provide a written response to the referrer. But following Mr X's referral to the Council it identified serious issues with the care provided to his father. This was care the Council had commissioned. I therefore consider the Council's failure to provide feedback to Mr X until prompted to represent further fault on its part. Mr X had to devote time to the matter causing yet more distress.
 52. Mr X also complains he has not received an appropriate apology and does not know what steps the Council (or care home) have taken following the safeguarding investigation.
 53. In response to my enquiries the Council said it did apologise to Mr X in its response to his complaint dated 28 June 2016. The Council's response does apologise for the delay in responding and its failure to contact Mr X or his family in September 2015. But there is no apology for the poor care Mr Z received while a resident of the care home. As explained above, the Council commissioned this care and is therefore responsible for the care home's failings. I consider the Council's failure to provide an apology to be fault. The injustice to Mr Z's family is further distress.
 54. I have already found the Council to be at fault because it did not send Mr X the result of its safeguarding investigation. This links to Mr X's complaint the Council has not told him what steps it then took. Because Mr Z did not return to the care home after April 2016, I do not think the Council was required to tell Mr X in any detail what then happened. But Mr X is keen that no other residents suffer in the way Mr Z did.
 55. The Council told me that following its visit in January 2016 it sent the care home an audit report on 01 March 2016. It gave the care home until 15 March 2016 to comment. The Council sent the care home the final outcome letter on 21 March 2016 and gave it until 18 April 2016 to submit an action plan. The Council received this on 19 April 2016. Social Worker D made a referral to the QMMT the following day and the CQC told the Council it would be visiting the care home on 21 April 2016.
 56. I consider the action plan to be unacceptable because it is lacking in detail. The status of many of the actions shows as "Red" because the care home had not delivered them by the target date. These include actions about staff training, the storage of medicines and the regular reviewing of care plans.
 57. The Council told me it then visited the care home in June 2016. It accepts that following the referral from Social Worker D and the CQC inspection it should have visited the care home sooner than June 2016. I agree with the Council. It has provided the Ombudsman with details of the visits it has since carried out. But as they are after the events Mr X complains about I will not set them out here.
 58. Given that Mr Z was admitted to hospital in April 2016, the Council's actions since then cannot be said to have had a direct impact on him or his family. This means it is not for the Ombudsman to say if the Council acted with fault. But in response

to my enquires the Council said it has now changed its approach to audits and works more closely with providers. It says it also now undertakes joint audits with the CQC and is developing information sharing meetings across the County.

Agreed action

59. Whenever the Ombudsman finds fault causing injustice, it is necessary to remedy the injustice caused. I therefore recommended the Council:
- Apologises to Mr X and the rest of Mr Z's family for the poor care Mr Z received while a resident of the care home.
 - Secures an apology from the care home which acknowledges the avoidable distress its failure to provide proper care caused Mr X and the rest of Mr Z's family.
 - Makes a payment of £100 to acknowledge the time and trouble Mr X has devoted to raising concerns about the care Mr Z received.
 - Makes a payment of £500 to Mr X to acknowledge the avoidable distress caused to Mr X and the rest of Mr Z's family by the faults I have identified. This should then be shared proportionately between the beneficiaries of Mr Z's estate.
 - Makes a payment to Mr X which is equal to fifty percent of Mr Z's contribution to his care fees between 01 September 2015 and 29 May 2016. I anticipate this to be in the region of £5500. This is to acknowledge that Mr Z paid for a service he did not receive or which fell below the standard expected. This should then be shared proportionately between the beneficiaries of Mr Z's estate.
 - Revises its procedures to ensure those making safeguarding referrals receive written feedback once a case is closed. The detail provided should take into account the referrer's involvement in the case and the outcome of the referral.
60. The Council agreed to all of my recommendations. The apologies and payments should be made within one month of the date of my final decision. The procedure changes should be made within two months of the date of my final decision.
61. Under the terms of the Memorandum of Understanding between the Local Government Ombudsman and the CQC, I will send the CQC a copy of my final decision.

Final decision

62. The care provided to Mr Z by Ashlands was inadequate. The Council was slow to identify problems and failed to give Mr X a written response following his safeguarding referral. The identified faults caused significant injustice to Mr Z and his family. The Council has agreed to take the steps recommended to remedy the injustice caused and I have therefore completed my investigation.

Parts of the complaint that I did not investigate

63. Mr X is concerned because the Council is still using the care home which is central to this complaint. But whether the Council still uses the care home no longer affects Mr X or his family directly. The exemption set out at paragraph 4 therefore applies. If Mr X has ongoing concerns about the general management of the care home he can contact the CQC as the body responsible for the inspection and regulation of care homes.

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64. I have spoken with Mr X and explained why the Ombudsman cannot investigate this part of his complaint. Mr X understands this and is aware he can contact the CQC to express his concerns.

Investigator's decision on behalf of the Ombudsman

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

**Investigation into a complaint against
Nottinghamshire County Council
(reference number: 16 009 251)**

27 July 2017

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.

Investigation into complaint number 16 009 251 against Nottinghamshire County Council

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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

Mr K - the complainant

Mrs J – his partner’s mother

Report summary

Adult care services: safeguarding

Mr K complains that he has been banned from visiting his partner's mother, Mrs J, at her Care Home.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council has agreed our recommendations and will commission an Independent Advocate to get Mrs J's views on seeing Mr K away from the Care Home. If Mrs J wants to see Mr K the Council will arrange for her to do this away from the Care Home and pay Mr K £300 for the failure to do this sooner:

The Council will also:

- write to Mr K apologising for its failings and those of the Care Home and Care Provider; and
- consider what action it needs to take to ensure it and its care providers deal with such matters properly in future.

Introduction

1. Mr K complains he has been banned from visiting his partner's mother, Mrs J, at the Care Home the Council has placed her in.

Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, 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. 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. In November 2016 the Care Quality Commission (CQC) produced *Information on visiting rights in care homes*. This includes a section on what a care provider can do if it believes a visitor poses a risk to other residents, staff or the running of the service, which says:

"Seeing a loved one in a care home can be distressing, especially in the beginning or as they become more dependent because of frailty, illness or decreasing capacity. Bearing this in mind, if issues or conflict develops, the care provider should first meet with the visitor and try to resolve them. Conflict between the provider and a family member or friend may be detrimental to the wellbeing of the resident. If the visitor has concerns about a resident's care, these should be acknowledged, understood and acted on".

"Care homes have a duty to protect people using their services. If issues cannot be resolved, as an extreme measure the provider may consider placing some conditions that restrict the visitor's ability to enter the premises if, for example, they believe (having sought advice from others, like the safeguarding team) that the visitor poses a risk to other people using the service and staff, or to the running of the service. For example, the provider could limit visits to take place in the resident's room only. Any conditions should be proportionate to the risks to other people or staff and kept under review. The provider must be able to demonstrate that any conditions are not a response to the visitor raising concerns about the service as this would be a breach of the regulations. The provider should seek advice from the local authority's Deprivation of Liberties team if the resident lacks capacity to make decisions".

How we considered this complaint

5. We produced this report after examining relevant files and documents, and discussing the complaint with Mr K and Council officers.

6. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

Investigation

7. The Council placed Mrs J in the Care Home in 2013 when Mr K and his partner could no longer look after her. According to its case notes, in November 2013 Mr K told officers he had come close to losing his temper physically with Mrs J. The Council asked Mr K not to visit Mrs J at the Care Home *“at least for the time being”*. Mr K agreed to this. The Council told the Care Home what he had agreed and advised it to ask him to leave if he tried to visit and to call the Police if he refused. The Care Home is one of over 100 homes run by HC-One Limited (the Care Provider).
8. On 2 December 2013 Mr K asked the Council if it had banned him from visiting Mrs J for life. It advised him to speak to a member of its Safeguarding Team about this. There is no record of him doing this.
9. On 15 April 2014 the Council noted Mr K *“had not been barred from visiting, a risk assessment has been put in place, should he visit and not comply with the rules of the home”*. The Council has not provided a copy of the risk assessment.
10. In June 2014 Mr K reported concerns to the Council that Mrs J had not had a bath for four weeks. He also reported his concerns to CQC. The Council addressed Mr K’s concerns via a safeguarding investigation. It did not substantiate the allegations.
11. On 20 November 2015 the Council noted *“[Mr K] is not allowed to visit the Care Home due to threatening behaviour”*.
12. In December 2015 Mr K told the Council Mrs J had asked him to get the ban lifted as she wanted him to visit. He said he had visited many times at weekends, including 12 times in the past six months.
13. The Care Home has provided statements from two members of staff who were there when Mr K tried to enter the home at 15.40 on 8 January 2016. They wrote the statements at the end of March 2017. According to the statements, one member of staff told Mr K he was not allowed on the premises but Mr K said it had *“been sorted”*. The member of staff told Mr K to leave. The statements say Mr K was very loud and swore at staff in the presence of other visitors. According to the statements, Mr K left after another member of staff went to call the Police. It appears the Police were not called.
14. On 1 March 2016 the Council visited Mrs J. After the visit the Council called Mr K to let him know Mrs J could decide to resume contact with him and he could visit the Care Home again.
15. In April 2016 Mr K raised safeguarding concerns with CQC about Mrs J’s care at the Care Home. CQC passed the concerns on to the Council to investigate. The Council contacted the Care Home on 28 April 2016. The Care Home said it knew Mr K had raised the safeguarding concerns. It told the Council it did not know Mr K had been given the go

ahead to return. The Care Home said it did not agree with this decision “*primarily to safeguard other residents and, as importantly, members of staff*”.

16. On 29 April the Council called Mr K to let him know Mrs J was happy with her care at the Care Home.
17. On 3 May the Care Home did a risk assessment for Mr K’s “*access to the home*”. This refers to “*previous threats made to staff and management*” and describes them as frequent but does not say what the threats were or when they were made. It identified these risk control measures:

“[Mr K] is not allowed access to [the Care Home] – staff are aware of this and know to call 999 if [he] tries to gain access. Social Services are also aware of this restriction. Police have also been made aware of threats made to home’s management.”
18. The Care Home’s reviews of the risk assessment in August and December say “*Risk assessment remains relevant*”.
19. On 9 May the Care Provider wrote to Mr K in response to a letter received on 3 May. It said its visitor records showed he had only been in the Care Home for about 20 minutes, so he could not say call bells had been going for over an hour. It said it monitored call bells and none had gone off for an hour. It said he had been banned from visiting the Care Home since Mrs J came to live there. It said the Council had lifted the ban in March 2016 without consulting the Care Provider. It said because of threats he had made to staff and managers at the Care Home, which were logged with the Police, it had to uphold the ban. It said if Mrs J wanted to see him, the Council should be able to arrange for him to see her outside the Care Home. It said the Care Home could provide transport for Mrs J.
20. On 12 May the Care Provider told the Council it wanted to discuss e-mails it had received from Mr K. It later told the Council it would not allow Mr K to access the Care Home. The Council asked Mr K to stop writing to the Care Home with his concerns and to direct them to the Council.
21. On 20 May the Council visited Mrs J at the Care Home. The Care Home told her she would have to leave if she wanted Mr K to visit her there. The Care Home said this was due to threatening behaviour towards staff and false allegations.
22. On 26 May Mr K told the Council that the Police had confirmed they had not received an allegation of threatening behaviour against him from the Care Home.
23. On 28 June the Council met Mr K with his partner. They discussed concerns about poor care. The Council said the Care Home had carried out its own investigation which did not support their allegations. The Council said it had not been able to substantiate the allegation of neglect. It said the evidence from its visits showed Mrs J was being cared for. Mrs J had confirmed she was happy living in the Care Home and had the capacity to decide where she lived. Mr K and his partner said Mrs J had repeatedly told them she wanted to move to another home as there were not enough staff to meet the residents’ needs. The Council said it would appoint an Advocate to find out Mrs J’s views.

24. On 26 July Mr K wrote to the Care Home. He said the Police had confirmed it had no record of the Care Home reporting him for making threats. He said he had reported the Care Home to CQC three times because of the poor care he had witnessed. He said it had banned him because of these reports. He said the Care Home had to lift the ban within five days or they would move Mrs J to another Care Home. He said the ban was unfair and based on lies and false accusations.
25. On 1 August an Independent Advocate visited Mrs J to check whether she wanted to stay at the Care Home. The next day she e-mailed the Council to report:

"[Mrs J] said that she was settled in her placement and that she didn't want to move as she didn't know what a new placement would be like and she was happy where she was. [Mrs J] says she likes the staff and has built relationships with other residents. [Mrs J] enjoys reading and engages with activities there. [Mrs J] on several occasions said that she didn't want to move placement".
26. The Council sent the e-mail to the Care Provider.
27. On 4 August the Care Provider wrote to Mr K. It said it had received a response from the Council about the Independent Advocate's visit. It said Mrs J:

"was asked if she wanted to go out to meet with you and could not decide, however, she said she would think about it and let the home know. If she does decide she wants to meet with you we will of course set up a date and time to meet you off the premises of [the Care Home] in a suitable location chosen by [her]".
28. The Care Provider told Mr K they had contacted the Police and had *"on file reference numbers in relation to this"*.
29. On 8 August the Council told the Care Home it was open to Mrs J's daughter to take her out of the home to meet Mr K, if that is what Mrs J wanted to do.
30. On 18 August the Council wrote to Mr K. It said Mrs J had the capacity to decide where she lives and the Independent Advocate had confirmed she wants to remain at the Care Home. It said it could not reach a firm conclusion on the lack of sympathy Mr K said officers had towards his ban on visiting the Care Home. It said the management of the Care Home had been distressed by his behavior. It said it was not appropriate for the Council to intervene.
31. CQC published a report on the Care Home. It required the Care Home to make improvements relating to being: safe; effective; responsive; and well-led. It found the Care Home was providing a good service in terms of being caring. Mr K says the need to make improvements shows he was right to report problems to CQC.
32. The Manager of the Care Home says Mr K verbally threatened her over the telephone *"telling me to be careful when I leave work as the car park is dark at night"*. Mr K denies saying this. The Manager says she contacted the Police immediately after the

conversation but was not given a crime number or an incident number. She says she cannot provide a date for the incident, having worked at the Care Home for two years.

33. The Care Home has recorded consulting Mrs J about seeing Mr K on: 8 September 2016, 5 October 2016, 18 November 2016, 22 December 2016, 13 January 2017 and 15 February 2017.
34. In response to our enquires on this complaint, the Care Home told the Council Mrs J's daughter takes her out so she could see Mr K if she wanted to. Mrs J's daughter says this is untrue. She says this would not be possible because of her mother's mobility problems. Mrs J uses a wheelchair and needs a hoist and sling and two people for transfers. The Care Home has been unable to provide any evidence in support of its claim that Mrs J goes out with her daughter.

Conclusions

35. This complaint has revealed some poor practices by the Council, the Care Home and the Care Provider. Although not issued until November 2016, the CQC guidance reflects what has always been good practice. The failure to follow a structured process over the ban has resulted in a confused sequence of events. This could have been avoided if the right process had been followed.
36. The Council asked Mr K not to visit Mrs J when she first moved to the Care Home. Any restriction on visiting should either be based on a specific request from the resident, if the resident has the capacity to make such decisions, or a risk assessment and best interest decision if they do not. Any restrictions on visiting because of a risk to staff or other residents needs to be based on a risk assessment. The Council failed to consult Mrs J or do a risk assessment before asking Mr K not to visit and, more significantly, advising the Care Home to call the Police if he tried to visit and would not leave. That was fault.
37. Although the request not to visit was "*at least for the time being*" the Council did not review the arrangement. That was also fault. There should be regular reviews of any visiting restrictions. Such reviews should, wherever possible, take account of the resident's views. The Council did not do this until March 2016. That was fault.
38. The issue of contact with Mr K is one for Mrs J to make. The Care Home should not have threatened her with eviction if she wanted Mr K to visit her at the Home. That was fault. That threat is likely to have had an impact on her subsequent answers to questions about meeting Mr K. Mrs J should at least have been given the option of meeting Mr K away from the home.
39. In April 2014 the Council appears to have decided it had not banned Mr K from visiting, although that was clearly not the case. It noted a risk assessment was in place but has provided no evidence of this. In November 2015 the Council accepted Mr K had been banned from the Care Home. The failure to review the ban resulted in it being left in place when there may have been no need for it. That was fault.

40. The ban has not always prevented Mr K from visiting Mrs J. It appears the Care Home did not always enforce the ban. It was clearly aware he had been visiting as he had recorded at least one visit in its visitors' book.
41. The Care Provider has no records of the threats it says Mr K made to the Manager of the Care Home or other staff. Nor does it have any records of the incident which it says took place on 8 January 2016. If the Care Home had reported the threats to the Police it should have had a reference number. The failure to keep proper records is fault. The Care Home should record any threats and report them to the Council, as the safeguarding authority, so it can take account of them when reviewing a risk assessment.
42. The Council failed to tell the Care Home it had decided to lift the ban on Mr K visiting. That was fault. In April 2016 the Care Home told the Council it did not agree with lifting the ban as Mr K posed a risk to other residents, as well as to members of staff. There is no evidence to support the claim that he posed a threat to residents.
43. The Care Home finally did a risk assessment in May 2016; over two years after Mr K had been banned from visiting Mrs J. The risk assessment is not robust enough. This is because it does not substantiate the allegations against Mr K. There is no current evidenced risk to Mrs J and she had confirmed that she was content to see Mr K. The timing of the risk assessment, following Mr K's complaint to CQC, raises the prospect that his complaint prompted the Care Home to reinforce its ban. This is supported by the record of the Council's visit to the Care Home on 20 May 2016 when it told the Council Mr K's "*false allegations*" were a reason for the ban. That was fault.
44. The Care Provider has made some inaccurate statements. It told Mr K the Independent Advocate had asked Mrs J if she wanted Mr K to visit. But that is not supported by the Independent Advocate's e-mail to the Council. The Care Provider also told Mr K it had reference numbers for its contact with the Police, but that was not the case. This casts doubt over some of the Care Provider's other statements. It also means it cannot be accepted as a reliable broker when asking Mrs J if she wants to see Mr K. The Council needs to commission an Independent Advocate to obtain Mrs J's views.

Injustice

45. The injustice to Mr K is to some extent dependent on whether Mrs J wants to see him. Nevertheless, the bodies involved have not dealt fairly with him and for that reason the Council needs to apologise to him.

Decision

46. The Council was at fault because it:
 - did not involve Mrs J properly in the decision to ban Mr K from visiting her;
 - did not carry out a risk assessment;

- did not review the ban; and
- failed to tell the Care Home or Care Provider when it lifted the ban.

47. The Council is also accountable for the faults of its Care Provider and the Care Home which:

- did not keep proper records;
- provided inaccurate information; and
- threatened Mrs J with eviction without offering all the options.

Recommendations

48. In order to remedy the injustice caused by the faults identified by this report the Council has agreed within the next three months to commission an Independent Advocate to get Mrs J's views on seeing Mr K away from the Care Home. If Mrs J wants to see Mr K, the Council will arrange for her to do this away from the Care Home and pay Mr K £300 for the failure to do this sooner.

49. The Council will also:

- write to Mr K apologising for its failings and those of the Care Home and Care Provider; and
- consider what action it needs to take to ensure it and its care providers deal with such matters properly in future.

Complaint reference:
16 013 301

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: There is no evidence of fault in the Council's decision to treat Mrs V as having notional capital when assessing her ability to pay for care and support services. However there is fault in the way the Council calculated the value of Mrs V's notional capital. Although the Council disagrees with this finding, it has agreed to carry out an independent valuation to assess the value in accordance with statutory guidance so I have completed my investigation.

The complaint

1. The complainant, whom I shall call Mrs W, complains on behalf of her mother, Mrs V, about the Council's decision to treat her as having a sum of notional capital when assessing her ability to pay for her care and support.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

How I considered this complaint

4. During my investigation I have:
 - spoken with Mrs W on the telephone
 - considered information supplied by the Council including correspondence with Mrs W
 - considered the Care and Support Statutory Guidance issued in support of the Care Act 2014
 - given the complainant and the Council the opportunity to comment on my draft(s)
 - considered the comments made by the Council and Mrs W in response to my draft and amended where appropriate

What I found

Relevant legislation and statutory guidance

5. Statutory guidance on charging for non-residential services under the Care Act is available in a document called 'Care and Support Statutory Guidance' (CASS).
6. Once a council is asked for help it will carry out a care assessment. This will normally take place in a person's home. Following the assessment the Council will produce a care and support plan. This sets out how the Council will meet the person's care and support needs.
7. Councils can decide in their policies not to charge service users at all for non-residential services, although most do charge. Some Councils place an upper limit on the amount a person will have to pay towards their care. Before charging for services, the Council must work out how much a person can afford to pay which will still leave them with a reasonable income. Councils calculate this through a financial assessment.
8. Most councils charge people the full cost of providing non-residential care if their capital exceeds £23,250. People with between £14,250 and £23,250 in capital pay an amount towards their care. People with less than £14,250 do not contribute anything.
9. Similar rules apply when a person receives care and support in a care home.
10. CASS contains sections called 'Treatment of Capital' (Annex B) and Deprivation of Assets (Annex E). CASS says:
 11. In some circumstances a person may be treated as possessing a capital asset even when they do not actually possess it. This is called notional capital. (Annex B, paragraph 29)
 12. Notional capital may be capital which the person deprived themselves of in order to reduce the amount of charge they have to pay for their care. (Annex B, paragraph 30)
 13. When undertaking a financial assessment a local authority may identify circumstances that suggest that a person may have deliberately deprived themselves of assets in order to reduce the level of the contribution towards the cost of their care. (Annex E, paragraph 3)
 14. It is important that people pay the contribution to their care costs that they are responsible for. This is the key to the overall affordability of the care and support system. A local authority should therefore ensure that people are not rewarded for trying to avoid paying their assessed contribution. (Annex E, paragraph 4)
 15. There may be good reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:
 - a) Whether avoiding care and support charge was a significant motivation;
 - b) The timing of the disposal of the assets. At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support? And
 - c) Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs? (Annex E. paragraph 11)
 16. If a local authority decides that a person has deliberately deprived themselves of assets in order to avoid or reduce a charge for care and support, they will first

need to decide whether to treat that person as still having the asset for the purpose of the financial assessment and charge them accordingly. (Annex E, paragraph 18)

17. As a first step, a local authority should seek to charge the person as if the deprivation had not occurred. This means assuming they still own the asset and treating it as notional capital or notional income. (Annex E, paragraph 19).
18. When a Council has decided that a capital asset should be treated as notional capital, the value of that capital must be the current market value of the capital asset or the surrender value of the capital asset, whichever is the higher, minus 10% of the value if there will be any actual expenses involved in selling the asset and any outstanding debts on the property.
19. If the person and the assessing officer both agree that after deducting any relevant amounts that the total value of the person's capital is more than the upper capital limit of £23,250, or less than the lower capital limit of £14,250, then it is not necessary to obtain a precise valuation. If there are any disputes, a precise valuation should be obtained. However, the local authority should bear in mind how close someone is to the upper capital limit when deciding whether or not to obtain a precise valuation.
20. In the context of jointly owned capital, the total value of the asset should be divided equally between the joint owners and the person should be treated as owning an equal share unless there is evidence a person owns an unequal share. The current market value is not assessed by taking the overall value of the whole house and dividing it by the number of beneficial owners, rather it is the price a willing buyer would pay to a willing seller for that person's particular share. It is the person's interest in the property not the value of the property itself. This method of valuation is appropriate because there is a risk that a person's interest in an asset or property may actually be nil. While in the current financial climate this is less likely, especially with more and more private investors willing to buy shares of property, there is still a risk. Therefore, an independent valuation is appropriate. Where a precise valuation is required, a professional valuer should be asked to provide a current market valuation. Once the asset is sold, the capital value to be taken into account is the actual amount realised from the sale, minus any actual expenses of the sale.
21. In accordance with paragraph 14 of Annex B of the Statutory Guidance, once the valuation is obtained, the Council should deduct 10% from that valuation to take account of any expenses attributable to disposing of the property.

What happened

Background

22. Mr and Mrs V, the subject of this complaint, each owned a 25 per cent share in a property. The other 50% of the property was owned by Mrs W and her husband Mr W. Mrs V gifted her share of her property to her grand-daughter in 2011.
23. Between the 3 August 2009 and 8 August 2009 Mrs V and her husband Mr V stayed at a residential home, which I shall call Home B.
24. Mrs V completed a Statement of Financial Circumstances form on 18 August 2009 in order for the funding to be provided for the stay at Home B. The form contained terms that demonstrated her agreement that she was aware that if she disposed of, or had disposed of, any of her capital assets, property, investments

-
- etc, the Council could take account of those resources as if they were still hers and charge accordingly. Mrs V signed the form.
25. Council records show that the couple stayed at Home B while they were having a bathroom refitted. They paid a contribution towards their care.
 26. There are no records to indicate that Mrs V was suffering from any ill health at the time. In fact, along with her daughter Mrs W, she was Mr V's carer.
 27. Records show that Mrs V was considered to be her husband's carer both at this time and during the immediate period after the couples' stay at Home B.
 28. In October 2010 records show Mrs V was finding it harder to care for her husband. She felt exhausted.
 29. In November 2010 Mrs V had a fall and fractured her arm. The couple were placed in respite care at another home, which I shall call Home F, to help her recover. This stay was extended many times, resulting in a continuous stay until 19 January 2011. Records show that while there were no complaints about the level of care, Mrs V was anxious to get home. However, she still had a 'pot' attached to her arm and it would have been very difficult for her to manage.
 30. When her pot was removed, plans were put in place for Mrs V to live with her daughter for a while. Mr V was to remain at Home F as his condition had deteriorated. Records show that when Mrs V was leaving the home, it was felt she required a service to help her shower twice weekly and a meals service.
 31. In February 2011 Mrs V visited a consultant. Records show she was told that her arm would not improve any more. She did not have a good turning point on it and found it difficult to grab and hold things as she had lost power in that arm.
 32. On 9 March 2011, Mrs W contacted the Council with a view to increasing her mother's care package upon her return home, to seven showering calls.
 33. On 23 March 2011 Mrs W and her mother Mrs V visited their solicitor. Records show that during this meeting, the solicitor was told that although Mrs V's arm had deteriorated, the family hoped things would improve.
 34. The solicitor's attendance note sets out that Mrs V had recently left home F. They had a discussion about Mrs V's wish to give her quarter share of her property to her grand-daughter, which would be bringing forward what she had already bequeathed to her in her will. The solicitor expressed '*serious concerns at the arrangement*'; one being that Mrs V was approaching 91 years of age at this time and that she had only recently come out of a Care Home. His attendance note shows he was perplexed as to why Mrs V would want to take this course of action for her grand-daughter when she was due to inherit this share in her will in any event. He noted there was an expectation Mrs V's grand-daughter would soon return abroad. This anticipation was strong enough for him to suggest all correspondence to her should be to care of the Ws. He further noted:

"I specifically said that if the Local Authority considered that she had given up her share in the property to avoid paying fees then they could take the view that she still owns the share in the property and assess her accordingly."
 35. In another part of the solicitor's note he said that although Mrs V did not want to be at Home F, '*it appears she cannot totally rule out the possibility of going into long term care if things do not improve, but the likelihood is that if she cannot remain at home on her own she would move in with the [Ws], but that is not the*

preferred option.’ It was envisaged that this would happen, unless Mrs W’s health meant she was unable to take care of her mother.

36. On 24 March 2011 the solicitor wrote a letter to Mrs V setting out his advice. He cautioned against the gift. Part of his advice was that if she still wanted to go ahead with the transfer, one way of protecting herself from the risk of Mrs V’s grand-daughter going bankrupt and losing the asset would be if she leased back the property into her own name. This would give her the security to live in the property but her grand-daughter would be obliged to pay for repair and to insure the property. He also advised that this type of obligation *‘is a reason for the transaction andmay defeat a claim by a Creditor or the Local Authority’*.
37. Mrs V opted for the leaseback arrangement. Mrs W believes Mrs V wanted to give the share of property to her grand-daughter to encourage her to come home. (She was living abroad at the time of the transfer of assets). Although she also said that the leaseback arrangement was a factor when her mother was deciding to give away her share.
38. On 28 March 2011, a support plan was completed for Mrs V. Records show Mrs V’s leg was swollen and a GP visit was arranged as it was thought it might be infected.
39. In April 2011, Mrs W completed a Statement of Financial Circumstances form for the stay at Home F. Again, the same declaration was made at 8(e) of the form. Under section 7, Additional Information, it appears Mrs W wrote, *‘Mrs [V] is giving her share of property to her granddaughter.’*
40. On 23 April 2011 Mrs W asked for further support for her mother because she was struggling to support her mother as Mrs W was suffering with shingles.
41. On 2 May 2011 direct payments were started for Mrs V.
42. The deeds were signed over in June 2011. The Council say the transfer happened on 22 September 2011.
43. In September 2013, records show Mrs V’s health was beginning to deteriorate. It is clear efforts were made by Mrs W to ensure her mother stayed at home and that this is what her mother wanted. However, eventually it became impossible. Mrs V needed to go into a residential home. She was admitted as a permanent resident at Home F on 13 July 2016.
44. On 1 July 2016 the Council wrote to Mrs W. She had completed a financial assessment for her mother, Mrs V, in order to fund her residential care. The Council informed her it had decided to treat the transfer of money her mother had made in September 2011 as a deprivation of assets.

Mrs W defends the accusation her mother deprived herself of her assets

45. There followed an exchange of correspondence between Mrs W and the Council. In summary, Mrs W said:
 - it had never been her mother’s intention to go into a care home
 - her mother did not stay at Home B for health needs and her stay at Home F, prior to the transfer of her assets was only because she suffered a fall. Mrs W believes her fall was at least in part because she was exhausted providing 24-hour care for her husband
 - direct payments were only set up to provide her mother support following her mother’s fall.

- after her mother took legal advice and learned that she would have no maintenance problems if she enjoyed the benefit of a lease back arrangement with her daughter, she decided to go ahead with the transfer.
- in any event, the Council's valuation of her mother's share in the property was incorrect.

The agreed notional value of Mrs W's share in the property

46. The Council initially suggested that based on a total valuation of the property at £160,000, Mrs V's notional share was valued at £40,000.
47. Mrs W disagreed and eventually agreed a notional value for her mother's share of the property at £39,350.
48. However in statements I have seen showing the weekly depreciation of the sum, the Council statements seem to indicate the Council used the sum of £40,000 in its calculations.

What I found

49. The restriction outlined in paragraph 3 applies to this complaint. The Ombudsman cannot question a decision that a council has taken without administrative fault in the decision making process. In this case the Council has reached its decision in accordance with the statutory guidance and it is one that it is entitled to take.
50. In reaching its decision the Council considered the factors set out in paragraph sixteen.

Whether avoiding care and support charge was a significant motivation;

51. We cannot ever know with absolute certainty what Mrs V's motivation was in giving away her share of her property at such a late stage in her life. But the evidence shows the Council gave this due consideration.
52. Mrs W says the transfer was to encourage her daughter to come home. Mrs V also confirmed the same to her solicitor. Mrs W says her mother wanted to delight at the pleasure of making the gift. But on balance, the Council was not acting unreasonably in questioning this.
53. A part of the families' solicitor's advice was that if Mrs V wanted to transfer her share of her property to her grand-daughter, one way of defeating a claim from the local authority would be to set up a lease-back agreement. There were other benefits to this arrangement too (in that Mrs V's grand-daughter would be obligated to repair the property should the need arise), but Mrs V was aware that the Council could view this transaction in an unfavourable light and disregarded this risk.
54. The solicitor's note indicates that Mrs V's grand-daughter had already been left the property share in Mrs V's will. While her grandmother is alive it would have been unlikely that Mrs V's grand-daughter would attempt to realise her share in the property. Therefore, it seems odd that Mrs V felt she would be more encouraged to come back to the country early just because she would receive a share in the property earlier than expected, a share which she wouldn't be able to benefit from in any event until her grandmother passed away. The Council is entitled to have doubts about the motivation behind the transfer, especially since Mrs V had just spent time in a home and at her age there was a likelihood she would need long-term care in the future.

At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?

55. The Council argued that around the time of the transfer Mrs V had stayed at Home F for a significant period of time and at the point of transfer, Mrs V was in receipt of direct payments to help support her needs. The Council might also have added that the legal advice Mrs V was given anticipated that although Mrs V did not want to go into a home and everything would be done to avoid this eventuality, the family could not rule out the possibility.
56. The solicitor's attendance note says that the family informed him that while Mrs V's arm had deteriorated they hoped things would get better in the future. This is a different account to the one given to the Council and noted in the records shortly before the visit. As far as the family were concerned, she had lost the power in her arm – there is no record of any hope for things improving. Mrs W says that her mother's arm has now actually improved, but this could not have been anticipated during this crucial time. The solicitor specifically recorded that if things did not improve she would not be able to stay at home by herself. Although she may have wanted to stay in her own home, but she must have thought this might not be possible. The Council were not unreasonable in viewing her situation in this light.

Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs? (Annex E. paragraph 11)

57. The Council say that Mrs V had been financially assessed before and was aware of the need to contribute towards her care costs. Further, both Mrs V and Mrs W had signed financial assessments which set out that if a transfer was made and the Council considered it was a deprivation of assets, they would be charged for care as if they still owned the capital. Mrs V's solicitor had also warned the family of the risk that the Council would consider the transfer inappropriate and might charge them.
58. For the above reasons, I find that the Council's decision was well reasoned and without administrative fault. It gave Mrs W the opportunity to comment on its original decision and considered what she said. It then referred the matter to a senior officer who upheld the decision.
59. Having reviewed the evidence available I am satisfied the Council acted without administrative fault in deciding to treat Mrs V deprived herself of her assets.

The value of Mrs V's notional capital

60. I am not satisfied that the Council have complied with Annex B of the Care and Support Statutory Guidance issued in support of the Care Act 2014 when calculating the notional value of Mrs V's share of the property.
61. The guidance indicates that the Council should calculate the value of the property in a way that determines what a willing buyer would pay to a willing seller. Given that the value of Mrs V's notional capital is only 25% of the property value, there is a risk that it would be difficult to find a willing buyer for such a share. There is a risk, therefore, that the value could be nil. Even if it has some value, it may well be much lower than the £39,350 estimate that the Council and Mrs W first agreed on. This valuation was only agreed because Mrs W assumed this was the correct way to value the share in the property. But to value the property in that way, does not take into account what a 'willing buyer' would pay for a 25% share. The Council should therefore obtain an independent valuation of the property to determine the true value of Mrs V's notional share.

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62. I am however satisfied that the Council does not need to deduct 10% from the value of the share for potential sales expenses. These have already been accounted for when the Council assessed Mrs V's financial ability overall.

Recomendation

63. The Council should, within 20 days of my final decision, obtain an independent valuation of Mrs V's notional share of the property in order to properly obtain its value for the purposes of assessment. The market valuation should be the value of the share in July 2016.
64. The Council should share the valuation with Mrs W and apply any adjustments necessary to its assessments of Mrs V's contributions to care charges for the time in question. If appropriate it should refund to Mrs V any money paid for care during that time if it transpires this should not have been requested.

Final decision

65. There is no evidence of fault in the Council's decision to treat Mrs V as possessing notional capital for the purpose of assessing her ability to pay for care and support services. However, I have found fault with the way in which the Council initially valued Mrs V's share of her property. This caused Mrs W uncertainty. Although the Council disagrees with this finding, it has agreed to carry out an independent valuation to assess the value in accordance with statutory guidance so I have completed my investigation.

Final decision on behalf of the Ombudsman

Complaint reference:
16 012 298

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: There was fault in the Council's consideration of whether Mrs C deprived herself of assets with the intention of avoiding care fees. The Council will carry out a further assessment including speaking with Mrs C and any other investigations it considers necessary to enable it to make a robust decision.

The complaint

1. Mrs B complains the Council has wrongly decided that her mother, Mrs C, deliberately deprived herself of capital with the intention of avoiding care fees. As a result the Council is seeking to recover the outstanding care home fees from the family.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I considered the complaint and spoke to Mrs B. I asked the Council for its comments on the complaint and additional information. I sent a copy of a draft of this statement to Mrs B and the Council and invited their comments.

What I found

Background

5. Mrs C lived in her own home with her daughter, Ms X. Ms X provided care and support for Mrs C. Sometime early in 2014 Mrs C and Ms X moved into a privately rented flat as the house and garden was too much for them to manage. In June Mrs C sold her house for £85,000.
6. Ms X became ill and died in March 2016. Mrs C had moved into a nursing home in February 2016.

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7. On 7 March 2016 the Council carried out a financial assessment of Mrs C to decide whether she should contribute to her care. Mrs C did not take part in the assessment and it was done with her son Mr D. The result of the assessment was that the Council decided that Mrs C had intentionally disposed of the proceeds of the sale of the house. This meant the Council considered Mrs C was liable for the cost of the nursing home.
 8. Mrs C has not made any payments to meet the care fees and at the end of January 2017 the arrears were just under £26,000. The family made a payment in March of £12000 and were setting up standard order.
 9. Mrs B says that Mrs C had never intended to go into a nursing home when she sold her home. So she used the money from the sale of the house to improve her new home and gave some away to church and charity. She could not have predicted her daughter's illness and that she would need nursing home care. She had budgeted to be able to manage with some care in her own home.

The relevant guidance

10. The rules for assessing and charging for residential care are contained in the Care and Support Statutory Guidance (CSSG). Councils should follow the relevant guidance when undertaking a financial assessment to determine how much a person has to pay towards the costs of their residential care.
11. CSSG says deprivation of assets means where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they are charged for their care. It goes on to say there may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:
 - Whether avoiding the care and support charge was a significant motivation;
 - The timing of the disposal of the asset. At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?
 - Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?
12. The guidance makes it clear that it has to be the person's intention when making the disposal that they are doing so to avoid care charges: avoiding care charges must have been a "significant motivation".
13. Where the Council has decided there has been deprivation it should seek to charge the person as if the deprivation has not occurred. This means assuming they still own the asset and treating it as notional capital. Where the person has transferred the asset to a third party to avoid the charge, the third party is liable to pay the difference between what it would have charged and did charge the person receiving the care. However the third party is not liable to pay anything which exceeds the benefit they have received from the transfer. If the person has transferred money to more than one person each of those people is liable to pay the Council
14. In some cases a Council may wish to conduct its own investigations into whether deprivation of assets has occurred rather than relying solely on the declaration of the person.

The decision there has been deprivation

15. The Council has decided that Mrs C disposed of the proceeds of the sale of the house with the intention of avoiding care charges. The Council has not spoken to Mrs C about what happened to the money. There has been some debate about Mrs C's capacity to deal with her own finances and her children Mrs B and Mr D have dealt with the practical arrangements although they do not have power of attorney. But the current position is that Mrs C does have capacity.
16. The family has said that money was spent as follows:
- £2000 on a shower room for the rented flat Mrs C moved to;
 - £1000 for a ramped/disabled access;
 - £4000 for furnishings including a washing machine, tumble dryer, higher chairs and sofa for easy access, and a new bed;
 - £3500 to pay off an existing overdraft;
 - £10,000 to pay off a bank loan;
 - £3465 six months rent and deposit for the flat;
 - £500 removal fees;
 - £5000 for new car which was suitable for carrying a wheelchair;
 - £850 was lost on a deposit for a stairlift for the house Mrs C moved from;
 - Estate agent fees for the sale;
 - Gifts to children.

The family has not provided any receipts of the expenditure or any other evidence or details of the amounts or timing of the gifts or other disposals.

17. The Council should carry out a proper financial assessment of Mrs C. The Council should question what happened to the money from the sale of the house. But I do not consider the Council has provided adequate reasoning to support its conclusion that it can consider all the sale proceeds of £85,000 as part of Mrs C's notional capital. The Council's says that Mrs C would be unlikely to admit to giving away the money for the purposes of avoiding care home fees. That may be the case but Mrs C's explanation of what happened to the money would be a relevant factor in the Council's decision making. Mrs C may be able to provide relevant information about how and why she no longer has the money. The Council has not given her the chance to provide that information. The Council should also have all relevant factual information such as bank statements before coming to any decision.

Agreed action

18. The Council will carry out a further financial assessment after speaking to Mrs C. The Council should also consider using its investigatory powers to gain the information it needs to make a sound decision on whether Mrs C deliberately deprived herself of the assets with the intention of avoiding care charges. It is reasonable for the Council to take into account the timing of any disposals and other circumstances such as Mrs C's health and that of her daughter. It should be able to provide a reasoned basis for the decision it reaches.

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19. If the Council intends to seek to recover a contribution to the outstanding fees directly from Mrs B and Mr D as recipients of some of the sale proceeds the Council would need to establish the amount of any gift they received.

Final decision

20. There was fault in the Council's consideration of whether Mrs C deprived herself of assets with the intention of avoiding care fees. The Council will carry out a further assessment including speaking with Mrs C and any other investigations it considers necessary to enable it to make a robust decision

Investigator's decision on behalf of the Ombudsman

Complaint reference:
16 002 677

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Council failed to carry out an annual review of Child Y's statement of special educational needs. This fault caused injustice to Child Y and their parent. The Council has agreed to the Ombudsman's recommendations to remedy the injustice caused.

The complaint

1. The complainant, whom I shall call Mr X, complains as follows:
 - a) The Council has failed to update his daughter's statement of special education needs. I shall refer to Mr X's daughter as Child Y. This means that when Child Y started at School D her statement was out of date. Mr X says the Council last carried out a statutory assessment of his daughter's needs in 2007.
 - b) School D could not ascertain Child Y's level of need or support her needs but took informal steps to obstruct her needs being met. Because the Ombudsman cannot look at what happens in schools, I can only consider how the Council satisfied itself the school was meeting Child Y's needs.
 - c) By September 2015 School D recognised the support Mr X was providing to his daughter, but delayed Mr X from receiving appropriate educational support. As above, because the Ombudsman cannot look at what happens in schools, I can only consider how the Council satisfied itself School D was meeting Child Y's needs.
 - d) An educational psychologist I shall refer to as Officer C:
 1. Inappropriately speculated on Child Y's level of need.
 2. Misinformed Mr X with incorrect and inappropriate advice.
 3. Took informal steps using his professional advantage to obstruct Mr X's efforts to address the support required by Child Y. Officer C's superior (Officer D) supported his acts of misconduct.
 - e) Officer E from the Council used his professional advantage to further facilitate malpractice by pushing Mr X to meet with Officer C under inappropriate circumstances.
 - f) The Council's actions prevented Mr X from moving forward with an Education Health and Care Plan because it would be managed by the school and council staff who had discriminated against Mr X and Child Y.
 - g) The Council's Chief Executive provided an inadequate response to Mr X's complaint.

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- h) The Council has taken inappropriate steps to try and force Child Y back to School D.

The Ombudsman's role and powers

2. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Chamber of the First Tier Tribunal ('SEND')*)
3. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
4. A child with special educational needs may have a statement of Special Educational Needs ('SEN'). The statement sets out the child's needs and what arrangements should be made to meet them. The Ombudsman cannot change a statement; only SEND can do that.
5. The Council is responsible for making sure that all the arrangements specified in the statement are put in place. The Ombudsman cannot look at complaints about what is in the statement but can look at other matters, such as where support set out in a statement has not been provided or where there have been delays in the process.
6. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
7. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
8. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
9. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - it is unlikely we could add to any previous investigation by the Council, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants, or
 - there is another body better placed to consider the complaint.(*Local Government Act 1974, section 24A(6), as amended*)
10. We normally expect someone to refer the matter to the Information Commissioner if they have a complaint about data protection. (*Local Government Act 1974, section 24A(6), as amended*)
11. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

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12. Some of the things Mr X complain about date back to 2007. In this case I have decided to consider events dating back to July 2014. This was when the last annual review took place before Child Y transferred to School D.
 13. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

14. During my investigation I have:
 - spoken with Mr X about his complaint and considered the supporting evidence he provided;
 - sent enquiries to the Council and considered its responses including information about Child Y;
 - considered legislation and guidance as referenced below;
 - given Mr X and the Council the opportunity to consider my draft decision and taken into account their comments.
15. 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 decision with Ofsted.

What I found

16. **Relevant legislation**
17. In 2014 the Government introduced new law and guidance for pupils with SEN. The Children and Families Act 2014 replaced statements with Education Health and Care ('EHC') Plans. The new and old law were to work in tandem while councils transfer pupils from the old to the new system. Councils should complete the process by 01 April 2018.
18. The law and guidance governing statements remains the Education Act 1996 and the 2001 SEN Code of Practice ('the Code of Practice'). The old law and guidance remain in force until the statement has ceased or been replaced with a final EHC Plan.
19. The government also issued statutory guidance called the 'SEN Toolkit' to accompany the Code of Practice.

What happened

20. The correspondence about this case is detailed and extensive. It is not possible (or necessary) for me to set out here everything which has happened. But I have included some key events to explain the background to the complaint. Some more information about what happened is in the 'Analysis' section.
21. Child Y has a statement of SEN which the Council first issued in 2007. Child Y attended School C from October 2007. School C is a local authority special school for children with autistic spectrum conditions.
22. Information from the Council shows that annual reviews of Child Y's statement took place each July between 2008 and 2014.
23. In December 2014 Mr X withdrew Child Y from School C because he had lost confidence in the school.

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24. In support of his complaint, Mr X has provided copies of emails which show he raised his concerns about School C with the Council. I will not consider Mr X's concerns about School C because the exclusion at paragraph 6 applies.
 25. Child Y started at School D in February 2015. School D is also a local authority special school for children with autistic spectrum conditions. Child Y at first attended for mornings only. Her first full day at school was 17 March 2015. Child Y started to attend School D full-time in June 2015.
 26. The Council says that in September 2015 Child Y started to attend school on a reduced timetable. This was because Mr X said she was showing signs of being "stressed". When Child Y was not at school she followed a structured learning programme developed by Mr X. A member of school staff would visit Child Y at home to observe her learning. This arrangement took place until December 2015.
 27. The Council says that in January 2016 Mr X postponed the annual review meeting which was due to take place to discuss Child Y's statement.
 28. Child Y's last day of attendance at School D was 19 January 2016. She has not attended school since and has been educated at home by Mr X (although she remained on the roll of School D until 02 May 2017.)
 29. In March 2016 Mr X submitted a 32 page document to the Council raising concerns about various issues including Schools C, D and extensive concerns about the Educational Psychologist who had worked with Child Y (Officer C).
 30. In April 2016 Mr X met with Officer G from the Council to discuss future plans for Child Y and the transfer of her statement to an EHC Plan. The process for dealing with Mr X's complaint was also discussed.
 31. On 01 June 2016 the Council's Chief Executive responded to Mr X's complaint from March 2016. Much of the response focussed on Mr X's concerns about Officer C. If Mr X remained unhappy he was told he could complain to the Ombudsman.
 32. In September 2016 council officers visited Mr X to discuss Child Y's non-attendance at School D. Mr X had not asked the Council to remove Child Y from the school's roll and it was not aware of any reasons she could not attend. The school had therefore recorded her absence as 'unauthorised'.
 33. In January 2017 the Council wrote to Mr X as Child Y's attendance at School D remained 0% for the 2016/17 academic year. The Council explained that it would interview Mr X (and his wife) under caution.
 34. In March 2017 the Council issued an EHC Plan for Child Y naming School D.
 35. In May 2017 the Council wrote to Mr X amending Child Y's EHC Plan so it named School E. This was Mr X's preferred school for Child Y. During my investigation Mr X confirmed he was happy with these arrangements for Child Y.

Analysis

36. I have considered each of Mr X's complaints in turn.
The Council has failed to update his daughter's statement of special education needs. This means that when Child Y started at School D her statement was out of date. Mr X says the Council last carried out a statutory assessment of his daughter's needs in 2007.
37. The Code of Practice [9.1] says:

“All statements (other than those for children under two) must be reviewed at least annually. The annual review of a pupil’s statement ensures that once a year the parents, the pupil, the LEA [local education authority], the school, and all the professionals involved, consider both the progress the pupil has made over the previous 12 months and whether any amendments need to be made to the description of the pupil’s needs or to the special educational provision specified in the statement. It is a way of monitoring and evaluating the continued effectiveness and appropriateness of the statement. LEAs must ensure that such a review is carried out within 12 months of either making the statement or of the previous review.”

38. Councils can also review statements at any time of the year. These are known as ‘Interim’ or ‘Early Reviews’.
39. Annual Reviews are a multi-stage process. The purpose of an annual review meeting is to assess the child’s performance against targets set at the previous review and set new targets. The purpose of the annual review meeting is also to consider the continuing effectiveness of the statement and whether the statement should be changed.
40. The Code of Practice sets out what should happen following an annual review of a statement. The headteacher must send the Council a report of the meeting. It should set out the main issues and recommendations. It may include a recommendation for amendments to the statement. The Council must review the statement in light of the report and any other information it considers necessary. It must decide whether to:
- continue with the statement as it is;
 - change aspects of the statement and issue a revised version;
 - carry out a wide range of assessments (Statutory Assessment) with a view to issuing a new statement of special educational needs;
 - cease to maintain the statement.
41. It must send a copy of its decision to the headteacher and the parents. Parents then have a right of appeal to SEND about the Council’s decision. They have two months to lodge an appeal if they wish to do so.
42. Information from the Council shows annual reviews for Child Y took place in July between 2008 and 2014. As explained in paragraph 12, I will not consider matters before the July 2014 annual review. I will consider the July 2014 annual review as it is the one closest to Child Y’s transfer to School D. The information I have suggests that for matters before July 2014 Mr X had the opportunity to appeal to SEND.
43. The annual review report from 2014 recommended two changes to Child Y’s statement. These were *“the critical need for [Child Y] to have access to her AAC (Augmentative and Alternative Communication) aid which the Local Authority fund”* and *“Local Authority provided transport to and from school also needs adding to Child Y’s statement.”*
44. In response to my enquires the Council said the school had not annotated Child Y’s statement to show where the changes were required. The Council says it wrote to School C and Mr X in September 2014 asking for more information but it did not receive a response. It therefore considered the statement to be current when Child Y left School C in December 2014.

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45. But given the detail provided in the annual review report, I see no reason why the Council could not have proceeded to follow the process set out above and issue a revised statement. I consider this to be fault. But the letter sent to Mr X in September 2014 did advise him of the right to appeal the Council's decision to SEND. Mr X did not do this.
46. Mr X says the Council failed to update his daughter's statement and this meant it was out of date when she started at School D. Due to the fault identified above I agree with Mr X. But I need to consider the injustice (if any) this caused Mr X and Child Y.
47. In response to my enquires the Council said the two amendments requested at the July 2014 annual review were put in place when Child Y started at School D (and she also received the support in question at School C). I therefore find that while her statement was out of date, I cannot say this caused Child Y any injustice. This is because she received the same support she would have done if the Council had issued a revised statement.
48. There is no requirement in the SEN Code of Practice for a council to carry out an annual review when a child transfers from one school to another – unless they are transferring phase – for example from primary school to secondary school. The Council could have called an interim / early review but it decided not to. This is a decision of professional judgment I will not criticise because I see no fault in the way the decision was reached.
49. I have also seen evidence of discussions with Mr X about schools Child Y could attend after she left School C. School D was one of his preferred schools. It is disappointing the Council took until August 2015 to issue an amended statement which named School D.
50. As part of my investigation I asked the Council if it carried out annual review in 2015. In response to my enquires the Council said:
- "There should have been an annual review of [Child Y's] statement in July 2015 but at that point she was still settling in to School D and it made more sense to hold it later when a fuller picture of her presenting needs at School D would be available".*
51. But as explained in paragraph 37, the Code of Practice requires statements to be reviewed annually. The Code of Practice says this 'must' happen and the requirement therefore has the force of law. There is no option for Councils to simply choose not to carry out an annual review.
52. I therefore find the Council to be at fault because it did not carry out an annual review in 2015. This meant Mr X lost the opportunity to appeal the content of Child Y's statement to SEND. This represents injustice for Mr X and Child Y.
53. Mr X withdrew Child Y from School D in December 2015 because he felt it was not meeting her needs. In May 2017 the Council named Mr X's preferred school in Child Y's EHC Plan.
54. I do not know what would have happened if an annual review had taken place in 2015. It could have been decided that no amendments to Child Y's statement were necessary. It seems the Council still considers School D capable of meeting Child Y's needs. But it is also possible that amendments could have been identified which would have led to better outcomes for Child Y. As well as the lost appeal rights referred to above, I consider the fault to have caused uncertainty and distress and to represent further injustice to Mr X and Child Y.

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55. I have not considered the matter of a 2016 annual review for Child Y. I note the Council arranged a meeting for January 2016 which Mr X asked the Council to postpone. Meetings took place later on in the year to discuss the transfer of Child Y's statement to an EHC Plan. This has now been finalised and as previously explained, I understand Mr X is happy with the school named.

School D could not ascertain Child Y's level of need or support her needs but took informal steps to obstruct her needs being met. Because the Ombudsman cannot look at what happens in schools, I can only consider how the Council satisfied itself the school was meeting Child Y's needs.

56. In support of this part of his complaint Mr X provided an email sent to Officer C on 17 June 2015. This lengthy email set out Mr X's concerns following a recent meeting with the school.
57. As explained in paragraph 6, the Ombudsman cannot look at what happens in schools. But we can look at whether a council has failed to ensure what is in a child's statement or EHC plan is delivered.
58. I have already found the Council to be at fault because it failed to carry out an annual review in 2015. This would have allowed it to assess Child Y's progress and the overall effectiveness of her education. The annual review would also have been an appropriate time to consider Mr X's concerns about School D. The Council's failure to hold an annual review in 2015 means I also uphold this part of Mr X's complaint – but only in regards to the Council's actions. The injustice to Mr X is uncertainty about whether the education School D delivered to Child Y was effective and appropriate. He also lost the opportunity to raise his concerns with School D and the Council which the annual review process is meant to provide.
59. I have also considered the wider issue of how the Council responded to Mr X's concerns about the education provided by School D. If Councils are aware of schools having problems meeting a child's needs, they should help as much as possible and as quickly as possible.
60. The evidence I have seen shows extensive correspondence between Mr X, School D and the Council – mainly through Officer C. The relationship between the parties was at times clearly strained. But I consider the Council to have responded appropriately to the concerns raised by Mr X about the school's actions and the delivery of what was in Child Y's statement.
61. If Mr X has further concerns about what happened in School D he may be able to pursue them through the school's own complaints process.

By September 2015 School D recognised the support Mr X was providing to his daughter but delayed Mr X from receiving appropriate educational support. As above, because the Ombudsman cannot look at what happens in schools, I can only look at how the Council satisfied itself School D was meeting Child Y's needs.

62. This point overlaps with the previous one. I have seen no evidence to support this part of Mr X's complaint. As explained above, if Mr X has concerns about the actions of School D, he may be able to pursue them through the school's own complaints process.

63. **An educational psychologist (Officer C):**

- 1. Inappropriately speculated on Child Y's level of need.**
- 2. Misinformed Mr X with incorrect and inappropriate advice.**

3. Took informal steps using his professional advantage to obstruct Mr X's efforts to address the support required by Child Y. Officer C's superior (Officer D) supported his acts of misconduct.

64. In support of his complaint Mr X supplied various documents. I will not set them all out here but they included an email thread with Officer C ending 10 November 2015. Mr X sent this to the Council's Chief Executive. Mr X referred to Officer C being *"overly emotional"* and that Officer C had said he found an email from Mr X *"threatening"*. Mr X said he found some of the language used by Officer C to be inappropriate and that he had overstated the value of his time by reference to his *"above and beyond effort"*.
65. Having reviewed all of the documents provided by Mr X it is clear he has significant concerns about the conduct of Officer C. But the role of the Ombudsman is not to consider the actions of individuals – our role is instead to look for administrative fault by councils as a whole.
66. I consider below the Council's response to Mr X's complaint submitted in 2016 which largely focussed on the conduct of Officer C. As the Council has already considered Mr X's concerns about Officer C, I do not think it is appropriate for the Ombudsman to consider this matter further. The exclusion at paragraph 9 therefore applies.

Officer E from the Council used his professional advantage to further facilitate malpractice by pushing Mr X to meet with Officer C under inappropriate circumstances.

67. In support of his complaint Mr X supplied me with an email thread with Officer E. He said this showed Officer E was *"misleading us into believing that our choices were elective home education or a return to School C"* and *"Pretentiously endorsing the standards of School C."* Mr X says Officer E had also contacted the Principal of School C and asked him to contact Mr X *"without first discussing with us whether this was an appropriate course of action."*
68. The email provided by Mr X shows Officer E said *"I think it is important to state that the Local Authority has no reason to believe that the educational provision of School C is inappropriate for Child Y"*. This is Officer E expressing his professional judgment on behalf of the Council. This is something he was entitled to do. While it is clear Mr X disagrees with what Officer E was saying – this is not evidence of fault.
69. In response to Mr X, Officer E said *"If however, you believe that [School C] is no longer a realistic option then you may have to decide whether to choose to electively home educate Child Y"*. Officer E went on to explain this was because the Council was looking to change the school named in Child Y's statement. But because of a lack of spaces there was no guarantee Mr X's preferred school would be named. While Councils must comply with a parent's preference to name a particular school in a child's statement – this does not apply if the placement would be incompatible with the efficient education of the other children with whom the child would be educated.
70. The email sent by Mr X shows Officer E did contact the Principal of School C *"in order to try and restore your [Mr X's] confidence."* Mr X says Officer E had not asked his permission to do this. But I see no fault in a council officer asking the principal of a child's school to contact the parents of a pupil who has concerns about their child's education.

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71. While recognising the sometimes difficult relationship between Mr X and council officers, I have not seen any evidence to support the matter complained about. It is also unlikely the Ombudsman would find that one council officer encouraging a parent to meet another council officer constitutes administrative fault. I cannot therefore uphold this part of Mr X's complaint.

The Council's actions prevented Mr X from moving forward with an Education Health and Care (EHC) Plan because it would be managed by the school and council staff who had discriminated against Mr X and Child Y.

72. My understanding is that this point stems from Mr X's request that Officers C, D and E were "*permanently excluded from participating in any level of involvement in matters relating to my daughter [Child Y] and her family*". Mr X said the officers were excluded from "*Accessing or sharing information relating to [Child Y]*" and "*Providing advice, decision making or any form of input which directly or indirectly influences or affects outcomes relating to [Child Y]*". Mr X said that if they were "*found participating in any level of involvement they will be personally liable for prosecution*". Mr X made this request under the Data Protection Act.
73. The Council's response to Mr X was that his request would mean no members of its Education Psychology Service or Integrated Children's Disability Service could be involved with Child Y. This was because the officers Mr X referred to had line management responsibility for these two services. The Council's view was that complying with Mr X's request would mean it could not fulfil its statutory duties to Child Y. The Council said its "*interpretation of the Data Protection Act is that the legislation does not require the Council to comply with your request.*"
74. I recognise Mr X's concerns about certain officers being involved in Child Y's education. But I also need to consider the practicalities of his request. While it is reasonable for a parent to express a preference that certain officers do (or do not) work with their child, there is no requirement on a council to comply. I have seen evidence the Council attempted to meet Mr X's request, for example, by appointing an alternative Educational Psychologist. But this was not acceptable to Mr X due to them being managed by Officer C.
75. I do not therefore find the Council to be at fault and its response to Mr X would seem to be fair and proportionate. Given that Mr X made his original request under the Data Protection Act, he may wish to consider contacting the Information Commissioner's Office to establish if the Council has breached the Data Protection Act.

The Council's Chief Executive provided an inadequate response to his complaint.

76. In response to my enquiries the Council explained that in March 2016 Mr X submitted a 32 page document containing various concerns. Officer D offered to meet with Mr X but he refused. Mr X continued to email the Chief Executive and the Council met with him in April 2016 to discuss his concerns. Mr X made it clear he did not want Officer C or any of his staff involved in Child Y's education. But because Officer C was the Council's Principal Educational Psychologist this made it difficult to progress the conversion of Child Y's statement to an EHC Plan.
77. The Council told me that it would normally try and agree a record of complaint before beginning an investigation. In this case it did not think this would be possible due to the difficult relationship with Mr X. But it decided the conduct of Officer C was the integral issue. This needed to be resolved so the transfer of Child Y's statement to an EHC Plan would not be delayed.

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78. It is clear to me that Mr X is determined to achieve the best possible outcomes for his daughter. But I note that this determination has resulted in much correspondence with the Council. I have reviewed all the correspondence available and I consider Mr X's concerns to be at times difficult to identify. The Council also said this in response to my enquiries.
79. While I am sure it is not intentional, Mr X's emails to council officers can also seem somewhat confrontational. I therefore consider that on balance, the Council's approach to dealing with Mr X's complaint was reasonable and proportionate. I turn now to the content of the Council's response.
80. The Chief Executive's response to Mr X is seven pages long. It sets out the background to his complaint and the methodology used to consider his concerns. The Chief Executive considered each point under separate headings with the findings clearly identified. The options available to Mr X were explained.
81. While I understand Mr X is unhappy with the Council's response, it is not the Ombudsman's role to re-investigate matters when they have already been properly considered. This applies even if we would reach a different decision or give different weight to the evidence involved.
82. The Council met with Mr X to discuss his concerns, investigated and provided a detailed response. It did not produce a written record of the complaint before the investigation but there was a legitimate reason for this. I do not uphold this part of Mr X's complaint.

The Council has taken inappropriate steps to try and force Child Y back to School D.

83. In support of this part of his complaint Mr X supplied an email trail with the Council. It is not clear to me how this is relevant to this part of his complaint.
84. Between January 2016 and May 2017 Child Y remained on the roll of School D. The Council's position during this period has been that School D can meet Child Y's needs.
85. The evidence available shows the Council has encouraged Mr X to consider a return to School D. Given the Council's view the school can meet Child Y's needs this is not surprising. I understand the Council is pursuing the matter of Child Y's non-attendance at School D.
86. As I have previously explained the role of the Ombudsman is to look for administrative fault causing injustice. Our investigations focus on whether a council has failed to follow its processes or procedures or if there was fault in how it took decisions.
87. While I understand the relationship between Mr X and the Council has been a difficult one, I cannot uphold this part of Mr X's complaint. This is because there is no evidence of fault as described in the above paragraph.

Agreed action

88. Whenever we find fault causing injustice we look to remedy the injustice caused. The Council failed to complete the annual review process in 2014 and it failed to carry out an annual review in 2015. This meant the Council could not be confident School D was meeting Child Y's needs. This caused uncertainty and distress for Mr X. If it was not for the identified fault it is possible the outcomes for Child Y could have been better. This is something Mr X will never know.

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89. To remedy the fault causing injustice I recommended the Council:
- Apologises in writing to Mr X.
 - Makes a payment to Mr X of £200 for the loss of opportunity to appeal the content of Child Y's statement in 2015.
 - Makes a payment to Mr X of £400 for distress and uncertainty.
 - Makes a payment to Mr X of £100 for the time and trouble he has had to devote to this matter.
 - Reviews its procedures to ensure that annual reviews are carried out as required by the Code of Practice.
90. The Council agreed to my recommendations. It should make the payments to Mr X within one month of the date of my final decision. It should review its annual procedures within two months of the date of my final decision.

Final decision

91. The Council failed to complete the annual review process in 2014 and to carry out an annual review in 2015. This meant Mr X lost the opportunity to appeal to SEND and the fault caused uncertainty and distress for Mr X. The Council has agreed to the Ombudsman's recommendations to remedy the injustice caused and I have therefore completed my investigation.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
16 017 156

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Council's apology for a data breach involving sensitive personal information about Mr and Mrs X to Mr X's former partner is insufficient to remedy the injustice caused. It will pay Mr and Mrs X £1000.

The complaint

1. The complainant, whom I shall call Mrs X, complains that the Council sent sensitive personal information about her husband to his former partner.
2. She says this has made it easier for the former partner to continue restrict contact between her husband and his child and allows her to use this information against him in future.

What I have investigated

3. I have investigated what remedy the Council should offer for the acknowledged data breach and its actions after the breach. I give my reason for not investigating the data breach itself at the end of this statement.

The Ombudsman's role and powers

4. We normally expect someone to refer the matter to the Information Commissioner if they have a complaint about data protection. However, we may decide to investigate if we think there are good reasons. (*Local Government Act 1974, section 24A(6), as amended*)
5. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
6. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
7. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

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8. 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 decision with Ofsted.

How I considered this complaint

9. I read the complaint correspondence Mrs X supplied and made written enquiries of the Council. I considered the Council's response and the documents it supplied. I considered the Ombudsman's *Guidance on Remedies* and sought advice from colleagues. I shared a draft of this decision with both parties and invited their comments. I considered those I received.
10. While the data breach is a matter that can be complained of to the Information Commissioner, we are able to consider remedy for an acknowledged breach. Mrs X could seek compensation via court action, but she has also complained of the Council's actions after the breach. It is for this reason that I have exercised the Ombudsman's discretion to consider the matter of remedy together with the subsequent matters.

What I found

11. A Council officer sent a letter that contained sensitive personal data about Mr and Mrs X to Mr X's former partner by mistake. The Council accepted this happened.
12. The letter dated from October 2015. The Council a confidential copy of its data breach notification form. This shows the breach happened on 7 March 2016.
13. In January 2016, the former partner stopped contact between Mr X and their child, Y.
14. It is clear from the content of the correspondence that the Council focussed initially on the injustice to Mr X rather than the wider family, although both letters from the Council to Mrs X in response to her complaint apologised for the effect on the family.
15. The Council apologised to the family for the data breach. It declined to make a monetary payment in response to Mrs X's request, taking the view its apology was sufficient.
16. The Council has accepted fault for the data breach. I also find it at fault for failing to acknowledge that the breach affected Mrs X and might also have affected Z.

Injustice

17. Mrs X was concerned the data breach caused Mr X's former partner to stop contact with Y. However, the Council's internal data breach recording form shows it happened two months later. I do not therefore find the breach caused Mr X's former partner to stop contact between him and Y. Expenses Mr X later incurred in pursuing contact were not therefore the result of the breach.
18. However, the information about Mr X contained in the breach included details about his mental health after the end of the relationship his former partner would not have known. While this would probably have become clear in court later, the premature release of this information is likely to have caused him some distress. This is unlikely to have been long-term, as court action followed within months.
19. Mrs X says her husband incurred unnecessary cost in the form of having to take time off work to attend a meeting. However, I have seen no evidence the Council

declined to progress his complaint without a meeting. Therefore, the offer of a meeting was one he could have accepted or refused.

20. The breach also included details of sensitive matters in Mrs X's past for which she was not to blame. The former partner would have had no knowledge of these and it is less likely they would have been disclosed in court. Even if they had, it is still the case that the former partner possesses a letter laying out details of Mrs X past she finds unpleasant. And as Mrs X points out, the two women are likely to have to deal with each other for many years to come as Mr X and the former partner are the parents of Y. The distress to Mrs X in the form of embarrassment or discomfort when dealing with her husband's former partner is moderate and is likely to be long-term, outlasting the court case. The Council's failure to specifically acknowledge the effect of the breach on Mrs X until she pointed this out added to her injustice.
21. Although the Council should also have considered the potential effect of the breach on Z, the information contained about him was general in nature. I do not consider the former partner knowing it has any potential effect on him. I do not therefore find he has suffered an injustice from fault by the Council.
22. The Ombudsman does not recommend compensation payments in the same way as courts, which are able to award punitive damages. I have considered the Ombudsman's Guidance on Remedies, which states that where distress is severe or prolonged, we may recommend up to £1000, more in exceptional cases. This is not an exceptional case, though as already stated, Mrs X's injustice is likely to be long-lasting.

Agreed action

23. To remedy the injustice caused by fault, the Council will pay Mr and Mrs X £1000. This is made up of £250 for the distress caused to Mr X by the premature disclosure of information about his mental health and £750 for the prolonged distress caused to Mrs X in knowing her husband's former partner has information about upsetting events in her past each time the two women have to deal with each other.

Final decision

24. I have upheld the complaint and closed the case as the Council has agreed to provide a suitable remedy for the injustice caused by fault.

Parts of the complaint that I did not investigate

25. I have not investigated the breach as neither party disputes it happened.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
17 000 453

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Council has accepted fault in how it investigated allegations of historical abuse which were made against Mr B. It did not follow its review protocol for decisions which involve professional disagreement. It has apologised and has amended the outcome of the investigation to reflect that it considers the allegations to be false. As a result, Mr B's injustice has been remedied. It is not appropriate to conduct a full review of how the Council conducts investigations into abuse allegations because there is no evidence of wider fault.

The complaint

1. The complainant, whom I refer to as Mr B, complains about the Council's investigation into allegations of historical child sexual abuse which were made against him. He says the Council first found the allegations to be "*unsubstantiated*", which was incorrect, as the evidence proved he was not the perpetrator. He says the Council subsequently reviewed its decision, decided the allegations were "*false*", changed the outcome, and apologised to him.
2. Mr B says he is not satisfied with the outcome of the Council's review, because it did not address whether this had happened in other investigations.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I considered the information provided by Mr B and the Council. I wrote to Mr B and the Council with my draft decision and considered their comments.

What I found

What happened

6. Mr B was arrested in February 2016 after allegations of historic sexual abuse were made against him. However, the Police took no further action.
7. In September 2016 the Council contacted Mr B and told him it had investigated the allegations and found them to be “*unsubstantiated*”.
8. Mr B requested a review of this decision. The Council conducted a review in January 2017 and found fault with the decision of the original investigation. The Council said that, while the Chair’s view was a professional judgement, it had decided that the evidence did not support the finding. The review found the allegations to be “*false*” and apologised to Mr B.
9. Mr B wrote to the Council again in February and said the review did not properly acknowledge how the Chair had disregarded evidence, and did not look into whether previous investigations had led to similarly incorrect conclusions. He said the Council’s letter to him following the review was “*defensive*”. He questioned the efficacy of the Council’s investigative practices on a wider scale.
10. The Council responded to Mr B’s letter and said the error appeared to be isolated, because in this case the Council’s protocol for reviewing investigations which involve professional disagreement was not followed. It said, had this protocol been followed when professional disagreements were voiced at investigation stage, it would have reviewed the finding earlier and would have concluded that the allegations were “*false*”. It said this error did not warrant a review of previous investigations, or the Council’s processes.

Analysis

11. The Council has accepted fault in how it originally considered the allegations against Mr B. It has also accepted that, had it followed its protocol of reviewing decisions which involve professional disagreement, it would have concluded that the allegations were “*false*” rather than “*unsubstantiated*”, and Mr B would not have needed to ask for a review of the decision.
12. Mr B’s complaint is that, because there was fault in how the Council considered the evidence in this case, there are serious questions about how it conducts similar investigations on a wider scale.
13. I do not consider there to be sufficient evidence to suggest that the Council should review its previous decisions or should change its processes. The Council’s position is that this was an isolated error which resulted from the correct protocol not being followed. Mr B has not provided evidence to suggest that the problem is widespread. An error in Mr B’s case does not necessarily mean there must have been errors in similar cases.
14. The Council has already remedied Mr B’s personal injustice. In order to consider conducting a wide-ranging investigation into the Council’s previous decisions and its investigative practices, I must be satisfied that the available evidence suggests that there have been significant systemic errors which have affected the quality and outcomes of a number of investigations. I am not so satisfied and, as a result, I do not consider further action necessary.

Final decision

15. The Council has accepted fault in how it investigated allegations of historical abuse which were made against Mr B. It did not follow its review protocol for decisions which involve professional disagreement. It has apologised and has amended the outcome of the investigation to reflect that it considers the allegations to be false. As a result, Mr B's injustice has been remedied. It is not appropriate to conduct a full review of how the Council conducts investigations into abuse allegations because there is no evidence of wider fault.

Investigator's final decision on behalf of the Ombudsman

Complaint reference:
17 006 069

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: A school admission appeal panel was at fault because the clerk's notes of the appeal do not show how it reached its decision when considering cases where children including Miss X's daughter had lost places at School A as a result of admissions arrangements the Council had accepted breached the School Admissions Code 2014. The Council will offer fresh appeals with a new panel and clerk to each parent affected.

The complaint

1. The complainant, whom I shall call Miss X, complains of fault in the way a school admission appeal panel considered her appeal for a Reception place for her daughter, Y at School A.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We cannot question whether an independent school admissions appeals panel's decision is right or wrong simply because the complainant disagrees with it. We must consider if there was fault in the way the decision was reached. If we find fault, which calls into question the panel's decision, we may ask for a new appeal hearing. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I read Miss X's complaint and spoke to her on the telephone. I considered documents supplied by the Council, including the clerk's notes of the hearing. I checked the School Admissions Code 2014 and the School Admission Appeals Code 2012.

What I found

5. The Council changed its admissions arrangements for schools in September 2016.
6. The change removed priority in the over-subscription criteria for children outside schools' catchment areas who had siblings over those who did not.

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7. Following a challenge by a parent, the Schools Adjudicator ruled in January 2017 the admissions arrangements for one school were unfair and invited the Council to consider what to do about other schools for which it controls admissions. The Council decided in February 2017 the admissions arrangements for all its schools breached the School Admissions Code 2014.
 8. Miss X applied for a place in Reception at School A for September 2017 for her daughter, Y. Infant class-size prejudice applied. This means that infant classes can only surpass 30 in limited circumstances. The Council refused the place and she appealed. It is not in dispute that Y would have gained a place at School A but for the admissions arrangements that the Council has accepted breached the School Admissions Code 2014. The loss of a place in this way is one of the limited circumstances in which the infant class-size limit can be exceeded by a panel upholding an appeal.
 9. The School Admission Appeals Code 2014 lays out the procedure panels must follow in such circumstances. This is more complex than for other appeals where the infant class-size limit alone applies. The panel clerk's notes of a hearing must make it clear how the panel reached its decision. That is particularly important in a case such as this.
 10. The Council accepts the clerk's notes of this appeal do not make it clear how the panel reached its decision to turn down the appeal. This was fault causing injustice in the form of uncertainty whether the panel acted correctly in refusing the appeal. This also applies to other parents in the same hearing whose children lost places at School A as a result of the admissions arrangements that breached the School Admissions Code 2012.

Agreed action

11. The Council will offer a fresh appeal with a new panel and clerk to all the parents in the same hearing whose children lost places at School A as a result of the admissions arrangements that breached the School Admissions Code 2012.

Final decision

12. I have upheld the complaint and closed the case as the fresh appeal with a new panel and clerk is a suitable remedy for the injustice caused by the fault found.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
17 006 177

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: A school admission appeal panel was at fault because the clerk's notes of the appeal do not show how it reached its decision when considering cases where children including Mrs B's daughter had lost places at School A as a result of admissions arrangements the Council had accepted breached the School Admissions Code 2014. The Council will offer fresh appeals with a new panel and clerk to each parent affected.

The complaint

1. The complainant, whom I shall call Mrs B, complains of fault in the way a school admission appeal panel considered her appeal for a Reception place for her daughter, C at School A.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We cannot question whether an independent school admissions appeals panel's decision is right or wrong simply because the complainant disagrees with it. We must consider if there was fault in the way the decision was reached. If we find fault, which calls into question the panel's decision, we may ask for a new appeal hearing. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I read Mrs B's complaint and spoke to her on the telephone. I considered documents supplied by the Council, including the clerk's notes of the hearing. I checked the School Admissions Code 2014 and the School Admission Appeals Code 2012.

What I found

5. The Council changed its admissions arrangements for schools in September 2016.
6. The change removed priority in the over-subscription criteria for children outside schools' catchment areas who had siblings over those who did not.

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7. Following a challenge by a parent, the Schools Adjudicator ruled in January 2017 the admissions arrangements for one school were unfair and invited the Council to consider what to do about other schools for which it controls admissions. The Council decided in February 2017 the admissions arrangements for all its schools breached the School Admissions Code 2014.
 8. Mrs B applied for a place in Reception at School A for September 2017 for her daughter, C. Infant class-size prejudice applied. This means that infant classes can only surpass 30 in limited circumstances. The Council refused the place and she appealed. It is not in dispute that C would have gained a place at School A but for the admissions arrangements that the Council has accepted breached the School Admissions Code 2014. The loss of a place in this way is one of the limited circumstances in which the infant class-size limit can be exceeded by a panel upholding an appeal.
 9. The School Admission Appeals Code 2014 lays out the procedure panels must follow in such circumstances. This is more complex than for other appeals where the infant class-size limit alone applies. The panel clerk's notes of a hearing must make it clear how the panel reached its decision. That is particularly important in a case such as this.
 10. The Council accepts the clerk's notes of this appeal do not make it clear how the panel reached its decision to turn down the appeal. This was fault causing injustice in the form of uncertainty whether the panel acted correctly in refusing the appeal. This also applies to other parents in the same hearing whose children lost places at School A as a result of the admissions arrangements that breached the School Admissions Code 2012.

Agreed action

11. The Council will offer a fresh appeal with a new panel and clerk to all the parents in the same hearing whose children lost places at School A as a result of the admissions arrangements that breached the School Admissions Code 2012.

Final decision

12. I have upheld the complaint and closed the case as the fresh appeal with a new panel and clerk is a suitable remedy for the injustice caused by the fault found.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
17 006 405

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: A school admission appeal panel was at fault because the clerk's notes of the appeal do not show how it reached its decision when considering cases where children including Mrs Q's son had lost places at School A as a result of admissions arrangements the Council had accepted breached the School Admissions Code 2014. The Council will offer fresh appeals with a new panel and clerk to each parent affected.

The complaint

1. The complainant, whom I shall call Mrs Q, complains of fault in the way a school admission appeal panel considered her appeal for a Reception place for her son, P at School A.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We cannot question whether an independent school admissions appeals panel's decision is right or wrong simply because the complainant disagrees with it. We must consider if there was fault in the way the decision was reached. If we find fault, which calls into question the panel's decision, we may ask for a new appeal hearing. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I read Mrs Q's complaint and spoke to her on the telephone. I considered documents supplied by the Council, including the clerk's notes of the hearing. I checked the School Admissions Code 2014 and the School Admission Appeals Code 2012.

What I found

5. The Council changed its admissions arrangements for schools in September 2016.
6. The change removed priority in the over-subscription criteria for children outside schools' catchment areas who had siblings over those who did not.

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7. Following a challenge by a parent, the Schools Adjudicator ruled in January 2017 the admissions arrangements for one school were unfair and invited the Council to consider what to do about other schools for which it controls admissions. The Council decided in February 2017 the admissions arrangements for all its schools breached the School Admissions Code 2014.
 8. Mrs Q applied for a place in Reception at School A for September 2017 for her son, P. Infant class-size prejudice applied. This means that infant classes can only surpass 30 in limited circumstances. The Council refused the place and she appealed. It is not in dispute that P would have gained a place at School A but for the admissions arrangements that the Council has accepted breached the School Admissions Code 2014. The loss of a place in this way is one of the limited circumstances in which the infant class-size limit can be exceeded by a panel upholding an appeal.
 9. The School Admission Appeals Code 2014 lays out the procedure panels must follow in such circumstances. This is more complex than for other appeals where the infant class-size limit alone applies. The panel clerk's notes of a hearing must make it clear how the panel reached its decision. That is particularly important in a case such as this.
 10. The Council accepts the clerk's notes of this appeal do not make it clear how the panel reached its decision to turn down the appeal. This was fault causing injustice in the form of uncertainty whether the panel acted correctly in refusing the appeal. This also applies to other parents in the same hearing whose children lost places at School A as a result of the admissions arrangements that breached the School Admissions Code 2012.

Agreed action

11. The Council will offer a fresh appeal with a new panel and clerk to all the parents in the same hearing whose children lost places at School A as a result of the admissions arrangements that breached the School Admissions Code 2012.

Final decision

12. I have upheld the complaint and closed the case as the fresh appeal with a new panel and clerk is a suitable remedy for the injustice caused by the fault found.

Investigator's decision on behalf of the Ombudsman

Complaint reference:
16 015 818 & 16 015 819

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: The Council was at fault for delaying in assessing the complainant's needs when she was incapacitated due to complications arising from a pregnancy. Further it failed to co-ordinate a response between its Adult and Children's Services which both dealt with her case. When a care package was put in place it focused too heavily on needs the complainant had arising from a diagnosis of Asperger's Syndrome and not her short-term physical incapacity. It also failed to properly explain what charges it would make for that care. All these faults caused distress and therefore the complaint is upheld. However, it is not found they led directly to a child protection investigation for which the Council is not criticised.

The complaint

1. The complainant, whom I have called 'Mrs B', complains at the service she received from Council social services (both Adult and Children's Services) from April 2016 onward. In particular Mrs B complains the Council:
 - Failed to adequately support her and her family from April 2016 when they were in crisis, arising from complications in Mrs B's pregnancy; *and*
 - Instead intervened inappropriately in undertaking child safeguarding and child protection work rather than providing the support needed; *and*
 - Displayed a biased and discriminatory attitude towards her; in particular in its child protection work. Mrs B also complains at interactions the Council had with the father of one her children and the Courts which ran concurrently to the child protection work it undertook.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. We must also consider whether any fault has had an adverse impact on the person making the complaint. I 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*)

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4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
 5. We cannot investigate a complaint about the start of court action or what happened in court. (*Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended*)

How I considered this complaint

6. Before I completed my investigation and issued this decision statement I considered the following:
 - Mrs B's written complaint to the Ombudsman and supporting evidence including details of her correspondence with the Council over the matters raised.
 - Information provided by the Council in response to written enquiries.
 - Relevant law and guidance as referred to in the text below.
 - Comments Mrs B made on two draft decision statements setting out my thinking on the complaint. Comments on a first draft decision led me to make further enquiries of the Council and I also took account of information I received in reply to those as well as its comments on the draft decision statement.

What I found

Background – the key facts of this complaint

7. The beginning of events covered by this complaint is April 2016. However I note that before this date there was some history of contact between Mrs B and the Council. Mrs B is a married woman with three children. She has two disabled children, whom I will call 'Child X' and 'Child Y'. The Council has provided some support to Mrs B in meeting both children's needs since 2009. In addition, in May 2015, Mrs B received a diagnosis of Asperger's Syndrome. The Council's Adult Services considered if there was any service it could offer Mrs B further to that diagnosis and contacted her about this, but it was not something she pursued.
8. The reason the Council became further involved in April 2016 followed Mrs B becoming pregnant with a third child. Within a few days at the end of April the Council received two letters, one from a Clinical Psychologist working with Mrs B and one from a Consultant Perinatal Psychiatrist. Both letters told the Council Mrs B had experienced complications in her pregnancy. She had a condition known as 'Symphysis Pubis Dysfunction' or 'SPD' which causes swelling and pain around the pelvic joints. It left Mrs B with limited mobility. This in turn created problems caring for her family. In particular Mrs B could no longer drive and transport Child Y to his school, which involved a round trip of around 40 miles. Further the letters told the Council Mrs B was suffering "*significant anxiety and low mood*". Both medical professionals suggested the Council needed to urgently review the support it provided to Mrs B.
9. In response to these requests the Council referred Mrs B's case to both its Adult and Children's Services. Its Adult Services could not carry out an assessment until the end of June 2016 (when Mrs B had given birth to her third child I will call 'Child Z'). However, a re-ablement worker from the service had telephoned Mrs B at the end of April 2016. They recorded Mrs B saying she had to use a wheelchair and needed help around the house. The Council said Mrs B "*refused the support*"

it offered in response although it did not record what this was. In comments the Council has clarified the re-ablement service helps with *“short term needs and specific tasks, such as taking someone to appointments [and] support to access the community”*.

10. The Children’s Services referral went to its Safeguarding ‘hub’. Officers decided a social worker from Children’s Services should visit Mrs B and complete an assessment of need. The stated purpose of the assessment was *“to assess parenting ability”* and *“support networks”* in place for Mrs B and her husband, whom I will call ‘Mr B’.
11. The assessment took place in mid-May 2016. It referred to the physical complications Mrs B had with her pregnancy which required her to use a wheelchair at times. Also that Mr B was in full-time employment and because of this unable to help with matters such as the school run for Child Y. Mrs B told the Council she had separately contacted its specialist school transport team but they had said they could not help.
12. The social worker spoke to the fathers of both Child X and Child Y, both of whom took care of their children regularly. The social worker recorded Child Y’s father saying he *“does what he can”* to help with childcare for Child Y. This included help *“with the school run”* (the school being significantly closer to his house than that of Mrs B). The assessment also noted Mrs B’s parents sometimes visited and helped with domestic tasks such as housework and cooking.
13. The social worker had no concerns for the welfare of Children X or Y. She concluded the Children’s Service did not need to offer more support saying it was not its responsibility to help with school transport or housework. The social worker’s line manager signed off this assessment noting *“it is clear the family have a significant amount of support from agencies and extended family”*.
14. Shortly after the assessment completed (at the end of May 2016) Mrs B required hospital admission and she gave birth to Child Z in mid-June. When the Council’s Adult Care Services assessed Mrs B shortly after that, its social worker noted the practical difficulties Mrs B had in providing care for her children. In particular that she needed help in preparing food, housework and laundry. Also that she had need for help with mobility and personal hygiene. The assessment set out that some of these needs were short-term and associated with Mrs B’s pregnancy. Although the assessment also noted that because of her Asperger’s Syndrome Mrs B had some underlying need for support with certain tasks. For example, Ms B struggled to perform some tasks independently such as cooking because of difficulties she experiences with the textures of some foods, a common feature of Asperger’s Syndrome.
15. The assessment noted Mrs B relied on Mr B’s help for many tasks. It recorded Mrs B saying he had to *“do everything”* and while he was temporarily off work she had concerns for what would happen when he returned to work.
16. The Council considered it needed to provide Mrs B with services under powers set out in the Care Act 2014. This was because there were certain ‘outcomes’ she could not achieve (as defined under the Act) and that this had a significant impact on her wellbeing.
17. The Council proposed offering support of between two and two and a half hours a day. This would be via a care agency. Workers from the Agency would support Mrs B with ‘independent living skills’ such as cooking, cleaning and domestic tasks.

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18. From notes kept by the Council it is also clear its Adult Services knew of the problems Mrs B had getting Child Y to school. Its social worker enquired with its School Transport team and received advice they could not help. This was because Child Y's school was more than seven miles away. Following this advice the social worker told Mrs B she was "*unable*" to arrange transport for Child Y to go to school. Later, when replying to Mrs B's complaint the service said they considered this a matter for Children's Services to address.
 19. The Council's Adult Services put a support plan into place from the end of July 2016. The Council arranged for an Agency to visit Mrs B for an hour and a half each week day. The support plan said this was to help Mrs B "*prepare a snack for lunch when prompted*", to help her "*understand content of mail*" and give "*prompts and gentle support to maintain home environment*". The support plan said the Council would review the arrangement after three months. I noted these hours were less than originally recommended. The Council recorded Mrs B as satisfied with what it offered although she disputes this saying that "*straight away*" she told the Council the hours offered were not enough.
 20. The Council recorded that soon after the service began Mrs B complained about its suitability. In particular Mrs B said she did not know exactly what tasks the service could provide. For example whether support workers could collect shopping. In response her social worker said the support service was only there to promote independent living skills needed because of Mrs B's Asperger's Syndrome.
 21. In early August 2016 Mrs B's social worker visited her in response to these concerns. During that visit Mrs B told the social worker about details of confrontation she had with Mr B. The social worker recorded Mrs B saying that twice Mr B had grabbed her face causing pain and there had been "*heated arguments*" between them. The social worker had resulting concerns for the welfare of Mrs B's children. So she referred the case back to its Children's Services via its Safeguarding hub. Mrs B says the Council's record of this conversation is inaccurate and exaggerates what she said about Mr B. Mrs B also says she spoke to the social worker about Mr B because of concerns she had for his mental health.
 22. Following this re-referral, Children's Services carried out a further review of the family's needs in August 2016. It recorded that both Mr and Mrs B had insight into the causes of their confrontation. They described support they had received to date and further support they had asked for. The Council decided there was no need to take further action.
 23. Shortly afterwards, in early September 2016, Mrs B contacted the Council. She said the family still needed more support. In particular she suggested continued problems getting Child Y to school. The Council's notes said Mrs B was driving again, although she says on medical advice this could only be for short distances. The Council comments that as it had only recently completed an assessment it saw no need to complete another one.
 24. Towards the end of September the Council received contacts from a third party agency. The agency had concerns for Mrs B and the welfare of her children. This followed contact from Mrs B where it said she referred to confrontations with Mr B and reported her saying she suffered "*emotional abuse*" from him. Then, at the beginning of October the police contacted the Council. The notes of the referral suggested police attended a disturbance at Mr and Mrs B's home. A later report for the Council said Mr B had 'slapped' Mrs B and left the home with Child Z for a

time. The police noted that Mrs B thought Mr B was unwell with undiagnosed mental health problems. By this time I note that Mr B was not working and supporting Mrs B at home. I understand by September 2016 Child Y was spending more time staying with his father (supported also by Mrs B's father). However he could not care for him full time meaning Mrs B still had some responsibilities for ensuring his school attendance. Mrs B notes the disturbance in October took place on a day when the Council care provider did not turn up at her house as planned.

25. In response the Council began a child protection investigation. While it prepared for an initial child protection case conference the Council received a letter from Mrs B's Consultant Perinatal Psychiatrist. This did not suggest concerns for the wellbeing of Mrs B's children. It said Mr and Mrs B were struggling to cope following the birth of Child Z, Mr B having changed work patterns (he was then on unpaid leave). Also they had difficulties in communication because of Mrs B's Aspergers Syndrome. The letter said Mrs B believed the couple would benefit from more services from the Council but it was not specific about what services she wanted.
26. In mid-November 2016 the initial child protection case conference took place. The Council had concerns about the reports of Mr B's behaviour disclosed by Mrs B. Its social worker considered the couple were "minimising" their arguments. Their report noted Mr B had previously left the home for two nights following an argument with Mrs B and considered he may do so again. She noted Mrs B's self-referrals both to the third party organisation and also to an NHS service where she reportedly described difficulties coping alone. For these reasons the Council considered the children in the home at risk. The social worker recommended Children Y and Z be made the subject of Child Protection Plans. As part of the child protection investigation the social worker spoke to the fathers of children X and Y. Child X's father subsequently did not return Child X to Mrs B's care despite a shared residency order. Mrs B contends the Council advised him to take this action. However the Council's notes of its contacts with Child X's father do not say this. They say its social worker repeatedly advised Child X's father to seek independent advice on Child X's residency if he did not wish to return him to Mrs B's care.
27. The initial child protection conference had an independent chair-person. Before the conference took place the Chair met with Mr and Mrs B and they also attended the conference. During the conference Mrs B explained her view that Mr B was struggling with his mental health and needed support. Mrs B also set out that she felt let down by the Council since the spring when she asked for more support. At the conference Mr B explained the support he had begun to receive and the couple explained how they were making changes to avoid any further incidents. The conference also had positive reports from schools and health professionals not expressing concerns for the children's welfare.
28. A representative from the Council's Adult Services also attended. He recognised the assessment undertook in June *"had been flawed from the onset and had not been done correctly, the wrong support had been put in place, this had not met parent's needs, this would now be reviewed."* The Chair rejected the Council's recommendation to place Children Y and Z on Child Protection Plans. *The Chair did not agree the children were at risk of 'significant harm'.* Instead they recommended the Council support the children through a 'Child in Need' plan. This would include:

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- That the children not be exposed to domestic violence;
 - That issues around Child Y's education needed to be resolved by his parents;
 - That the issue of where Child X should live needed to be resolved;
 - That social workers should work with Children X and Y to gain their views;
 - A parenting assessment would be undertaken to understand the parental view of domestic violence and its impact on children.
29. After the child protection conference in November 2016 the Council's Adult Services re-assessed Mrs B's needs. It offered to continue providing services, although less than previously. But around the same time Mrs B decided she no longer wanted that support and the care package cancelled. Mrs B told us that she began using the services of a private cleaner to support her instead.
30. The conference recorded the Child in Need plan would be reviewed a few days after the meeting. I have seen no notes of any such review. However, a review took place in December 2016. At this meeting the Council told Mr and Mrs B the parenting assessment was not compulsory. Mr and Mrs B did not consider it necessary given the earlier incidents took place at a time of great stress, when they believe the Council had let them down. Also that they had taken steps to address their conflicts. Mrs B is unhappy however that Child X's father later introduced this matter into residency proceedings at the Family Court.
31. A further review of the Child in Need plan took place in March 2017. Before then the Council recorded in late December 2016 that Mr and Mrs B had changed their mind about co-operating with the steps envisaged in the plan. This followed a Family Court hearing in December begun by Mrs B to require Child X's father to comply with the joint residency order. During the hearing Child X's father raised the child protection proceedings and the Court contacted the Council seeking more information about its involvement. But at the time neither Child X's social worker nor their senior officer was available meaning several hours passed before the Court made its decision. The Council has said the absence of key staff was unfortunate but it had no prior knowledge of the proceedings and so could not plan for the Court's contact (although Mrs B says it was mentioned at the earlier Child in Need review meeting). Mrs B says that because of the residency dispute she had to cancel a family holiday arranged for November 2016 and incurred legal fees. She says her costs increased because of the Council's inability to respond to the Court straight away in December 2016.
32. In February 2017 Mr and Mrs B met with a worker from the Council's Family Support Team to discuss the parenting assessment. The worker's notes say that she challenged Mr and Mrs B on their motives for undertaking the assessment. The key worker understood Mr and Mrs B only agreed to the assessment to avoid a negative impact on any future residency proceedings. The key worker recorded Mr and Mrs B *"will not gain anything by the intervention as they do not see the need for it given belief that the incident was a one off [...] this is their 'reality' of the situation rather than my belief"*.
33. After the review meeting in March the Council decided to close the case, understanding it had no further role.
34. In December 2016 the Family Court ruled Child X's father should comply with the shared residency order. However, there have been subsequent proceedings involving both Child X (now resolved) and Child Y which are ongoing. This also follows Mr and Mrs B's decision to emigrate in May 2017.

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35. In January 2017 Mrs B received an invoice for charges for her social care received between July and November 2016 (this including a notice period after Mrs B cancelled care). Mrs B said she had no prior knowledge the Council would charge her for care. The Council says this *"would have been"* discussed during the assessment in June although there is no note of this. It also says that in September it had written to Mrs B inviting details of her income and expenses so it could assess her contribution to care charges but it did not receive a response. So it assessed her as owing the 'full cost' of her care which was around £100 a week. The Council has invoiced Mrs B for outstanding care charges totalling around £1800.
36. Both during and further to the events described above Mrs B made a complaint using the Council's complaint procedure. The relevant service departments answered these and the Council signposted Mrs B to our service. However it declined Mrs B the choice of using a statutory procedure for complaints about Children's Services set up following the Children's Act 1989. This allows for an independent investigation of such complaints and after that, if still dissatisfied, the complainant can ask a review panel to consider the case.
37. The Council said it did this because *"an independent investigation would not be able to investigate whether the decision to initiate the child protection process was correct or not"*. Also because *"an independent investigation could not consider whether professional views or decisions made during the child protection process were wrong, simply because you disagree with them"*. The Council points out that we have previously supported the approach of not invoking 'Stage 2' of the statutory procedure when investigating some complaints made to us by residents of the County.

My analysis

38. Considering events in order the first matter I note is that Mrs B had to wait too long for an assessment of need from the Council's Adult Services after it received a referral in April 2017. I noted that when Mrs B's specialists contacted the Council they stressed the sudden physical limits placed on her because of the complications of her pregnancy. Mrs B stressed the same in her telephone conversation with the service. I note the Care Act 2014 does not place a time limit on how long a council has to complete a needs assessment. But as a benchmark I do not consider someone should usually have to wait more than four weeks for assessment to start. In Mrs B's case she should arguably have waited less time for assessment to begin as her needs appeared urgent. Yet she had to wait two months for the assessment to begin. That was too long in the circumstances and justifies a finding of fault.
39. The second matter I note is that Mrs B had two separate assessments, one from its Children's Services and one from its Adult Services. I am not sure this was necessary as the Council had the power to undertake only one assessment. The Council says this might have been burdensome for Mrs B, something she disagrees with. But it is clear the different services had different resource issues. To wait for Adult Services might have delayed the Children's Services assessment. Given this context I do not find the Council at fault for not undertaking a joint assessment. The fault lies in the delay by Adult Services referred to above.
40. I did not think it was inappropriate for the first Children's Services referral to be routed via its safeguarding hub. The requests the Council received implied Mrs B needed help to meet her children's needs and they might have been at risk of

harm otherwise (even if through no fault of Mrs B). I also do not have any reason to find the Council carried out the assessment which followed any differently than how it would have treated it, had the enquiry been routed a different way.

41. While I do not criticise the Council for not undertaking a joint assessment I do find there was a lack of joined up service in responding to Mrs B's needs. This is most evident when considering a problem Mrs B presented from the outset in taking Child Y to school. No-one questioned that Mrs B could no longer physically transport Child Y to school given her incapacity. But no service took responsibility for addressing this need. Children's Services received a vague assurance from Child Y's father that he might help. But its assessment was not precise enough in identifying the support Mrs B received from Child Y's father or her parents. That was a fault.
42. Later, the Council's Adult Services went back to Children's Services about this issue. But it did so without engaging in any meaningful way on how the Council might address Child Y's need to go to School. I also found neither service prepared to take the matter up with School Transport services who applied their school transport policy rigidly.
43. I can accept that all professionals might have thought this was a problem Mrs B brought on herself. Taking a child to school so far away was unusual. But I note Mrs B had recently moved house and perhaps wanted to spare Child Y disruption of moving schools also. I also note the school was close to his father. Also that he has special educational needs and needed to prepare for any change of schools. Further, no Council officer seems to have considered if there was a nearer school with a place that would take Child Y. The Council should have taken all these factors into account. It would not matter to Mrs B which service met the need. What mattered was that she received clear advice about whether the Council accepted there was a need and how it could be met. I consider all services involved with Mrs B had a responsibility to ensure her concerns about school transport were properly addressed. I find they were not and this was a fault.
44. When the Council's Adult Services assessed Mrs B's needs I would not fault the way it applied the Care Act 2014 to her case. But its support plan did not flow logically from its assessment. As I see it, Mrs B's needs were twofold. In the short-term she was physically incapacitated making daily living tasks harder for her. In the longer-term Mrs B's Aspergers Syndrome makes it harder for her to plan for certain tasks and some support for that might have been useful.
45. But when the Council produced its support plan it focused only on her needs related to having Asperger's Syndrome. This was inappropriate. Because it must have been obvious to the Council that in the short-term Mrs B did not need a "*gentle prompt*" to do household tasks; she needed someone who could do them for her. The support plan could not therefore meet Mrs B's short-term needs and justifies a further finding of fault.
46. I also agree with Mrs B that it should not have taken the Council over three months to review that plan. It should have been apparent from Mrs B's immediate contacts once the service began that it was inappropriate. So this failure to review was a further fault.
47. Also, I do not find the audit trail surrounding the charges made for this care straightforward to follow. The Council says it "*would have*" discussed with Mrs B making a charge for the service but I cannot find this reflected in its paperwork. It is also not enough for the Council to refer to charging for services in a general

way. Statutory support guidance accompanying the Care Act says: *“The personal budget is the mechanism that, in conjunction with the care and support plan, or support plan, enables the person, and their advocate if they have one, to exercise greater choice and take control over how their care and support needs are met. It means: knowing, before care and support planning begins, an estimate of how much money will be available to meet a person’s assessed needs and, with the final personal budget, having clear information about the total amount of the budget, including proportion the local authority will pay, and what amount (if any) the person will pay”* (my emphasis).

48. Given Mrs B’s dissatisfaction with the support put in place by the Council I doubt she would have kept using it until October 2016 had she appreciated the charges. I foresee she would have brought in a private service sooner. I recognise the Council wrote to Mrs B as it states in September 2016. But overall I am not satisfied it gave Mrs B enough information about the charges she might incur before the service began. That was a fault.
49. Returning therefore to how I first summarised Mrs B’s complaint I agree with her that the Council did not offer her enough or timely support in response to the contacts made in April 2016. I also note this is something the Council recognised itself when a representative from Adult Services attended the child protection conference in November 2016.
50. However, I do not agree with Mrs B the Council’s investigations into alleged domestic violence have been unreasonable or disproportionate. Wherever Council Children’s Services work with a family their primary concern has to be for the welfare of the child. I can understand why professionals had concerns here. The Council understood there were repeated confrontations between Mr and Mrs B. The reports of these confrontations came from three different outside agencies as well as what Mrs B told one of its social worker. While I can make no finding of fact about what truly happened between Mr and Mrs B there was a consistency to those reports. Which leads me to find the Council’s concern about these confrontations and the potential impact on the children was reasonable.
51. Mrs B queries if the incidents reported met the definition of domestic violence. The Government defines this as *“any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to:*
- *psychological*
 - *physical*
 - *sexual*
 - *financial*
 - *emotional”*
52. I note that what the Council understood had taken place were incidents where Mr B used some physical force against Mrs B. Also there was more than one incident. Mrs B says the incidents were out of character and Mr B used only minimal force. Also that they resulted from his reaction to stress. But even so I do not find it unreasonable the Council considered the incidents met the definition above.
53. I note that on the first occasion in August 2016 the Council did not take action following an assessment. It is clear this was in response to the representations

made by Mr and Mrs B. It only changed its mind and intervened further when reports of confrontations escalated. I understand Mrs B objects to some of the contents of a social worker's report that went to an initial child protection conference but I found this put across Mr and Mrs B's views. I have no reason to find that report did not fairly represent the views of third parties also consulted or the social worker's own honestly held opinions. I am satisfied the Council listened fairly to Mr and Mrs B's view of the confrontations between them. I do not find the Council showed bias or was discriminatory towards Mrs B in its investigation of this matter.

54. However, I note that in between assessments in September 2016 Mrs B had contacted the Council and asked for more services. I find its response was lacking. While Children's Services did not need to carry out a further assessment it should have alerted Adult Services to Mrs B's ongoing dissatisfaction. In my view this was a continuation of the faults identified above where both services failed to co-ordinate action and Adult Services did not review its support plan. This too was a fault.
55. I considered next the impact of the child protection proceedings on the residency disputes involving Children X and Y. I understand Mrs B's concerns that the child protection investigation had negative consequences for her care of Child X. But by law the Council had to tell Child X's father of the child protection concerns. It could not then stop him introducing this matter to the Family Court. I consider it is then a matter for the Court to decide what weight to put on the child protection investigation.
56. It was also Child X's father who decided to take him into his care. I found no evidence the Council encouraged him to take this step. I accept the Council appears not to have tried to dissuade Child X's father from this course of action. But it is not there to take sides in the residency dispute; which is for the Family Court to resolve. So there is no fault in that.
57. I did not find any fault in the Council's actions in December 2016 when the family court considered Child X's residency. The evidence conflicted about whether the Council had any awareness of the proceedings. But it was never party to the proceedings. So was not under any formal notice to attend the Court. It was unfortunate it could not respond more quickly to the Court's contact on the day but I could not find fault in that in these circumstances.
58. The Family Court will also place its own weight on any evidence the Council provides in respect of any outstanding child care proceedings. It will note that the independent Chair of the child protection conference did not consider Mrs B's children needed to be subject to any child protection plans. Mrs B can also explain to the Courts why her and Mr B did not complete the Parenting Assessment envisaged as part of the Child in Need review should this be introduced to evidence.
59. Finally, I noted the complaint procedure followed by the Council in this case. I had concerns at the reasons put forward by the Council for not putting Mrs B's complaint through the statutory procedure for Children's Services complaints. I could see no reason why an independent investigation could not have considered if the Council followed proper procedure in its child protection enquiries. I also consider fault in procedure can extend to professional judgments; for example if those judgments are based on an incomplete understanding of the facts arising from a procedural failing.

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60. So I do not accept the Council's reasoning. However, I think there were practical reasons for not routing the complaint via the statutory procedure on this occasion. Because Mrs B's complaint involved two services using the procedure might have delayed any investigation we undertook. Or led to its fragmentation. So I do not therefore find fault in the Council's decision not to follow the procedure on this occasion albeit for different reasons to those it put forward.

The injustice caused to Mrs B

61. At paragraphs 38, 41, 43, 45, 46, 48 and 54 I have identified faults in the service Mrs B received from the Council in response to her requests for support arising after her pregnancy complications. I cannot say that but for these faults Mrs B would have received more support with matters such as getting Child Y to school and help with domestic tasks. This is because the Council did not consider in enough detail the support networks in place for the family between June and November 2016. It did not consider to what extent those were sustainable (for example when Mr B ceased working to provide more support). Nor how the picture changed over time (as Mrs B became more able). But I consider it possible Mrs B missed out on support services. This uncertainty is a cause of distress to Mrs B and that is part of her injustice. Also distress arises from the Council's failure to explain properly costs Mrs B would incur for her care.
62. However, I can establish no causal link between the Council failings and the incidents which led to its child protection investigations. I accept that had the Council been supporting the family more, tensions might not have escalated in the way they did. But I do not consider it proven that the Council would have provided significantly more support. I also note the evidence which points at sources of tension beyond the Council's control. For example the pressures brought about by having a new baby in the household.

Agreed action

63. To remedy the injustice set out at paragraph 61 the Council has agreed that within 20 working days of a decision on this complaint it will:
- Provide an unreserved apology to Mrs B for the faults identified by this investigation and resulting injustice.
 - Write off any costs owing for the care Mrs B received and pay her £500 in recognition of her injustice.
64. The Council has also agreed to consider what wider lessons it can learn from this complaint. It will write to us within three months of a decision on this complaint explaining how it proposes:
- To reduce delays in assessment of need in its Adult Services.
 - To prioritise assessments of need for those describing potentially urgent needs as a result of a change in circumstance.
 - To ensure services provided to adults with Aspergers' Syndrome take account of other needs they might have such as physical incapacity.
 - To improve liaison between Adult and Children's Services where both receive referrals to assess needs.
 - To ensure it does not fetter discretion in supporting families whose school transport needs may fall outside the confines of its usual policy on providing such help.

Final decision

65. For the reasons explained above I uphold this complaint. I find the Council acted with fault causing injustice to the complainant. I welcome the Council agreeing to take action that I consider will provide a fair remedy to the complaint. On the understanding that action completes within the agreed timescale I can complete my investigation satisfied with its actions.

Investigator's decision on behalf of the Ombudsman