

20 August 2019

Complaint reference:

LGSCO reference: 18 008 051

PHSO reference: C2061205

Complaint against:

Nottinghamshire County Council

Doncaster & Bassetlaw Teaching Hospitals NHS Foundation Trust



The Ombudsmen's decision

Summary: The Ombudsmen find no fault in the way an NHS Trust and Council handled two discharges from hospital for a man who had undergone an operation. However, the Ombudsmen find the operation was delayed unnecessarily, but poor record keeping by the Trust means we cannot resolve why this happened. The Ombudsmen also find fault in the way the Council and NHS Trust handled the complaint. The Council and Trust have agreed to actions to address the injustice these failings caused.

The complaint

1. Mr G complains about the care Nottinghamshire County Council (the Council) and Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust (the Trust) provided to his late father, Mr R, in early 2018. He complains that:
 - a) James Hince Court (an Intermediate Care Placement, funded by the Council) failed to stop Mr R's blood thinning medication despite instructions to do so, which delayed planned surgery
 - b) The Trust sent patient transport to the wrong address, which delayed Mr R's rescheduled surgery
 - c) The Trust inappropriately discharged Mr R from hospital on 15 March 2018
 - d) The Trust inappropriately found Mr R to be medically fit for discharge on 20 March 2018
 - e) Mr R did not have capacity to consent to paying for a Short Term Care placement at St Michael's View from 20 March 2018, as he had delirium and confusion due to a urinary tract infection.
2. Mr G said these failings caused Mr R significant avoidable distress at a time when he was already very ill with bladder cancer. Mr G said this, in turn, caused him unnecessary distress. In addition, Mr G said Mr R was wrongly charged for Short Term Care at St Michael's View.
3. Mr G said the Council and the Trust have not taken adequate remedial action to acknowledge their failings or to address the impact. In bringing his complaint to the Ombudsmen he would like the Council and the Trust to acknowledge the failings that occurred in his father's care. He would like them to take appropriate action to prevent recurrences. Further, Mr G would like the charges for Mr R's placement at St Michael's View to be waived.

The Ombudsmen's role and powers

4. The Ombudsmen have the power to jointly consider complaints about health and social care. Since April 2015, these complaints have been considered by a single team acting on behalf of both Ombudsmen (*Local Government Act 1974, section 33ZA, as amended, and Health Service Commissioners Act 1993, section 18ZA*).
5. The Ombudsmen investigate complaints about 'maladministration' and 'service failure'. We use the word 'fault' to refer to these. If there has been fault, the Ombudsmen consider whether it has caused injustice or hardship (*Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1), as amended*).
6. If the Ombudsmen are satisfied with the actions or proposed actions of the bodies that are the subject of the complaint, they can complete their investigation and issue a decision statement (*Health Service Commissioners Act 1993, section 18ZA and Local Government Act 1974, section 30(1B) and 34H(i), as amended*).

How I considered this complaint

7. I read the correspondence Mr G sent to the Ombudsmen and spoke to him on the telephone. I wrote to the Council and Trust to explain what I intended to investigate and to ask for comments and copies of relevant records. I considered all the comments and records they provided. I considered relevant legislation and guidance and took advice from a doctor with relevant knowledge and experience.
8. I shared a confidential copy of my draft decision with Mr G, the Council and the Trust to explain my provisional findings. I invited their comments and considered those I received in response.

What I found

Background

9. In January 2018 Mr R lived alone without any formal support. At the end of the month doctors found he had a lesion in his bladder, which it suspected was bladder cancer. Surgeons booked Mr R in for surgery on 21 February.
10. A couple of days after this outpatient appointment Mr R had a fall at home and spent a long time on the floor afterwards. Mr G found him and called an ambulance which took him to hospital. Doctors felt Mr R's fall probably related to an infection. The hospital admitted Mr R and treated him for urosepsis (a condition where a urinary tract infection spreads from the urinary tract to the bloodstream), via antibiotics.
11. Early in the admission a doctor talked to Mr R about plans for when he left hospital. Mr R shared concerns about his ability to get about and the doctor planned to refer him to a discharge team. A social worker took part in planning what would happen when Mr R's admission ended.
12. In early February Mr R left hospital and went into an Intermediate Care facility, for which there was no charge.
13. Mr R's surgery did not happen on the scheduled date, or the re-scheduled date around a week later. Mr R remained in the Intermediate Care facility. In early March the facility started planning for Mr R to return home with support four times a day after his surgery.

-
14. Mr R went into hospital for surgery in the middle of March. The operation went ahead. Mr R left hospital and went home the next day, with plans for support visits four times a day.
 15. A few days later a carer found Mr R on the floor. An ambulance took him back to hospital. Mr R stayed in hospital overnight and then, the next day, went into a Short Term Care Placement, for which he was charged the full cost.
 16. In the middle of April 2018 Mr R returned to hospital. He was found to have urosepsis. Medics found he was medically fit for discharge at the end of the month. A social worker made plans for him to return to the Intermediate Care placement.

Analysis

Complaint Handling

17. Mr G made his complaint to the Council toward the end of April 2018. In early May 2018 the Council emailed the Trust and sent it details of the complaint. It said it felt it would be simpler to send two separate responses rather than trying to send a coordinated one. The Trust accepted this and the organisations proceeded on this basis.
18. The Council sent its response in the second half of June and noted some issues would need to be answered by health services. The Trust sent its response six days later.
19. *The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009* (the Complaint Regulations) came into force in April 2009. They set out the responsibilities of social services and health organisations in dealing with complaints about their service.
20. The Complaint Regulations include, at section 9, a duty to work together on complaints about more than one organisation. They state that, in these circumstances, the responsible organisations must cooperate in handling the complaint. This includes duties to: establish who will lead the process; share relevant information; and, provide the complainant with a coordinated response.
21. There is no evidence either organisation asked Mr G about his preferences. There is no evidence either organisation made enquiries of the other about what the other's investigation would entail or how long it would be likely to take. On the evidence I have seen the Council designated each issue either for it or for health, but neither organisation considered whether they might involve both. Therefore, I do not consider there is evidence that the prospect of a joint investigation was properly explored before it was dismissed. This is fault. The Council was not automatically the lead agency because it received the complaint. Therefore, responsibility for this complaint lies equally with both organisations.
22. The separate, uncoordinated approach may have been simpler for the organisations but it was not for Mr G. It meant he received two responses and had to liaise with two organisations. It also had consequences for the investigation of the complaint about why Mr R's initial operation did not go ahead (I will say more about this below).
23. On balance, I consider that if the Council and Trust had given this issue proper consideration it would have led to a joint investigation. If there had been a joint investigation it is likely important information (about the cancellation of the surgery) would have come to light sooner and would have led to findings and learning points sooner. Therefore, were it not for the fault, Mr G would have

experienced less frustration and would have been put to less time and trouble. As such, the fault here led to an avoidable injustice. I have made recommendations to address this.

Complaint that James Hince Court failed to stop Mr R's blood thinning medication despite instructions to do so, which delayed his surgery

24. In late January 2018 the Urology clinic found Mr R had a tumour in his bladder. Surgeons planned to operate on 21 February 2018.
25. Mr G said this operation did not take place because no one stopped Mr R's prescription of clopidogrel (a blood-thinning medication). Mr G complained about the failure to stop the prescription.
26. The Council's complaint response of June 2018 said he would need to raise this with the relevant health organisation.
27. The Trust's response, several days later, said the hospital issued a discharge letter which gave instructions for the medication to be stopped seven days before 21 February. It said this letter was sent to James Hince Court and the GP.
28. Mr G said neither the Council nor the Trust have not taken adequate remedial action to address this issue. He said he has no reassurance that this would not happen again to other patients. I agree the organisations did not get to the bottom of this. As noted in the previous section, I consider this was a result of the uncoordinated approach to answering the complaint.
29. Records from the Trust show that, during Mr R's hospital admission in early February 2018, doctors and other professionals were aware of the planned operation on 21 February 2018. There are references to this on 31 January 2018, and 2, 5, 8 and 9 February 2018. On 7 February 2018 a member of staff made a note in the 'Communication with relatives' section of a form. It stated they had a telephone conversation (it does not say who they spoke to) about the planned surgery on 21 February 2018. The note said Mr R would need to stop taking clopidogrel seven days before the operation, so would need to stop on 15 February 2018.
30. There is evidence, from a medication administration chart, that James Hince Court understood it needed to stop Mr R's prescription of clopidogrel, and did so. This chart recorded the medications Mr R had prescriptions for, and when staff gave them to him. The chart:
 - Includes a prescription for clopidogrel tablets and noted '*To be stopped 7 days prior to surgical procedure. See discharge letter*'
 - Show staff gave Mr R one clopidogrel tablet each day for five days in a row, from 9 to 13 February 2018. The record states that there were initially 28 tablets and, after the dose on 13 February 2018, 23 tablets remained
 - Records that staff did not administer a dose of clopidogrel for the next 15 days, from (and including) 14 to 28 February 2018
 - Records that staff started to give a dose of clopidogrel to Mr R again on 1 March 2018. After this dose 22 tablets remained.
31. Therefore, I have not found evidence on the part of the Council. There is evidence that James Hince Court stopped giving Mr R clopidogrel in line with the Trust's instructions.
32. Staff at the Trust completed a range of records in relation to Mr R's surgery, which took place on 14 March 2018. An admission form included a list of Mr R's

regular medication and included clopidogrel. It also noted this medication was '*stopped 14-2-18*'.

33. The Trust advised me that the planned surgery was cancelled on 15 February 2018. It said the only information recorded about the cancellation is that it related to clopidogrel, but it is not more specific than that. The Trust said relevant staff cannot recall anything about this now, which is unsurprising given the passage of time.
34. The Trust concluded that, working on the information to hand, the most likely explanation for the cancellation is that its Booking Team received information that Mr R had not stopped taking clopidogrel in time.
35. I have not seen any evidence of the conversation (or other communication) that took place that led the Trust to believe Mr R had not stopped taking the medication in time. It is apparent there was a breakdown in communication – as the prescription had been stopped in time – but I cannot be any more specific. Therefore, even working on balance, I cannot say who was at fault here.
36. Nevertheless, this issue does raise several concerns about the way the Trust recoded information. Firstly, as I understand it, Mr R needed to have seven full days without a dose of clopidogrel before the start of the date of surgery; i.e. to have a last dose on 13 February. However, the notes made on 7 February 2018 included '*stop 15/02/18*'. It seems this did not have any further consequences in this case, as the last dose was on 13 February, but it had the potential to cause confusion and to lead to a mistake.
37. Secondly, there is a lack of information about why the surgery was cancelled. There is nothing recorded about who spoke to who, when, and what was discussed. This means the audit trail for the cancellation of this important surgery is significantly more limited than it should be. This is fault. This lack of information is a key reason why this investigation cannot make a finding about the breakdown in communication in this case. This, in turn, has left uncertainty and frustration which is an injustice in its own right. I have made recommendations to address this.

Complaint the Hospital sent patient transport to the wrong address, which further delayed Mr R's surgery

38. The hospital rescheduled Mr R's surgery for 28 February 2018. An ambulance did not arrive at James Hince Court to collect Mr R and the surgery did not go ahead. The surgery was rescheduled and took place on 14 March 2018.
39. Mr G complained about this. He said the transport went to Mr R's home address, rather than James Hince Court. Mr G said neither the Trust have not taken adequate remedial action to address this issue. He said he has no reassurance that this would not happen again to other patients.
40. The Trust acknowledged this mistake. It said its staff did not adequately communicate the need for transport to go to James Hince Court, rather than Mr R's home address. It apologised for this error.
41. The Trust reiterated this acknowledgment in correspondence with the Ombudsmen. It provided further explanation that when Mr R was discharged his temporary place of residence (James Hince Court) had not been put on the electronic patient administration system. It said, instead, it was written by hand on the discharge letter. The Trust said the ward clerk should have input the address onto the electronic system at this point.

-
42. The Trust said in order to prevent this happening again it had rolled out an electronic bed management module linked to its electronic notes system. It said this would prompt the ward clerk to check the discharge address.
 43. As a result of this mistake Mr R missed his scheduled surgery and needed to wait a further two weeks for it. On the balance of probabilities, the combined delay, caused by the miscommunication about clopidogrel and transport, is unlikely to have been clinically significant. However, this delay caused avoidable stress, above any Mr R may have ordinarily experienced in anticipation of an operation. This unnecessary stress is an injustice.
 44. The Trust has been open in acknowledging its error. It has apologised, identified why it happened and taken steps to prevent recurrences. I am satisfied it has provided a proportionate response to this complaint and have not recommended any further action.

Complaint that the Hospital inappropriately discharged Mr R on 15 March 2018

45. Mr R came into hospital on 13 March 2018 and had surgery the next day. He left hospital and went back to James Hince Court on 15 March 2018. He then returned home with support from a home-care service on 16 March 2018.
46. Mr G complained his father was still very confused and should not have been discharged.
47. In its initial response the Trust said its medical and nursing staff did not find any clinical reason for Mr R to remain in hospital. In a subsequent response the Trust noted Mr R had a raised temperature at one point after his operation. It said staff checked Mr R's temperature only one more time after this raised result and before he left hospital. The Trust said nurses should have checked his temperature more than once. It said that if this had shown an abnormal temperature it would have been escalated and discussed. Aside from this, the Trust did not identify any shortcomings in its handling of Mr R's care during this time.
48. The Trust's records show it checked and recorded Mr R's physiological observations before surgery. The surgery went as planned and the surgeon noted a plan for Mr R to be discharged the next day.
49. In the afternoon after the surgery staff noted that all of Mr R's observations were within normal ranges, and his condition was stable. Staff recorded physiological observations at 15.05, 16.15, 17.00, 18.15, and 19.30. On each occasion they recorded that all of Mr R's observations were within normal ranges. At 23.50 staff took his observations again and found he had a raised temperature. The next time they took his observations they were all within normal ranges. A discharge summary from 15 March 2018 noted that Mr R had made a good post-operative recovery and was fit for discharge.
50. Experiencing a high temperature following an operation is fairly common. It would not, on its own, give clinicians significant cause for concern. There is evidence to show the clinicians acted appropriately in the context of the information available to them at the time. From a clinical perspective, there was nothing to indicate to the hospital that Mr R needed to remain in hospital. Therefore, I have not found fault here.

Events between 15 and 19 March 2018

51. Records from the Council show that a carer visited Mr R on 17 March 2018 and noted he refused to get up and said he was tired. They also noted he seemed quite confused. The worker noted Mr R seemed a lot better by the time they left.
52. On 19 March 2018 a carer found Mr R on the floor. He said he had been there for a while. The carer called an ambulance which took Mr R to hospital. The hospital found Mr R had symptoms of a urine infection and was confused.

Complaint that the Trust inappropriately found Mr R to be medically fit for discharge on 20 March

53. Mr G said his father was still very confused and should not have been discharged. He said Mr R's needs were such that he should have been kept in hospital rather than being discharged to St Michael's View.
54. Mr G said his father had to be rushed back to hospital after four days with sepsis and was in a critical condition. I have not seen evidence to support this. The records available to me show that Mr R left hospital on 20 March 2018 and moved into St Michael's View. There are entries every day in the daily records from that date until 15 April 2018 when Mr R returned to hospital (26 days after he left hospital).
55. In its response to the complaint the Trust said it found Mr R to be medically stable enough to leave hospital. It did not identify any flaws in this decision. The Trust said there were no clinical concerns about signs of an acute infection (that would require a hospital admission for intravenous antibiotics) or signs of sepsis.
56. The Trust's records show Mr R went into hospital, via the Emergency Department, on 19 March 2018. Staff noted he had had a fall the previous evening and could describe what had happened. A doctor physically examined Mr R and took physiological observations. They also took blood tests and completed an X-ray of Mr R's shoulder and a CT scan of his head. The doctors found it was likely Mr R was suffering from a urinary tract infection, but did not find anything else that gave them concerns about his physical health. The hospital gave Mr R an intravenous infusion of fluids and also gave him things to eat and drink. It then discharged him on 20 March 2018 with a seven-day course of oral antibiotics for a urine infection.
57. The assessments the Trust completed were appropriate and suitably thorough. The results of their assessments and observations did not show anything to show that Mr R needed an inpatient admission in an acute hospital. Therefore, I have not found fault in the way the Trust made its decision that Mr R was medically stable enough to be discharged.

Complaint that Mr R did not have capacity to consent to paying for a Short Term Care placement at St Michael's View, as he had delirium and confusion due to a urinary tract infection at the time

58. Mr G does not accept that Mr R had the mental capacity to consent to paying for short term care. Further, Mr G believes Mr R's needs were such that he should have received free NHS care rather than being transferred to a Short Term Care placement with associated costs.
59. During the complaints process the Council concluded it acted appropriately and, as such, there was no cause to waive St Michael's View's fees. It said Mr R made an informed decision to go to St Michael's View, in the knowledge that he would be asked to make a financial contribution toward the cost of his care.

-
60. The Council's records show a social worker saw Mr R on the ward on 20 March. They talked to him about the circumstances of his fall which Mr R recalled. In addition, the social worker noted they '*Discussed future support plans. Feels that he is now medically stable to return home and wished for a period of short term care – aware of his financial status has over the threshold for financial support*'.
 61. The social worker also recorded that they spoke to Mr R's son and wrote in the notes '*he agreed that a period of short term care would benefit his father – confirmed threshold of savings and would look towards requesting placement in [a particular] area*'.
 62. The Mental Capacity Act 2005 (the Act) is the framework for acting and deciding for people who lack the mental capacity to make particular decisions for themselves. The Act (and the Code of Practice 2007) describes the steps a person should take when dealing with someone who may lack capacity to make decisions for themselves. It describes when to assess a person's capacity to make a decision, how to do this, and how to make a decision on behalf of somebody who cannot do so themselves.
 63. There is an expectation that professionals should start by presuming the person has the mental capacity to make their own choices (*Section 1(2) of the Act and Paragraphs 2.3 to 2.5 of the Code of Practice*).
 64. In line with the Act, it was appropriate for the Council to talk to Mr R about his wishes, regardless of whether he was showing signs of confusion. Further, the Council's records suggest the social worker had a coherent conversation with Mr R. Based on this there is no clear suggestion a capacity assessment was required.
 65. The records support the Council's conclusion that Mr R made a choice to leave hospital and go into short term care placement. Further, there is evidence to show the financial implications of this were discussed. Therefore, I find no fault.

Agreed actions

66. Within one month of the date of the final decision both the Council and the Trust should write to Mr G and acknowledge they did not handle his complaint in line with the Complaint Regulations. They should acknowledge they each held a responsibility to explore the possibility of a joint investigation but dismissed this without full and proper consideration. The Council and Trust should also acknowledge this caused Mr G avoidable frustration and time and trouble, and they should apologise for their part in creating this injustice.
67. Within one month of the date of the final decision the Trust should write to Mr G and acknowledge it did not properly record the information about why Mr R's surgery was cancelled. It should also acknowledge that this fault has meant that there is a lack of clarity about why the surgery was cancelled and about where relevant information came from. The Trust should also apologise for the avoidable uncertainty and frustration this fault caused Mr G.
68. Within two months of the date of the final decision both the Council and Trust should take steps to ensure its internal complaint procedures are in keeping with the Complaint Regulations, in particular regard to the duty to cooperate with other relevant organisations. In the same timescale they should also take proportionate steps to ensure its staff are aware of the relevant procedures and using them appropriately.

-
69. Within two months of the date of the final decision the Trust should review its procedures for cases of elective surgery with pre-surgery conditions. It should ensure that the procedures are adequate and that relevant staff are aware of them, and are using them. In particular, attention should be paid to ensuring:
- the conditions, and any relevant dates, are properly and fully understood and recorded when they are set;
 - there is a clear understanding of who, how and when the Trust will check adherence to the conditions;
 - a proportionate amount of information is recorded to allow others to understand how and why any decisions to cancel or rearrange surgery have been made.

Decision

70. I have completed my investigation on the basis that there failings which led to an injustice. The Council and Trust have agreed to take action to address the injustice suffered.

Investigator's decision on behalf of the Ombudsmen

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Miss A's complaint that the Council is refusing to implement the provisions of her son's Education Health and Care Plan. This is because it is unlikely we would find fault on the Council's part.

The complaint

1. The complainant, who I will refer to as Miss A, complains that the Council is refusing to implement the provisions of her son's Education Health and Care Plan.

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 must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. 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. (*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

3. I have considered what Miss A has said in support of her complaint and the supporting information she has provided. I have also considered her response to my draft decision.

What I found

4. Miss A's son has special educational needs and has an Education Health and Care Plan (EHCP). The Council issued an amended EHCP in June 2019. Miss A's son is due to start at a Junior school in September 2019. Miss A complains that the school, the academy trust and the Council are refusing to implement the provisions of the EHCP.
5. The school is an academy and its actions, and those of the academy trust, do not fall within the Ombudsman's jurisdiction. Responsibility for ensuring that the provision set out in the EHCP is arranged lies with the Council.
6. Mrs A's son was supported at his Infants' school by a personal care assistant. Miss A says her son's EHCP set out that he must be supported by staff with experience and knowledge of a disorder of the type her son has. She therefore

asked that the personal care assistant be permitted to remain with her son when he moves to the Junior school. The junior school and the academy trust have refused this request on the grounds that the school's existing staff can be trained to make the necessary provision.

7. Miss A complained to the Council about the school's decision, which she regards as a refusal to implement the provisions of the EHCP. In response, the Council set out that staff at the new school are being trained to allow them to provide the support set out in the EHCP. It also points out that Miss A had the right to appeal to appeal to SEND about the provision set out in the EHCP
8. The Ombudsman will not investigate Miss A's complaint because it is unlikely we would find fault on the Council's part. The Council is required to ensure the provision in the EHCP is arranged. It takes the view that the Junior school is capable of delivering the provision by training its staff to do so. That is a decision for the Council to make and the Ombudsman will not intervene to criticise its professional judgement or to substitute an alternative view.
9. If, once Miss A's son starts his new school, she feels that the provision is not being delivered, she may complain to the Council. If she feels the provision set out in the EHCP needs to be amended to provide a higher level of support, she can request reassessment. There are no grounds for the Ombudsman to intervene.

Final decision

10. The Ombudsman will not investigate this complaint. This is because it is unlikely we would find fault on the Council's part.

Investigator's final decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Complainant says the Council has increased his client contribution for adult care services, which he cannot afford to pay. The change leaves Mr C with no disposable income, but this is not caused by fault of the Council. The Council has correctly assessed his client contribution in accordance with the law and national guidance and considered whether to allow a waiver based on his income and expenditure.

The complaint

1. The complainant, who I will call Ms B, says the Council has changed its policy for the way it calculates individual contributions towards the cost of care and support. This change means her son, Mr C, must now contribute £100 a month towards his care, which he says he cannot afford. Mr C previously did not have to contribute financially. Mr C will be unable to attend the day centre which will have an impact on both his and his mother's mental health and wellbeing. Ms B will have no respite from her caring role. The family will not be able to cope without the support of the day centre placement, and will mean Mr C may have to move into some form of supported living/residential care as the family will be unable to cope with him continuing to live at home with no form of support.
2. Mr C has continued to attend the day centre, but his family have been paying for him and cannot continue to do so. Paying the care contribution leaves him with no disposable income to do any social activities so has a negative impact on his wellbeing, and that of his family. Mr C would like his contribution to return to nil.

The Ombudsman's role and powers

3. 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*)
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:

-
- Information provided by Ms B, including during a telephone conversation.
 - Information provided by the Council in response to my enquiries.
 - Information available on the Council's website about its change in policy for charging for adult care services.
 - The Care and Support (Charging and Assessment of Resources) Regulations 2014 and the Department of Health's Care and Support Statutory Guidance.
 - The response from the Council to a draft of this statement; Ms B did not respond.

What I found

6. Mr C lives with Ms B, who provides all care support. The Council gives Mr C a care package; he attends a day centre five days per week and has 28 nights per year short breaks. This allows Ms B some respite from her caring role. The Council also gives Ms B £150 per year to contribute towards a recreation or leisure activity.
7. When the Council provides a care package it must assess what, if anything, the person using the service can afford to pay towards their care.
8. The Council previously had more generous financial assessment terms than recommended by national guidance. Under that regime Mr C did not have to pay anything towards his care.
9. The Council decided to change its financial assessment terms to bring it in line with national guidance. The Council consulted on the change, and the Council's Policy Committee decided to make the changes. The Council followed the correct process to make the policy change, and its change is in line with law and guidance. The Ombudsman cannot criticise the change of policy.
10. The Council then applied the changes to Mr C's financial assessment, which means he now must contribute over £100 per month.
11. The Council has completed a financial assessment in which it correctly disregards relevant benefits. The Council must leave Mr C with a minimum income guarantee of £151.45 per week, but it has allowed £170.23. I do not know how the Council has reached this figure, but as it is in Mr C's favour there is no reason for me to question it further. The Council has also allowed Disability Related Expenditure of £20 per week.
12. Disability Related Expenditure is money that you spend specifically because you are disabled, so the Council gives an allowance for that. The Council allows a set figure of £20 per week, but you can ask for an assessment if you feel you spend more than this. Ms B asked for an individual assessment of Mr C's Disability Related Expenditure, which showed it is £15.29 per week. Therefore the £20 allowed by the Council is enough.
13. The Council has discretion to allow short term waivers from collecting contributions for reasons of financial difficulty or extreme hardship. The Council has considered whether it should waive Mr C's assessed contribution. The Council considered an Income and Expenditure form completed by Ms B which showed Mr C has enough income to pay his contribution. The Council accepts this leaves Mr C with pennies as his weekly disposable income but considers he could reduce his outgoings in some areas to give himself more disposable income.

Was there fault causing injustice?

14. The Council is not at fault in the way it has assessed Mr C's financial contribution towards the cost of his care. It has acted in accordance with the law and national guidance.
15. The Council has correctly considered whether to allow a waiver in Mr C's contributions by looking at his income and expenditure. As there is no fault in the way the Council has assessed this, I cannot criticise its decision even though Ms B disagrees with it.
16. I understand losing £100 of his monthly disposable income has a big impact on Mr C, and will alter his lifestyle. The contribution towards his care costs leaves Mr C with no disposable income for activities he enjoys; this is the same as anyone else living on a tight budget. Ms B feels Mr C has a limited life and should be allowed some enjoyment. It also affects his carers if there is no money to take Mr C out and occupy him on weekends. This injustice is not caused by any fault of the Council. Mr C might be able to improve his situation by seeking some money management advice to consider any areas he could reduce his expenditure and provide more disposable income for leisure activities.

Final decision

17. I have completed my investigation on the basis there is no fault by the Council.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Ms A's complaint about the lack of care given to Mrs B during a period when she and her other carer were on holiday. This is because Ms A does not have consent or standing to complain on behalf of Mrs B.

The complaint

1. Ms A is concerned the person she cares for, Mrs B, was left without care for six days when she and another carer went on holiday. Ms A says the Council were aware well in advance of the holidays and failed to ensure the period of leave was covered. Ms A says the Council should consider this as a safeguarding matter as she believes Mrs B was neglected.

The Ombudsman's role and powers

2. We can only accept complaints from members of the public or their authorised representatives. This means we cannot accept complaints from carers complaining about something relating to their position as a carer. (*Local Government Act 1974, section 26A, as amended*)

How I considered this complaint

3. I considered the information Ms A provided. I sent Ms A a copy of my draft decision for comment.

What I found

4. It is understandable that Ms A is concerned about Mrs B's lack of care during a period of leave when she had advised the Council of this, however, she has not been caused any injustice herself from the actions of the Council warranting investigation by the Ombudsman. Given Ms A is employed as a carer and is acting in her capacity as an employee, she would not be considered as a suitable representative to complain on behalf of Mrs B.

Final decision

5. The Ombudsman will not investigate this complaint. This is because Ms A does not have consent or standing to complain on behalf of Mrs B.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Ms D complains that the Council gave inaccurate and libellous information about her to the NHS mental health service. The Ombudsman has found fault causing distress. The Council has already taken action to remedy that injustice.

The complaint

1. Ms D complains that the Council gave inaccurate and libellous information about her to the NHS mental health service. She says as a result she cannot access mental health services.

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 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*)
3. 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*)
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:
 - it is unlikely we would find fault, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants.(*Local Government Act 1974, section 24A(6), as amended*)
5. 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

6. I spoke to Ms D about her complaint and considered the information she provided to the Ombudsman.

-
7. I sent Ms D and the Council my draft decision and considered the comments I received.

What I found

Child and Family Assessment

8. Local authorities have a duty to safeguard and promote the welfare of children who are in need. A child in need may be assessed under section 17 of the Children Act 1989. This “Child and Family Assessment” should be completed within 45 working days from the date of the referral. Following the assessment, if the council decides to provide services, a child in need plan should be developed.

Child protection

9. If a local authority receives a report of concern about a child it must decide whether there is reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm. If so, the council must decide whether to initiate safeguarding enquiries under section 47 of the Act.
10. A Multi Agency Risk Assessment Conference (MARAC) is a meeting where information is shared between representatives of local police, probation, health, child protection, housing practitioners, Independent Domestic Violence Advisors (IDVAs) and others about high risk domestic abuse cases. The victim does not attend the meeting but is represented by an IDVA. Referrals can be made to a MARAC from any agency.

What happened

11. In 2018 Ms D used NHS mental health services. When she was discharged, she received a discharge summary which contained statements that appeared to have originated from the Council. These were that Ms D:
 - a) Had claimed top level PIP for her son fraudulently after he had left home
 - b) Had been “felt to be the main perpetrator” in a MARAC meeting
 - c) “Also uses the name Ms Y [a character from a film]”
 - d) Had “tried to manipulate services historically”
12. Ms D complained to the Council in January 2019 that the statements were inaccurate and amounted to slander and defamation of character.
13. The Council started a child and family assessment of Ms D’s children. This ended in February 2019 after Ms D withdrew her consent. She said she had consented to a section 17 needs assessment, not a safeguarding assessment.
14. The Council responded to Ms D’s complaint in March 2019. It said it had not shared any information about Ms D with the NHS as it only became involved after Ms D referred herself to the mental health team. It acknowledged that the recent child and family assessment was not full or comprehensive; this was because it had not been completed. The Council said:
 - a) It had not been aware Ms D had discussed the PIP with the DWP and that it had been frozen. The Council apologised for any offence caused.
 - b) The MARAC meeting had discussed Ms D as a potential perpetrator in relation to her not allowing her son to access support services and financial support.
 - c) Whilst this was factually accurate, the Council apologised if the comment had caused Ms D offence.

-
- d) This comment had originated from Charity 1, not the Council.
15. Ms D was dissatisfied with the response and asked for her complaint to be escalated. She said the Council:
- was wrong that she had self-referred to mental health services.
 - had failed to provide support or to carry out a section 17 assessment of her children.
 - had wrongly stated in the assessment that her children had been subject to multiple child protection plans.
16. The Council's final response to Ms D's complaint accepted there had been inaccuracies about the mental health service referral and the number of child protection plans. It also acknowledged that the PIP claim had been reinstated. The Council apologised. It had amended the assessment and added a note to Ms D's records.
17. The Council said it had closed the social care cases for Ms D's children as Ms D had withdrawn her consent to the child and family assessment; there was insufficient information to make recommendations for any support; Ms D had said she did not want any involvement from social care; and there were no safeguarding concerns.
18. Ms D complained to the Ombudsman. She sent a letter from Charity 1 which denied it had made the comment about her use of services.

My findings

19. The Council has accepted that some of its statements were inaccurate or caused offence to Ms D. This was fault and has caused distress to Ms D.
20. The Council has apologised and amended its records. These are actions I would expect it to take and are in line with the Ombudsman's guidance on remedying injustice caused by fault. I am satisfied that the actions the Council has taken were a proportionate and appropriate response to Ms D's complaint.
21. There is a dispute about where the comment about Ms D's historical use of services came from. It is unlikely that further investigation by the Ombudsman on this point would be able to establish the origin. In addition, even if I was able to determine that a Council officer made the comment, and whilst accepting that Ms D disagrees with it, I could not find that an officer's opinion was maladministration. If I did find fault on this point, it is likely I would ask the Council to apologise and amend its records, which it has already done.
22. Ms D says the Council's comments mean she is now unable to access NHS mental health services. I have seen no evidence of this and it is unlikely further investigation could determine she was denied mental health services as a result of the Council's actions.
23. Ms D wants the Ombudsman to require the Council to carry out a section 17 needs assessment of her children, but this would not be a remedy for the injustice caused by the fault identified in this complaint. In addition, the Ombudsman cannot tell a Council how to carry out a child and family assessment. Nor could I tell it not to carry out safeguarding enquiries if it thought a child was at risk of harm. So even if I investigated and found fault, I could not achieve the outcome Ms D is seeking.
24. Ms D says she wants the Ombudsman to stop the Council sharing false information about her. She says the Information Commissioner advised her to ask

the Council to place restrictions on the processing of her data by social care, but the Council has refused as it must record all contact with families. The Ombudsman has no power to tell the Council what information to record or pass on to other services. I could only ask it to amend factually inaccurate records; it has already done this. Ms D may wish to refer to the Information Commissioner if she has a complaint about data protection.

25. Ms D says the Council has defamed her. However, this is a legal matter and it would be for the courts and not the Ombudsman to determine whether this was the case.
26. We may decide not to continue with an investigation if we believe it is unlikely we would find fault, or if we cannot achieve the outcome someone wants. I have therefore discontinued my investigation into the comment about Ms D's historical use of services.

Final decision

27. There was fault by the Council which caused injustice to Ms D. I am satisfied the Council has taken action to remedy that injustice. I have completed my investigation.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint about the Council's classification of three roads. If Mr X disagrees with the Council's view it would be reasonable for him to take the matter to court.

The complaint

1. The complainant, Mr X, complains the Council has wrongly classified three roads. As a result, he says the Council refuses to accept liability to maintain the roads, which it believes are the responsibility of the residents whose homes front onto them.

The Ombudsman's role and powers

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. 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*)

How I considered this complaint

4. I reviewed Mr X's complaint, shared my draft decision with him and invited his comments.

What I found

5. Mr X complains the Council has wrongly classified three roads as private or unadopted. He suggests the roads are out of repair and require maintenance and that the Council is responsible for the cost of this. But the Council will not maintain the roads as it does not agree.
6. The Ombudsman will not investigate this complaint. The key issue in this case is whether the roads are out of repair and whether the Council is liable to maintain them. Section 56 of the Highways Act 1980 provides an alternative mechanism for Mr X to challenge the Council's position and I have seen nothing to suggest it would not be reasonable for him to use this process. The courts are better placed to determine whether the roads are maintainable at the public expense and, if they are, they may order the Council to carry out any repairs they feel are necessary.

-
7. It is not our role to interpret the law and we cannot force the Council to carry out repairs to roads where their status is in dispute.

Final decision

8. The Ombudsman will not investigate this complaint. This is because it would be reasonable for Mr X to take the matter to court.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman cannot investigate Mr X's complaint about a penalty charge notice issued by the Council. This is because Mr X has appealed to the Traffic Penalty Tribunal.

The complaint

1. The complainant, Mr X, complains about a penalty charge notice (PCN) issued by the Council.

The Ombudsman's role and powers

2. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. We may decide to investigate if we consider it would be unreasonable to expect the person to appeal but cannot investigate if the person has already appealed. (*Local Government Act 1974, section 26(6)(a), as amended*)
3. The Traffic Penalty Tribunal considers parking and moving traffic offence appeals for all areas of England outside London.

How I considered this complaint

4. I reviewed Mr X's complaint and discussed the case with him.

What I found

5. The Council issued Mr X a PCN for driving in a bus lane. Mr X disputes the contravention and appealed, firstly to the Council and then to the Traffic Penalty Tribunal.
6. Because Mr X has appealed to the Traffic Penalty Tribunal the Ombudsman cannot investigate his complaint. The Tribunal is the body responsible for dealing with appeals against PCNs and we cannot overturn its decision that the PCN is valid and must be paid.

Final decision

7. The Ombudsman cannot investigate this complaint. This is because Mr X has used his right of appeal to the Traffic Penalty Tribunal.

Investigator's final decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Miss D complains the Council refused her application for a blue badge. My provisional view is that there was no fault by the Council. It has offered to assess Miss D's mobility and reconsider its decision.

The complaint

1. Miss D complains the Council refused her application for a blue badge.

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. The law says we cannot normally investigate a complaint unless we are satisfied the council knows about the complaint and has had an opportunity to investigate and reply. However, we may decide to investigate if we consider it would be unreasonable to notify the council of the complaint and give it an opportunity to investigate and reply (*Local Government Act 1974, section 26(5)*)
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 spoke to Miss D about her complaint and considered:
 - The Blue Badge Scheme Guidance (England), Department of Transport, 2014.
 - Miss D's Blue Badge application form and supporting evidence, the Council's refusal letter, and its determination of her appeal.
6. I gave Miss D and the Council an opportunity to comment on my draft decision.

What I found

DLA and PIP

7. The Department for Work and Pensions (DWP) introduced a new social security benefit called Personal Independence Payment (PIP) to replace Disability Living

Allowance (DLA) for people aged 16-64. From October 2013 the DWP started to invite existing DLA recipients to claim PIP.

Blue Badge scheme

8. The Disabled Persons' Parking Badge Scheme provides a national arrangement of on-street parking concessions for severely disabled people who are unable, or find it difficult, to use public transport. The Scheme is for people with severe mobility problems.
9. Previously, anyone in receipt of the higher rate of the mobility component of DLA was entitled to a Blue Badge "automatically", i.e. without further assessment.
10. As DLA no longer exists for people aged 16-64, the Government decided to give automatic eligibility for a Blue Badge to those who receive eight points or more under the 'Moving Around' activity of the mobility component of PIP, because they cannot stand and walk (aided or unaided) more than 50 metres. An applicant in receipt of this award will have a decision letter from the DWP. Under the Mobility Component section, the letter will describe the degree to which the applicant can 'Move around'.
11. Blue Badge applicants should provide the council with proof from the DWP they scored eight points or more. If they do not, the badge will not be issued. If the applicant has lost their PIP decision letter, they should contact the DWP for a replacement
12. Those who are not automatically entitled to a Blue Badge may still qualify under discretionary criteria, if they can show their mobility is significantly impaired. This eligibility must be determined by an independent mobility assessment.
13. An independent mobility assessment will not be offered if the council decides that the applicant is clearly eligible or ineligible, based on the information it has.

Changes to the Blue Badge scheme

14. From September 2019, there will be new eligibility criteria for a Blue Badge. A person may be entitled if they have been certified by an expert assessor as having an enduring and substantial disability which causes them, during the course of a journey, to:
 - Be unable to walk; or
 - Experience very considerable difficulty whilst walking, which may include very considerable psychological distress.
15. The Council has therefore updated its application and assessment process to incorporate non-physical disabilities. It has asked residents that have a non-physical disability to apply from September 2019 onwards.

What happened

16. Miss D used to receive higher level DLA but is now receiving PIP. She has a mobility car and had previously had a blue badge.
17. Miss D applied to renew her blue badge in January 2019. She enclosed her council tax reduction statement, which showed she received a PIP mobility enhanced award. Miss D's application says she:
 - received 12 points under the PIP moving around award because she could not walk further than 20 metres.
 - had agoraphobia, which caused breathing problems whilst walking.

-
- could not walk unaided without another person.
 - used an elbow crutch.
 - was prescribed medication for pain in her legs and back.
 - struggled to walk long distances and got dizzy.
18. She said it was painful to walk for more than a few minutes and sometimes she could not walk at all.
 19. The Council contacted the DWP. It says the DWP advised that Miss D received four points under the moving around award. Miss D was therefore not automatically eligible for a blue badge.
 20. The Council did not invite Miss D for an independent mobility assessment because it had determined she was clearly ineligible, based on the information it had. It refused Miss D's application in April 2019.
 21. Miss D appealed and sent further evidence that she received a PIP enhanced mobility award. The Council refused the appeal. It said it would require further information about her walking difficulty due to a medical condition. Miss D complained to the Ombudsman.
 22. The Ombudsman cannot normally investigate a complaint unless we are satisfied the Council has had an opportunity to reply to it. As Miss D had not complained to the Council, we asked it to consider her complaint. The Council said it could not resolve the matter through its complaints procedure because it could see no fault in the way it had determined Miss D's application or appeal. As the Council had had an opportunity to respond to the complaint, we decided to investigate.

My findings

23. In response to my enquiries, the Council said it had recently invited Miss D for an independent mobility assessment, but she had not attended. Miss D says she could not make it to the assessment as she could not get there. She told me the Council did not realise how ill she was.
24. It is not the Ombudsman's role to decide if someone is eligible for a blue badge. My role is to look at how the Council made its decision.
25. If a council has followed the correct procedure, taking into account all relevant information, and given clear reasons for its decision, the Ombudsman cannot generally criticise it. The Ombudsman cannot uphold a complaint simply because a person disagrees with the professional judgement of a council or its officers.
26. In this case, I cannot criticise the Council's decision to refuse Miss D's Blue Badge application. The evidence the Council had was that Miss D did not automatically qualify for a Blue Badge as she did not have proof from the DWP that she received more than eight points under the moving around award.
27. The Council was entitled to decide she was clearly ineligible and therefore not invite her for a mobility assessment. I have seen no evidence of fault in the way it made this decision.
28. The Council has nonetheless invited Miss D for a mobility assessment. I understand Miss D was unable to attend. As she is not automatically eligible for a Blue Badge, she must have an independent mobility assessment to be considered eligible. Miss D may wish to apply again after September 2019, when psychological distress can be considered.

Final decision

29. There was no fault by the Council. I have completed my investigation.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mrs A's complaint that her son's, Mr B's, assessed care charges will cause him hardship. This is because there is no evidence of fault with the Council's assessment warranting an investigation by the Ombudsman.

The complaint

1. Mrs A says the Council's assessment of her son's, Mr B's, finances and increase in contribution towards his care costs will not leave him with enough money to have a good standard of care.

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 must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. 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
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify our involvement, 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.

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

3. 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)*

How I considered this complaint

4. I considered the information and documentation Mrs A provided. I sent Mrs A a copy of my draft decision for comment.

What I found

5. Mrs A complained to the Council in November 2018 when it wrote to Mr B advising his contribution towards his care costs had increased from £30.46 to £96.31 a week. Mrs A advised the Council Mr B could not afford this amount. The Council reassessed Mr B's finances and said he should pay £105.60 a week from 12 November.
6. The Council wrote to Mr B in December 2018. It acknowledged it had not given sufficient time before implementing the increased charges and said it will not to increase his charges until April 2019. The Council said Mr B's weekly contribution should remain at £39.75 and agreed to reimburse payments made.
7. The Council advised Mr B in February 2019 of an increase in his contribution towards his care from April. The Council assessed Mr B as having enough income to pay £91.72 a week. The increase was placed on hold until after review decision was made in June. The outcome of the review was that Mr B had enough income to contribute £91.72 from 3 June.
8. Mrs A remains unhappy with this decision and has asked the Ombudsman to consider her complaint this increase in contribution will cause Mr B hardship.
1. Councils must assess a person's financial resources to decide what contribution he or she should make to a personal budget for care. The scheme must comply with the principles in law and guidance, including that charges should not reduce a person's income below a certain amount. This is called the Minimum Income Guarantee (MIG). The Council can take a person's capital and savings into account subject to certain conditions. If a person incurs expenses directly related to any disability he or she has, the Council should take that into account when assessing available resources.
2. The Council has to follow Department of Health and Social Care guidance on charging for care and support. This is set out on the document below:
<https://www.gov.uk/government/publications/social-care-charging-for-local-authorities-2018-to-2019>
3. The guidance says the MIG for an adult over 25 years of age who is single is £91.40. Mr B's income and expenditure show the Council has followed the guidance and ensured Mr B's available income does not fall below this threshold. There is no fault with the Council's assessment of Mr B's finances or his charges for contributing towards his care.
4. Mrs A is concerned the Council is contesting her application to the Court of Protection for deputyship of Mr B's finances and health and wellbeing. Mrs A says she has incurred legal charges of £9000. If Mrs A's application to the court is successful she can ask it to consider the costs she has incurred, and it would be reasonable to do so.

Final decision

5. The Ombudsman will not investigate this complaint. This is because there is no evidence of fault with the Council's assessment warranting an investigation by the Ombudsman.

Investigator's decision on behalf of the Ombudsman