

The Ombudsman's final decision

Summary: Mr X complains about the sudden increase in Mrs Y's contribution to care from zero to £198 per week and about the way the Council dealt with his complaints about this. He says it has caused much stress, anxiety and financial hardship. The Ombudsman finds the Council was not at fault in the change to its charging policy but was at fault in implementing it without adequate notice. He also finds the Council was at fault in the way it dealt with Mr X's complaint. The Council has agreed to apologise, reimburse six weeks of contribution in lieu of notice, pay Mr X and Mrs Y £250 each and take action to prevent similar faults in future.

The complaint

1. The complainant, whom I shall refer to as Mr X, complains on behalf of his wife, Mrs Y, that the Council:
 - Unexpectedly, and without explanation, increased the charge for Mrs Y's care from zero to £94 per week, and then, over around seven months, to £198.13 per week.
 - Failed to complete a review of Mrs Y's care, and
 - Dealt poorly with their complaint.
2. Mr X says this has caused them much stress and anxiety, and financial hardship.

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 from the Complainant and from the Council.

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6. I sent both parties a copy of my draft decision for comment and took account of the comments I received in response.

What I found

Background

Financial assessment

7. Councils have discretion to choose whether to charge for non-residential services. Where a council decides to charge it must do so in line with the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the Care and Support Statutory Guidance (CSSG).
8. Where the council has decided to charge, it must carry out a financial assessment of what a person can afford to pay. It has no power to assess couples according to their joint resources: each person must be treated individually. The council must not charge more than the cost it incurs in meeting the assessed needs of the individual. It must regularly reassess a person's ability to meet the cost of their care to take account of any changes in their resources.
9. Councils must ensure that they do not reduce a person's income below a specified level (the minimum income guarantee) after charges have been deducted. The amounts are set out in the Care and Support (Charging and Assessment of Resources) Regulations. However, this is only a minimum and councils have discretion to set a higher level if they wish.
10. If a council takes a disability benefit into account when calculating how much a person should contribute towards the cost of their care, they must also assess disability-related expenditure (DRE) in the financial assessment. This is because the Care Act statutory guidance says councils must leave individuals with enough money to pay for necessary disability related expenditure to meet any needs not being met by the council. DRE are costs that arise from a disability or long-term health condition. Councils should always consider individual circumstances. Some councils disregard set amounts for DRE, but if the person's costs are higher than the set amount a full assessment of their costs should be made.

Reviews

11. Section 27 of the Care Act 2014 gives an expectation that local authorities should conduct a review of a care and support plan at least every 12 months. The authority should consider a light touch review six to eight weeks after agreement and signing off the plan and personal budget. It should carry out the review as quickly as is reasonably practicable in a timely manner proportionate to the needs to be met. Local authorities must conduct a review if the adult or a person acting on the adult's behalf asks for one.

What happened

12. For many years, Mrs Y lived with health conditions and disabilities which caused her significant difficulty with daily living. She received a personal budget via direct payment from the Council to employ support for ten hours daily. Mr X provided her support for the rest of the time.
13. In April 2017, the Council assessed the contribution Mrs Y had to pay towards her support as zero. Mrs Y had always previously been assessed as having to make no contribution.

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14. On 28 March 2018, the Council's policy committee considered a change to the charging policy and recommended it be approved. This followed a period of consultation from 6 November to 5 December 2017, and an extension on some elements to 22 January. The Council advises that 1,425 people responded of which 231 responded during the extended consultation. The changes included removing the option to assess a couple if this would be financially beneficial to the person. This meant the Council would only calculate a person's charge based on their own their own finances including 50% of any joint assets or liabilities.
 15. The following day, the Council wrote to advise people of the changes. It said the change to the way it charged would apply from April and said Mrs Y's contribution would now be £94.72 per week, due on 9 April. This meant it would reduce her direct payment by this amount. Council records note around 200 people were adversely affected by this change and were assessed to make increased contributions.
 16. Mrs Y did not see this advice until she returned from a break on 14 April.
 17. On 19 April, Mr X complained to the financial services team manager. He copied his complaint to the Chief Executive, the Corporate Director, the Head of service, the Head of complaints and the cabinet Member responsible for adult social care. He said there was no notice and no explanation of how Mrs Y should meet her costs as an employer with this significant reduction in the money she had available. He demanded a "full and detailed" response from each of those listed explaining "how everything has been forecast, calculated and assessed". He also asked for:
 - A detailed explanation of how and when the change was made and how it related to the previous situation.
 - The legal standing of the decision.
 - Which information it required as they did not recall a financial assessment.
 - What allowances could be made.
 - Why there had been no consultation, information or explanation about the change before it was implemented.
 - A meeting with Mrs Y's current, or newly allocated, social worker.
 - A meeting with the most senior officer responsible.
 18. The Council telephoned Mr X and Mrs Y on 24 April but they were not available. The following day it arranged a home visit. It also wrote to Mr X to advise that it had logged a formal complaint and passed it to the financial services team to investigate and review the financial assessment. It said the writer would be his central point of contact for his complaint.
 19. The Council visited Mrs Y and Mr X on 2 May and explained the changes. The officers gathered information and advised about DRE. They suggested Mr X provide further information about this. The officers updated the assessment based on the information given and increased the contribution to £118.18 per week. The officers asked whether the Council would waive Mrs Y's contribution for up to six months and whether it could increase her DRE allowance. Mr X asked for more information and the Council responded promptly with more details.
 20. On 29 May, Mr X contacted the Council as he had not heard anything more and wanted to query the direct payment amount which had reduced significantly. This

was because Mrs Y's contribution had been deducted before payment which is the usual procedure.

21. On 22 June, the Council wrote to Mrs Y to advise the outcome of the review completed at the visit. It had now assessed her contribution as £132.28 per week.
22. On 27 June, Mr X wrote saying he and Mrs Y were "exasperated". He said it seemed the more questions they asked, the more the Council charged Mrs Y. He said this would cause Mrs Y considerable financial hardship and asked for answers to the questions he had asked. These were about:
 - the algorithm it had used to calculate how much money it needed to provide the ten hours of care.
 - how much income she could keep, and the rationale behind this.
 - what had changed since the Care Act implementation.
 - how to appeal the decision.
 - what might happen if circumstances changed.
23. On 6 July, the Council responded. It explained:
 - it had based the financial assessment on Mrs Y's income not Mr X's.
 - if circumstances changed, it would update the financial assessment and reassess Mrs Y's needs if necessary.
 - the Council decided not to implement the change at the time the Care Act was implemented and this was why Mrs Y had continued with no contribution.
 - the initial letter was based on out of date information so the calculation changed once they had up to date information.
 - there had been a consultation in November 2017.
 - if Mr X wanted to appeal the decision he should contact the complaints team.
 - it had looked at the household income and decided the contribution should not cause hardship. It asked for details of Mr Y's earnings for the last two years so it could reconsider.
 - it had disregarded the full council tax amount instead of 50% when it calculated the contribution of £118.18. Changing this to 50% caused the increase to £132.28 per week. The Council agreed to postpone this increase until 23 July 2018.
24. On 19 July 2018, a community care officer from the Council reviewed Mrs Y's care and support. The review noted changes and how her needs were being met. For example, it said her speech had deteriorated but that her carers had been with her a long time and could understand her well. The reviewer noted that if Mr X's working hours change in the future, "there would be an expectation that he would provide a little bit more support". It said Mrs Y might only need support for six hours a day, five days a week. This "little bit more support" would mean 20 more hours a week provided by Mr X.
25. On 1 November, the Council wrote to advise of a further change to the way it calculated contributions to care. This reduced the amount people could keep for daily living costs and increased the amount of benefits it could include in the calculation. Mrs Y's contribution increased to £198.13 per week from 12 November.

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26. On 10 November, the Council agreed to delay phase the implementation of these most recent changes to give people time to adjust. The policy was to be implemented in April 2019 and the changes introduced in two stages in April 2019 and November 2019. It agreed to ensure people had at least six weeks' notice of the new contribution.
 27. On 16 November, Mr X wrote to the Council again. He said he had not received a full response to his previous complaint and asked that the six people he had addressed it to, respond. He also asked for a copy of the financial assessment before April 2018 and copy of the most recent "social worker report". He also asked for information about the care assessment completed in July. He said they had not yet received anything about this. He asked for a comprehensive review of Mrs Y's needs by a social worker as her condition had "deteriorated dramatically" since the Council had awarded her ten hours a day.
 28. On 17 December, the Council wrote to advise that the changes would not be implemented until April and November 2019. Mrs Y's contribution reverted to £132.28 and the Council said she would be reimbursed.
 29. On 19 December, the team manager for the adult care financial services wrote to Mr X. She apologised that she hadn't responded previously but had thought the visit had addressed this. She explained the changes to the Council policy on charging and the reason why Mrs Y had not paid a contribution previously. She also set out detailed calculations of Mrs Y's contribution from April 2018 and from April 2019. She enclosed the financial assessment from April 2017.
 30. Mr X remained unhappy with this response and said the Council had not addressed the impact on them personally. He said it had not addressed his questions about hardship, how this is calculated, and how they could afford to find £10,000 per year like this.
 31. Officers from the Council met with Mr X to discuss his complaint on 23 January 2019; he handed officers a letter setting out his complaint.
 32. On 30 January, the Council wrote to Mrs Y and advised it had found no change in the support needed which would remain at 50 hours per week. Mr X would also get three hours per month respite.
 33. On 20 February, the Service Director wrote to Mr X about his complaint addressing each of his points.

Was there fault which caused injustice?

34. The Council was at fault for giving no notice of a significant change to Mrs Y's contribution in April 2018. The Council's was still considering its decision to change the policy less than two weeks before the first contribution was due. It should have been clear it could not implement this in time. It later decided that six weeks was a suitable notice period, but it did not allow this for the change applied in April 2018. I have concluded it should have allowed at least six weeks' notice and therefore should reimburse Mrs Y with the first six weeks contribution.
35. Having had such unwelcome news in April, the Council then advised Mrs Y of another significant increase in November, without notice. This was fault but fortunately, on this occasion, it swiftly reconsidered, deferred the increase and reimbursed Mrs Y. However, she had already been caused significant and avoidable stress and anxiety by the letter advising this was to happen without notice.

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36. The impact of these changes were significant in Mrs Y's case, but the Council was not at fault in the changes it made, only in the lack of notice. It was also at fault in firstly calculating Mrs Y's contribution based on out of date information, and secondly in allowing the full amount of council tax, not 50%. This added more significant and avoidable uncertainty, stress and anxiety for Mrs Y and Mr X.
37. The Council also considered whether the revised contribution would cause the household financial hardship and it decided that it would not. This is a discretionary decision. Although I could not say the Council was at fault here, it should consider whether it is appropriate to consider the household finances when the contribution is calculated on individual finances. It should also provide Mr X with information about how it considers hardship.
38. The Council did review Mrs Y's support in July 2018. I saw no evidence this was delayed and found the review considered the necessary information. However, I found the comment about reducing Mrs Y's support was unhelpful and somewhat threatening. This is not how support is decided and I found the Council at fault in this. The Council was also at fault for not sending a copy of the review document; it must do this as soon as it is completed.
39. Mr X's complaint was about the financial assessment. Although he asked to meet the social worker in his first complaint, the Council had no reason to consider this would be helpful. He did not say Mrs Y's needs had changed or that the support was not meeting her needs. The Council was justified in believing a meeting with officers from the finance team and a fresh assessment was the appropriate response to his complaint.
40. Mr X copied his complaint to the Chief Executive, the Corporate Director, the Head of service, the Head of complaints and the cabinet Member responsible for adult social care. Although he was understandably distressed by the circumstances, I do not consider it was necessary for all these people to be involved in dealing with his complaint. They were aware of the complaint and could follow up internally to ensure it had been dealt with. They did not need to each respond to Mr X and the Council had provided a single point of contact which is good practice. The Council did, for the most part, provide the relevant information but Mr X was expecting a response it could not give.
41. However, the Council should have provided a comprehensive written response sooner than it did. Although it had responded in writing to some degree in July and December 2018, it did not address all the issues and Mr X remained dissatisfied. The Service Director's response in February 2019 was the first comprehensive written response which clearly dealt with each point he had raised. The Council was therefore, to some degree, at fault in the way it dealt with Mr X's complaint and this added to the uncertainty, stress and anxiety.

Agreed action

42. To remedy the injustice identified above, I recommended the Council:
- Apologise in writing to Mrs Y and Mr X, noting the fault identified above and detailing the actions it has taken, or will take, to prevent similar problems in future.
 - Reimburse Mrs Y with the first six weeks' contributions from April 2018.
 - Pay Mr X and Mrs Y £250 each for the uncertainty, distress and anxiety it caused.

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- Ensure it gives enough notice of changes to contributions in future.
 - Explain to Mr X and Mrs Y how it decides hardship.
 - Consider whether it should have included Mr X's finances when deciding hardship given Mrs Y is the person receiving services and the contribution is based only on her finances.
 - Complete these actions within two months of the final decision and submit evidence of this to the Ombudsman. Suitable evidence might include:
 - a) A copy of the letter of apology which will include information around how it decides hardship, the action it will take, and the reconsideration of hardship for Mrs Y.
 - b) Confirmation of the reimbursement and payments.

43. The Council has agreed to complete these actions.

Final decision

44. I have completed my investigation and upheld Mr X's complaint that the Council:

- Unexpectedly, and without explanation, increased the charge for Mrs Y's care from zero to £94 per week, and then to £198.13 per week within six months.
- Dealt poorly with their complaint.

45. I have not upheld Mr X's complaint that the Council failed to complete a review of Mrs Y's care.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mrs X's complaint about the state of the pavement near her home. This is because it is a highway maintenance matter which the courts are better placed to deal with.

The complaint

1. The complainant, Mrs X, complains lorries are driving over the pavement to reach the site of a new development and causing damage to the surface. Mrs X is concerned the pavement is a trip hazard and that the Council has not carried out proper inspections.

The Ombudsman's role and powers

2. 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

3. I reviewed Mrs X's complaint and the Council's final response. I shared my draft decision with Mrs X and invited her comments.

What I found

4. Mrs X contacted the Council to report lorries crossing the pavement to access a new development near her home. The Council investigated but decided the issue resulted from issues with the driver(s) error and would resolve itself. Mrs X is not satisfied with its investigation and is concerned about damage to the pavement. She is concerned it has become a trip hazard and that the Council has not carried out proper health and safety checks to determine whether repairs are necessary.
5. The Ombudsman will not investigate this complaint. The Council's role as highway authority is to ensure the highway, including any publicly-maintainable roads and pavements, do not fall into disrepair. The Highways Act 1980 is not prescriptive about the measures a council must take or how and when the council must inspect the highway for defects.
6. The issue in this case is Mrs X's concern that members of the public may trip over the damaged pavement and fall, causing injury. But if Mrs X is concerned the pavement has fallen into disrepair and that the Council's inspections are not

adequate as it has decided not to carry out repairs, she may take the matter to court. The procedure for this is set out at Section 56 of the Highways Act 1980 and it does not require legal representation. Mrs X would first need to serve notice on the Council and, if it accepts it is liable to maintain the road but does not act, Mrs X may apply to the court for an order requiring the Council to carry out repairs. The courts are better placed to determine whether the Council has fulfilled its duty to maintain the highway as we cannot interpret the law to say the Council should do more.

Final decision

7. The Ombudsman will not investigate this complaint. This is because Mrs X's claimed injustice relates to the state of the public highway and it would be reasonable for her to raise this at court.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's draft decision

Summary: The Ombudsman will not investigate Miss A's complaint that the Council has failed to disclose files relating to her involvement with Children's Services. This is because she may bring her concerns about the Council's response to her Subject Access Request to the attention of the Information Commissioner.

The complaint

1. The complainant, who I will refer to as Miss A, complains that the Council has failed to disclose files relating to her involvement with Children's 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'. 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 there is another body better placed to consider this complaint. (*Local Government Act 1974, section 24A(6), as amended*)
3. 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*)

How I considered this complaint

4. I have considered what Miss A has said in support of her complaint.

What I found

5. Miss A made a Subject Access Request to the Council. She says she and her son had contact with Children's Services in 2003 and 2004, and she wants to see the files from that period.
6. The Council responded to the Subject Access Request by saying it does not hold the requested information. Miss A does not accept the Council's response and wants the files retrieved.
7. The Ombudsman will not investigate Miss A's complaint. If Miss A is unhappy with the Council's response to the Subject Access Response, she may bring her

concerns to the attention of the Information Commissioner, who is better placed than the Ombudsman to consider such complaints.

Final decision

8. The Ombudsman will not investigate this complaint. This is because it would be reasonable for Miss A to bring her concerns to the attention of the Information Commissioner.

Investigator's final decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Ms D complains the Council decided to reduce her homecare package, even though her needs have not reduced. As such, Ms D says she no longer has the amount of support she needs. The Ombudsman did not find fault with the way the Council reached its decision.

The complaint

1. The complainant, whom I shall call Ms D, complained the Council decided to reduce her care package from 24 to 17 hours, even though her needs have not reduced and the contents of her most recent needs assessment/review was virtually unchanged from her previous one.
2. Ms D says the reduced support package will not be enough to meet her needs and the Council failed to explain:
 - How the 17 hours will be enough to meet her needs, and
 - Why it believes her needs can now be met by 7 hours less than before.

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 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*)
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 considered the information Ms D and the Council provided to me. I also interviewed two officers from the Council who have been involved in this case. I shared a copy of my draft decision statement with Ms D and the Council and considered any comments I received, before I made my final decision.

What I found

7. Ms D's needs assessment said she has to pace herself each day, as relatively small activities can leave her very tired. Ms D has limited mobility and is unable to stand for long. Ms D has specific dietary needs, which means she has to eat fresh foods. She lives at home with her husband and three children, who are in their teens. Ms D does not have to pay a contribution towards her care package and receives DLA (Low Care and High mobility). Ms D uses this for buying dietary supplements; a vehicle loan and wheelchair maintenance. Ms D receives support from a personal assistant (PA) from Monday to Friday.
8. The Council told me it arranged a care review in October 2018, following an alert that more than £6,000 had accumulated in her direct payments account between February 2017 and March 2018. It said that this indicated that Ms D was not using all her available support hours.
9. However, Ms D told me this amount had accrued due to difficulties with recruiting and retaining staff, and had accumulated over a three-year period. She said she only accrued £1,682 during the above 12 months period and was using all the 24 hours of PA support in October 2018 when the assessment took place.
10. The care review included a review by an OT. The care review said, amongst others, that:
 - Personal care: A PA provides support to Ms D with personal care, bathing and dressing.
 - Domestic tasks: Ms D is unable to complete domestic tasks independently. Ms D's PA makes a packed lunch for the children in the evening and supports Ms D to cook the family meal at night. The PA helps Ms D with cleaning and Hoovering, and with laundry when she cannot do this herself. Her husband also does some laundry at weekends.
 - Accessing the community: Ms D does not go out alone as she does not feel safe crossing roads and managing any risks. As Ms D relies on others to accompany her, she can often feel very isolated, spending much of the time during the day on her own. If needed, Ms D will access the local shops with her PA to get fresh groceries. The PA also supports with (hospital) appointments for her and/or her children, if needed. The records indicate that Ms D often feels too tired to be able to attend local groups or activities in the community.
 - Being a Parent. *"I need support to look after my children 1 – 2 times a week"*. Assistance with parenting is provided through domestic assistance and community hours as available. One of her children has severe asthma and his bedroom and living areas have to be dusted and hoovered daily to prevent an attack.
 - Ms D's husband works full time and has his own health conditions. He returns around 6pm and Ms D said he is often exhausted by the time he returns home.
11. Following the care review in October 2018, the Council made the following changes to Ms D's support package:
 - Personal care: The Council has continued to allocate one hour each morning, for support with personal care.
 - Domestic support: The Council has reduced this from 45 minutes per day (3.75 hours a week) to one hour per week. The Council says that:

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1. The Care Act Guidance (6.106f) says (maintaining a habitable home): *“councils should consider whether the condition of the adult’s home is sufficiently clean and maintained to be safe”*. At times, the Council has provided more support with this as needed. It only needs to provide support to ensure the person is safe. This support is therefore to do a thorough clean of the bathroom and kitchen once a week to keep them to a habitable standard. Furthermore, PAs have to clean up as they carry out support with personal care etc.
 2. It is not unreasonable to expect the husband and the three teenage children to provide some support with keeping their own house clean, such as cleaning, hoovering and laundry.
 - Support with meal preparation:
 1. Ms D continues to receive 30 minutes support at lunch time, to prepare her lunch using fresh ingredients and provide some other assistance.
 2. The support plan used to include 1.5 hour/day support with family meal preparations. This has now been reduced to 30 minutes per day. The Council says that:
 - a. Thirty minutes is sufficient to assist Ms D with preparing dinner. If needed, Ms D’s husband will only need to serve the food when he returns from work.
 - b. The support plan will no longer include support with preparing a packed lunch. The Council believes that although Ms D says two of her children have issues with food, her children should be able to prepare their own school lunch with support from their parents. The Group Manager has also signposted Ms D to the Council’s Children’s Services, if she considered they need support in their own right. However, Ms D has turned down this offer.
 3. Access to the local community. This has changed from 45 minutes per day (3.75 hours per week) to 6 hours per week. This will include support with attending (medical) appointments for Ms D or her children. Mr D has said his wife is not entitled to free hospital transport.
 12. Furthermore, the Council has said that:
 - Ms D’s condition varies from day to day. She does not have to use her personal budget in the above manner; she can use it flexibly. For instance, Ms D could move her hours around if needed or could access the ‘meals at home’ service and use the 30 minutes saved to meet alternative needs.
 - Ms D can keep a six weeks surplus of her Direct Payments in her Direct Payment Account, should she need this for contingency hours.
 - With regards to all the needs put forward in relation to the children (asthma, eating disorder etc), the Council proposed a referral to children service so they can assess the children’s needs and identify any support they could provide to assist with the situation.
 13. Ms D is very unhappy with the seven hours reduction in her care plan. She says that:
 - Her needs have not reduced and the contents of the 2018 assessment was very similar to the one in 2017.

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- Her husband is unable to provide an extra two hours a week of support to do domestic tasks. Her husband suffers from stress, anxiety, depression, Irritable Bowel Syndrome, and joint pain in his knees, back and shoulder. He works from 7am till 6pm and also provides care support to her when he is at home.
 - The Council has failed to appreciate that her children have their own health care needs and are therefore not capable of doing as many basic domestic tasks as healthy children of the same age.
 - She cannot prepare her children's school lunch, in the morning. Two of her children have issues/problems with regards to food and they are therefore unable to make their own lunches, while being supervised by her. As such, Ms D told the Council that she needs PA support with this aspect of her role as a parent.
14. The Council offered to carry out a carer assessment. However, Mr D initially turned down this offer. Since then, Mr D completed a carer assessment in May 2019, which resulted in a one of payment of £150. Furthermore: Mr D is eligible for respite care funding to offer him a break from his role as Ms D's carer, if he would want this. The assessment highlighted a request from Mr D to have support for his wife at the weekend, to enable him to leave the house and do more things with his children or for himself. As such, Mr D should explore this further with the Council, for instance a sitting service at the weekend.
15. The Council told me it aims to maximise the independence of its clients. As such, it referred Ms D to its Reablement Service to look at ways of promoting her independence in terms of accessing the community (for instance by bus), cooking and pacing herself. The service called Ms D in January 2019. However, Ms D said she did not feel the service was suitable for her:
- Ms D said she declined the offer, because she did not believe that she would be able to achieve more independence. She told me she participated in a rehabilitation course in 2014, which did not help her but increased her symptoms. She is already aware and uses equipment that can help her. Ms D also told me her physiotherapist said that *"her global pain and fatigue severely limit her ability to carry out household tasks"* and that she has *"limitations in her standing tolerance"*. Ms D said she discussed this with the reablement team, who agreed it would not be suitable for her.
 - However, the Council said at interview, that it does not have any record that said the reablement team agreed with Ms D's view. While it accepts that Ms D has limitations, they do not accept that 12 weeks of reablement support would not be able to identify areas, further equipment and ways of doing things that would have benefits for her.
16. The Council also offered a reassessment in February 2019. However, Ms D declined this because she was satisfied the assessment document accurately reflected her situation. She could therefore not see a reason to complete a further assessment.
17. The Council confirmed to me that, where there is a disagreement with clients about a reduction in care package, the Council will carry out a review after three to six weeks to assess how the reduced package is working.

Assessment

18. This is a decision for the Council to take on the merits of the case. The Ombudsman cannot substitute his judgement on what would be right for what a

council has decided. He must consider whether there was fault in the way the Council reached its decision. I found that the Council carried out an assessment that captured Ms D's needs. It considered the information and arguments Ms D provided, and used relevant guidance to come to a view as to how Ms D's eligible needs should be met.

19. As such, I found there was no fault in the way through which the Council made its decision. Without fault, I will not question the merits of that decision (see paragraph 4 above).
20. The Council has said it will review with Ms D how her revised care package is working.

Final decision

21. For reasons explained above, I decided not to uphold Ms D's complaint.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs X complained the Council's new policy on making contributions to the costs of home care is unfair and has caused her daughter financial hardship. There was no fault in the Council's actions.

The complaint

1. Mrs X complained the Council's new policy on making contributions to the costs of home care is unfair. In particular, she complained the Council was wrong to allow pensioners a greater weekly income than people under the pension age.
2. Mrs X also complained the Council's decision to approve the new policy was flawed.
3. Mrs X says the policy changes have caused her daughter financial hardship.

The Ombudsman's role and powers

4. 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*)
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 Mrs X and considered her view of her complaint.
7. I made enquiries of the Council and considered the information it provided. This included Mrs X's daughter's financial assessments, the report to the Council's Policy Committee on how it calculated individual contributions to care and the complaints correspondence.
8. I wrote to Mrs X and the Council with my draft decision and considered their comments before I made my final decision.

What I found

Legal background and Council policy

9. The Care Act 2014 is the overarching legislation which sets out what councils can charge people who have an assessed need for care.
10. The Care and Support Statutory Guidance sets out in detail how councils must apply the requirements of the Care Act.
11. Councils have discretion to choose whether or not to charge for non-residential services. Where a council decides to charge it must do so in line with the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the Care and Support Statutory Guidance.
12. Where the council has decided to charge, it must carry out a financial assessment of what a person can afford to pay.
13. Councils can take most benefits into account including employment and support allowance (ESA), attendance allowance and some components of disability living allowance.
14. Councils may exercise discretion to disregard some sources of income even if the law says they are allowed to take them into account when calculating a person's contribution to their care.
15. Councils must ensure that a person's income is not reduced below a specified level after charges have been deducted. This is called the minimum income guarantee (MIG). The amounts are set out in the Care and Support (Charging and Assessment of Resources) Regulations. However, this is only a minimum and councils have discretion to set a higher level if they wish.
16. During the time period of this complaint the Council's weekly MIGs were higher than the national guidance figures and were as follows:
 - people aged 18 – 24 years old = £132.45;
 - people from 25 years to under pensionable age = £151.45; and
 - pensionable age and over = £189.

The Council's Constitution

17. All councils have a constitution which sets out how they are governed and how decisions are made.
18. This Council's Constitution states the Policy Committee has responsibility for policy development and approval on all matters other than those that must be decided by a meeting of the full Council. This means the Policy Committee has the authority to approve changes to the Council's policy relating to how it calculates the contribution a person must make to the cost of their care.

Background

19. Prior to November 2018, the Council's policy on calculating the contribution to a person's care included the following:
 - if a person received disability living allowance (around £85 a week), it disregarded £28.30 of this as income; and
 - all people, regardless of their age, had a MIG of £189.
20. In July 2018 the Council's Adult Social Care and Public Health Committee recommended proposals to change the Council's policy so that it would:

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- include the full amount of a person's disability living allowance as income; and
 - reduce the MIG for people under pension age to £170.23 from April 2019 with a further reduction to £151.45 from November 2019.
21. These changes were designed to bring the Council's policy more into line with national guidance.
 22. The Council held an eight week public consultation on the proposals.
 23. It sent letters about the consultation to all people who received adult social care from the Council. The Council also set up an online survey on its website and shared the link with relevant local groups and placed copies of the consultation in its libraries.
 24. The consultation finished at the end of September 2018. 1,425 people responded. The majority of people who responded were not in favour of the changes.
 25. On 8 October, the Adult Social Care and Public Health Committee considered the results of the consultation. It recommended the Council's Policy Committee approve its recommendation that the Council introduce the new proposals.
 26. Later in October 2018, the Adult Social Care and Public Health Committee brought its report and recommendation to the Council's Policy Committee.
 27. The report included details of the proposals, the reasons for introducing them, the consultation and its results, comments made by consultees, the number of people affected and the increased contributions some would have to pay.
 28. The Policy Committee recommended the proposals were adopted by the Council.
 29. In February 2019, the Policy Committee considered the matter further and gave its approval to implement the changes in two stages:
 - from April 2019, a partial decrease in the MIG would be introduced so that people between the ages of 18 and pensionable age would have a MIG of £170.23; and
 - from November 2019, people between 18 and pensionable age would have a MIG of £151.45.

What happened

30. Mrs X's daughter, Ms D, is in her 50s and is disabled. She receives care at home.
31. Ms D receives ESA and disability living allowance.
32. Prior to the introduction of the new policy changes, the Council's financial assessment of Ms D showed it classed all of her ESA and £28.30 of her disability living allowance as income. It allowed her a MIG of £189. As a result, Ms D contributed £39.75 a week towards the costs of her care.
33. Following the implementation of the new proposals, the Council's financial assessment of Ms D showed her contributions increased to £91.72 a week. This was because the Council classed the full amount of her disability living allowance as income and decreased her MIG to £170.23.
34. Mrs X was unhappy with these changes and in March 2019 she complained to the Council. She said it was unfair that pensioners were allowed a MIG of £189 when the MIG for younger people was lower than this. Mrs X said this was particularly unfair for Ms D as she would not live to pensionable age.
35. The Council responded at the end of March 2019. It said that it would not consider her complaint under its corporate complaints policy because it had no

power to overturn the Policy Committee's decision to introduce the changes. The Council explained the consultation process it had carried out. It recommended Ms D complete an income and expenditure form so the Council could carry out another review of her finances to ensure her contribution was correct.

36. Mrs X remained unhappy and complained to the Ombudsman.

My findings

37. The Ombudsman is not an appeal body. We cannot review the merits of a council policy nor propose a change or amendment to it when it complies with national guidance and any policy changes were made without fault.
38. The Council followed the correct procedures when it made changes to its policy. The consultation was not a binding referendum and the Council had no duty to act in line with the majority who opposed the changes. The relevant Council committee submitted a report which contained appropriate information to the Policy Committee for its consideration and subsequent approval. This was in line with the Council's Constitution. And the proposals are in line with the national Regulations. There was no fault in the Council's actions.
39. The result of these changes is that Ms D must now contribute more towards the cost of her care. However, there is no fault in the way the Council has assessed her finances and calculated her contribution.
40. Mrs X says it is unfair that people under pensionable age have a lower MIG than people who receive a pension. However, this is what the law says and the Ombudsman has no power to intervene. Therefore, I will not investigate this matter further.

Final decision

41. There was no fault in the Council's actions. Therefore, I have completed my investigation.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint that the Council will not remove a tree from outside the complainant's home. It is unlikely he would find evidence of fault by the Council.

The complaint

1. The complainant, who I refer to here as Mr B, has complained about debris falling from a Council-owned tree in front of his house. He believes the Council should remove it as the debris gets into his house and it makes his car dirty.

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 provide a free service but must use public money carefully. We may decide not to start an investigation if, for example, 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 Mr B said in his complaint and the Council's replies to him.

What I found

4. The Council has no legal liability to clear leaves, flowers or pollen etc falling from a tree; that responsibility lies with the owner of the land on which they fall.
5. The Council's policy is to not to remove a healthy tree to mitigate the effect of leaves etc falling from it.
6. The Council has inspected the tree outside Mr B's home and considers it is healthy. It has explained to Mr B it will not remove the tree as this would be against its policy.

Final decision

7. I have decided we will not investigate this complaint because we are unlikely to find evidence of fault by the Council.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr B complains the Council did not tell him about care charges when his mother entered a care home and wrongly charged him for her stay. The Ombudsman found fault with the Council causing injustice. The Council failed to provide important information and took too long to carry out a financial assessment. The Council has agreed to take action to remedy the injustice caused.

The complaint

1. Mr B complains the Council did not tell him about care charges when his mother entered a care home and wrongly charged him for her stay. I have referred to Mr B's mother as Mrs C.

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. Under our information sharing agreement, we will share this decision with the Care Quality Commission (CQC).

How I considered this complaint

4. I considered:
 - Mr B's complaint and the information he provided;
 - documents supplied by the Council;
 - relevant legislation and guidelines; and
 - the Council's policies and procedures.
- The Council and Mr B comments on a draft decision.

What I found

Legislation and statutory guidance

5. The Care Act 2014 provides a single legal framework for adult care and support; it is accompanied by statutory guidance.

Charging

6. Where a council is meeting needs by arranging a care home, it is responsible for contracting with the provider. It is responsible for making sure the provider's invoices are paid.
7. Usually, the council must recover the full cost of providing residential care to a person with enough capital. People in residential care must contribute all their income less the personal expenses allowance (*Charging and Assessment of Resources Regulations 2014*).
8. A council must regularly reassess a person's ability to meet the cost of any charges to take account of any changes to their resources. This should take place if there is a change in circumstance (such as a person entering residential care) or at the request of the person.
9. Care and support planning will identify how best to meet a person's needs. As part of that, the council must provide the person with a personal budget, except in cases or circumstances set out in the Care Act (Personal Budget) Regulations.
10. The personal budget gives everyone clear information about the costs of their care and support, and the amount the council will pay. This will help people to make more informed decisions.
11. The Council should identify a personal budget in a timely manner, proportionate to the needs to be met. The Council should tell the person where they are in the care planning process, what will happen next and the likely time frames.

Debt recovery

12. Councils should clearly discuss with the person or their representative at the outset that care and support is a chargeable service and where the person has been assessed as being able to afford to do so, they will be required to contribute to the cost of that care. It should also be explained that this means there will be invoices and that an agreement should be reached as to whom the invoices are sent, and if the person wishes, that their agreement and authority is obtained for the use of an agent.

NHS Funding

13. A decision support tool (DST) is used in continuing health care funding decisions. It is a document which records evidence of an individual's care needs to determine if they qualify for continuing healthcare funding.
14. NHS continuing healthcare (CHC) is a package of care arranged and funded solely by the NHS for individuals who are not in hospital and have been assessed as having a "primary health need".
15. NHS funded nursing (FNC) care is a contribution from the NHS to meet the nursing element of a person's care if their needs are such they must be met in a nursing home, but do not trigger full NHS funding.

What happened

16. This chronology includes key events in this case and does not cover everything that happened.

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17. In January 2018, Mr B's mother, Mrs C, moved into care home 1.
 18. A week later, Mrs C was admitted to hospital. The Council stopped the funding for care home 1. It closed Mrs C's case because it did not know when she would be discharged from hospital. The Council told the hospital to tell it when Mrs C would be discharged so a care and support assessment could be undertaken and funding agreed.
 19. Mrs C was ready for discharge from hospital at the end of January 2018. The hospital arranged for Mrs C to return to care home 1 but did not tell the Council.
 20. Two days after Mrs C returned to care home 1, the care home phoned the Council and said it had readmitted Mrs C. The Council told the care home a new care and support assessment should have been undertaken before Mrs C was discharged from hospital. The Council updated Mrs C's care and support plan and said it would commission short-term care for Mrs C at care home 1.
 21. In February 2018, the Council carried out a care and support assessment. The assessment recommended Mrs C was provided with long-term care at a home with nursing and care provision. Mrs C said she would like to move to care home 2.
 22. The Council completed a CHC checklist and asked for a DST meeting.
 23. Care home 1 sent Mr B an invoice for £6,000. This was the total cost of Mrs C's care. The care home told Mr B if he did not pay, he would incur interest. Mr B said the Council was liable for the debt. The care home advised him to pay the fees and claim them back from the Council. Mr B paid almost £1,000. Mr B asked the Council to pay the balance of the invoice and repay him the money he had paid.
 24. The Council wrote to the hospital. The Council explained the hospital should have sent an assessment notification when Mrs C was ready for discharge. The Council said it did not assess Mrs C or agree to her being placed at care home 1. The Council told the hospital it accepted no liability for the debt.
 25. The Council wrote to care home 1 and said it should not have accepted Mrs C without a funding agreement. Care home 1 asked the Council to assess Mrs C for funding retrospectively. The Council said it could not apply for funding to cover the period of the invoice sent to Mr B. This was because social care had not placed Mrs C at care home 1.
 26. In March 2018, a DST meeting was held, and Mrs C was considered eligible for FNC funding.
 27. In April 2018, Mrs C moved to care home 2 to receive nursing care provision. The Council updated Mrs C's care and support plan.
 28. The Council arranged to visit Mrs C to carry out a financial assessment in June 2018. This assessment was for the period February to April 2018. Mr B told the Council Mrs C had been admitted to hospital and the planned visit could not go ahead. Mrs C passed away in June 2018.
 29. The Council carried out a benefit check for Mrs C and used a financial assessment completed in March 2017 to assess the amount she needed to contribute to her care costs between February and April 2018. In June 2018, the Council wrote to Mr B to tell him his mother's contribution to her care was £144 a week. But in the financial assessment the Council used the wrong income values and care home costs.

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30. In August 2018, the Council told Mr B it would pay care home 1's fees and invoice him for Mrs C's assessed contribution. It said care home 1 would refund him the money he had paid. Mr B agreed to pay Mrs C's assessed contribution for care home 1 as he had for care home 2.
 31. In September 2018, the Council wrote to Mr B with a recalculation of Mrs C's contribution to her care; this was £125 a week.
 32. Care home 1 refunded the money Mr B had paid.
 33. In October 2018, the Council sent Mr B an invoice for £1200. The Council explained this invoice was Mrs C's assessed contribution towards her care from February 2018 to April 2018. The Council said this period was short-term care while it completed assessments and considered to long-term care options for Mrs C.

Analysis

34. I have not found any evidence the Council gave Mr B or Mrs C information about her residential care status either orally or in writing. There is no evidence the Council told Mr B or Mrs C that her stay in care home 1 was short-term or that depending on the result of a financial assessment, Mrs C would have to contribute to the cost of her care. This is fault.
35. I have also found no evidence the Council gave Mr B or Mrs C information about her personal budget for her residential placement at either care home 1 or care home 2. This is fault.
36. The Council says it gave financial information orally to Mr B and Mrs C. But the Council did not record this in its case notes, which is fault. Even if the Council did provide information orally, it is not reasonable to expect Mr B and Mrs C to remember what they were told as it was a stressful time. The Council should have provided information in writing and not doing so is fault.
37. Financial assessments do not have to take place before a person receives care. If they did, people would be waiting for care – pending the assessment. But the Council took six months to carry out a financial assessment. This is too long and is fault. The fault was compounded by the Council not having properly advised Mr B or Mrs C at the start of the process about contributing to the cost of care. As I set out in paragraph 29, when the Council finally calculated Mrs C's contribution to the cost of her care, its calculations were wrong.
38. The Council also initially refused to pay Mrs C's care home costs from the end of January to April 2018. Although the Council argued the hospital should have told it Mrs C was going to be discharged, it was only two days before care home 1 told the Council Mrs C had returned. At this point, the Council should have undertaken an assessment, arranged suitable care, and arranged funding for Mrs C. Instead, it took the Council six months to resolve the issue during which Mr B was liable for all of care home 1's cost. This is fault.
39. The faults identified caused Mr B injustice. There was uncertainty about the amount Mrs C owed in care costs and the Council initially refusal to contribute to her care costs between January and April 2018, causing avoidable distress.

Agreed action

40. Within one month the Council will:

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- Apologise to Mr B and pay him £300 for the distress and uncertainty caused by the Council's faults.
41. And, provide guidance to the Older Adults Community Assessment Team about:
- what to record in their case records;
 - providing fees and charging information to families during the assessment process; and
 - aiming to complete a full financial assessment within 28 working days.
42. The Council should provide the Ombudsman with evidence that the above recommendations have been completed.

Final decision

43. I have completed my investigation and uphold Mr B's complaint. Mr B has been caused an injustice by the actions of the Council. The Council has agreed to take action to remedy that injustice.

Investigator's final decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: On behalf of Mr B, Ms X complains about the amount of money the Council leaves Mr B to live on given his weekly expenses due to his disability. The Ombudsman will not investigate the complaint because there is no evidence of fault by the Council and an investigation by the Ombudsman would not lead to a different outcome.

The complaint

1. Ms X complains on behalf of her son, Mr B, that the Council's assessment of Mr B's level of contribution towards his care costs does not properly take into account his expenses and leaves him with insufficient funds.

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
 - 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*)

How I considered this complaint

3. In considering the complaint I reviewed the information Ms X provided, including the Council's letter sent following its review of Mr B's income and expenditure. I gave Ms X the opportunity to comment on my draft decision and considered the comments provided.

What I found

4. Mr B is disabled and receives benefits. His income is taken into account by the Council in determining his contribution to the care package he receives.

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5. In deciding what a person's contribution will be, councils must ensure that a person's income is not reduced below a specified level after charges have been deducted. This is called the Minimum Income Guarantee (MIG). The amounts are set out by national government in the Care and Support (Charging and Assessment of Resources) Regulations but they are a minimum and councils have discretion to set a higher level if they wish.
 6. Previously the Council had set higher MIG figures than the national guidance figures. However, in 2018 it decided to change its policy which brought it more in line with the national guidance and other local councils and this has resulted in an increase in the contributions people receiving care have to pay.
 7. Mr B's contribution increased because of the change in the Council's policy. Ms X complained to the Council because she felt he had not been left with sufficient funds. The Council carried out a review of Mr B's income and expenditure but concluded that in its view Mr B has sufficient income to be able to pay the new contribution amount. It explained to Ms X that its complaints procedure could not override or change a policy decision made by Council Committee.

Assessment

8. As a result of the Council's change in policy, Mr B must now contribute more towards the cost of his care than he did before. However, while Ms X is concerned about the lower amount of money he now has to live on, there is no evidence of fault in the way the Council has assessed his finances and calculated his contribution.
9. Ms X says Mr B has higher expenses, like electricity, because he lives alone and does not share his accommodation. However, the income and expenditure form asks for the figure that Mr B actually pays so living alone would not affect this figure. Ms X also said that Mr B now has life assurance premiums to pay. This cost had been noted as "not applicable" on the form but if the situation has now changed Ms X should inform the Council of this, and any other new expenses Mr B has.

Final decision

10. The Ombudsman will not investigate this complaint. This is because there is no evidence of fault by the Council and an investigation by the Ombudsman would not lead to a different outcome.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs C says the Council delayed in assessing her husband's care needs, underestimated the severity of those needs and failed to provide him with suitable accommodation. She also says officers have been rude and unprofessional. She says this has caused her and her husband distress. There is insufficient evidence to decide on officers' behaviour. The Council assessed Mr C as eligible for care without undue delay and found him suitable, though temporary accommodation. However, thereafter, it delayed in providing Mr C with a typed-up version of a completed needs assessment. This was fault which caused Mr and Mrs C some distress. The council has agreed to pay them £100 each and apologise.

The complaint

1. The complainant, Mr C, is represented by his wife, Mrs C. She says the Council was at fault for:
 - a) failures in assessment and provision of care:
 1. A failure to take action to safeguard Mrs C from Mr C;
 2. Delay in assessing Mr C's eligibility for care;
 3. Errors in the assessment of Mr C's eligibility for care;
 4. Delay in providing Mr C with a suitable care placement;
 5. Delay in carrying out a full needs assessment; and
 - b) Failures of professional standards by social workers:
 1. Abusive treatment by an officer during a residential care assessment;
 2. Excluding Mrs C from a meeting in November 2018 during which inappropriate pressure was put on Mr C to divorce Mrs C;
 3. Putting inappropriate pressure on Mr and Mrs C to accept accommodation for Mr C at one facility which would have made it less likely he would get a place at another facility.

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*)
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 Mrs C. I considered the documents that she sent to the Ombudsman. I wrote an enquiry letter to the Council. I considered all the documents I received from Mrs C and the Council, weighing the evidence and applied the appropriate legal framework before reaching my decision.
6. I sent my draft decision to Mrs C and the Council and invited their comments.

What I found

What should happen

Care Act

7. The Care Act 2014 introduced a requirement for local authorities to promote 'wellbeing'. This '*signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs'.... The concept of meeting needs recognises that everyone's needs are different and personal to them. Local authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into*'. (*Care and Support Statutory Guidance, Ch 1*)
8. Councils must also consider the importance of preventing or delaying the development of needs for care and support among carers. Statutory guidance recommends 'tertiary prevention' methods such as respite care. (*Care and Support Statutory Guidance 2.10*)

Needs assessment

9. A council must carry out an assessment of any adult who seems to need care and support. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
10. Having identified eligible needs through a needs assessment, the Council has a duty to meet those needs. (*Care Act 2014, section 18*)
11. The Care Act sets out examples of different ways a council can meet eligible needs. Examples include accommodation in a care home, care and support at home, counselling and social work, and information, advice and advocacy. (*Care Act 2014, s 8*)

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12. If a council decides a person is eligible for care, it must prepare a care and support plan. This must set out the needs identified in the assessment. It must say whether, and to what extent, the needs meet the eligibility criteria. It must specify the needs the council intends to meet and how it intends to meet them. (Care Act 2014, ss 24 and 25)
 13. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan needs. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. (Care Act 2014, s27(4) and (5))
 14. The care and support plan must set out a personal budget which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. (Care Act 2014, s 26)
 15. The High Court has confirmed an individual's wishes are not the same as their needs and their wishes are not the paramount consideration. A council must have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs. (R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin))
 16. A person with eligible care needs can have a council arrange their care. Or, if they wish, they can arrange their own using a direct payment. (Care Act 2014, s 31)

Carers

17. A council must consider whether to carry out a carer's assessment if it appears the carer has need for support. It must assess the carer's ability and willingness to continue in the caring role. It must also consider the results the carer wishes to achieve in daily life and whether support could contribute to achieving those results (Care Act 2014, s10)
18. The Act says the local authority can meet the carer's needs by providing a service directly. In these cases, the carer must still receive a support plan which covers their needs, and how they will be met. (Care Act 2014, s 25)
19. The Council can also provide a carer's personal budget, which must be sufficient to enable the carer to continue to fulfil their caring role. The Council should consider the carer's wishes for their day-to-day life. The Council should try to agree the personal budget and its use during the planning process. (Care and Support Statutory Guidance 2014)
20. Councils are entitled to recoup the costs of care, or a proportion of those costs, from those who can afford to pay. Before doing so, they must carry out a financial assessment of service users. If a service user fails to complete the financial assessment, they will be charged the full rate.

Safeguarding

21. The Care Act 2014 requires councils to protect those who:
 - Have care and support needs
 - are experiencing or are at risk of abuse or neglect and
 - because of their care and support needs cannot protect themselves against actual or potential abuse or neglect.
22. On receiving a safeguarding notification, councils should consider how to respond. There is no requirement to formally investigate every allegation.

Mental Capacity Act

24. The Mental Capacity Act 2005 governs the assessment of adults' capacity to make decisions. The Act is based on five underlying principles:
- a) A presumption of capacity: every adult must be assumed to have capacity to make decisions unless proven otherwise;
 - b) Individuals must be supported in making their own decisions;
 - c) Even if an individual makes unwise decisions, that might be considered unwise or eccentric, this does not mean they lack capacity;
 - d) Anything done on behalf of someone who lacks capacity must be in their best interests; and
 - e) When making decisions on behalf of someone who lacks capacity, the least restrictive option is preferable.

Responsibility for housing in the Council's area

25. The Council as a county council, has responsibility for adult social care but does not have responsibility for housing which rests with the district authorities which make up the county. The Council did not have its own housing stock and was, to some extent, reliant on the district council.

Background

26. Mr C is in his early sixties. He has Parkinson's Disease. This affects his mobility, cognitive ability and judgment. It makes him prone to making rash decisions and to inappropriate, impulsive behaviour, which Mrs C found distressing. Their relationship was under considerable stress.
27. Mr and Mrs C had assets and were therefore liable to pay for, or pay a contribution towards, any residential care Mr C received. When the Council sent them financial assessment forms, they did not return them.
28. There was an incident in early April 2018 at Mr and Mrs C's home after which Mrs C called the police. Soon thereafter, she approached the Council and asked it to safeguard her and to find a residential care placement for Mr C.

April 2018

29. The Council arranged for Officer O, a social worker, to conduct Mr C's case. He made enquiries of medical professionals and others with knowledge of Mr C's condition but had difficulties in making contact with Mr C's consultant, Dr D. These problems may have been exacerbated by the fact that both Mr C and Dr D worked part time. Officer O was also asked to look into Mrs C's needs as a carer.
30. Officer O attended Mr and Mrs C's house on 19 April 2018 and met Mr and Mrs C. He asked them whether they wished to live together or apart in future because of stresses in their marriage. Mrs C said she could continue to look after Mr C if she had breaks when Mr C had respite care. Her preferred solution would be for Mr C to live elsewhere for two to three days per week.
31. Officer O had not, by this stage, met Dr D which concerned Mrs C. He completed a continuing healthcare (CHC) checklist to see if Mr C was eligible for NHS funding because of ongoing medical needs. On 18 May 2018, the CHC rejected the application saying Mr C's needs were not great enough to qualify.
32. Officer O continued to investigate the case. He looked into the possibility of arranging a residential care placement under the Council's Shared Lives programme where service users live with carers. No suitable carer was available.

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33. On the same day, Officer O went to Mr and Mrs C's house. He told them that, due to the lack of a suitable carer, Shared Lives could not help. The notes show Officer O felt tensions between Mr and Mrs C at their meetings and believed their wishes were not always aligned. He therefore recommended Mr C should have an independent advocate to represent him.
 34. Mrs C said Mr C lacked capacity. She told Officer O that Dr D had told her this some years earlier and said the police had recently agreed. Officer O said capacity was 'decision specific' and that he had to treat Mr C as having capacity in the absence of a capacity assessment.
 35. Mrs C became frustrated that Officer O was not supporting her. She contacted the Council and spoke to a senior officer, Officer P, who explained that, as Mr C was the one with the eligible needs, Officer O's role was to support him.
 36. Officer P agreed to arrange a carer's assessment for Mrs C. During this phone call, records show, Mrs C expressed extreme frustration with her situation leading the officer to suggest she contacted a solicitor about divorce. Officer P also recommended Mrs C should look into two residential care options for Mr C.
 37. The Council arranged for Mrs C to have a carer's assessment. This took place in July 2018. The social worker responsible referred to the assessment as '*particularly difficult*' because of Mrs C's distress. The Council awarded Mrs C a £200 per year carer's allowance from July 2018 onwards, referred her to the carers trust for support and suggested support for her in her caring role.
 38. Mrs C wrote back saying that the assessment assumed she would continue to care for Mr C which was not necessarily the case as Dr D had told her she ought to '*step away from this role*'.
 39. Officer O located a residential care home which, he thought, would be able to provide respite care and, in the longer term, residential care for Mr C. He provided a cost estimate for the care of around £450 a week. Mrs C phoned back saying she did not think this would be a viable option for respite care due to the cost.
 40. The next time Mrs C spoke with Officer O, she said she had not realised he was not there to help her. She questioned the need for an independent advocate as she knew Mr C best. She suggested Officer P should take over the case. She said she had looked into Officer P's residential care suggestions but found one had no vacancies. Officer O said he would find out if they were suitable.
 41. Officer O continued to investigate Mr C's condition. Mr C worked at a charity shop. He spoke to the manager who said his condition had recently worsened. He continued to chase Dr D who proved very difficult to contact.
 42. Officer O finally spoke to Dr D in early June 2018. Dr D said that Mr C's mental capacity may have been compromised by the Parkinson's medication he had been taking a few years earlier but he now took a less debilitating alternative.
 43. Mrs C contacted Officer O a week later saying Mr C's condition had worsened; he fell regularly and might need to go into residential care. Officer O said he would need to complete the assessment but felt residential care might not be suitable for Mr C. Mrs C said Mr C should go into a residential home for assessment.
 44. Mrs C continued to try to persuade Officer O that Mr C did not have capacity to make decisions. Officer O said he had to assume Mr C had capacity.
 45. Officer O continued to investigate options for Mr C but found the available alternatives had waiting lists and required applicants to live locally. He also found

the costs were high; most over £500 a week with additional hourly care fees which was a problem as Mr C had to pay for it.

Needs assessment June 2018

46. At the end of June, Officer O went to Mr and Mrs C's house with the independent advocate to complete the needs assessment. Officer O found:
 - a) He had no concerns about Mr C's capacity to make his own decisions; and
 - b) Because of his needs, the Council had a duty to care for him under the Care Act 2014.
47. Officer O investigated options for Mr C's care. These were, essentially, residential care, care at home or care in alternative accommodation.
48. Mrs C continued to press for Mr C to be taken into care. It is clear she found living with Mr C very stressful. She phoned Officer O and claimed he had promised to get Mr C into one of two care facilities; one in her hometown, Home 1 the other, Home 2, in a nearby town (a similar facility to Home 1 but with fewer facilities and care options) for assessment. Officer O's notes show that he was concerned that this was not true. He felt Mrs C was pressuring him unfairly.
49. Officer O says he told Mrs C that, because Mr C was a homeowner and therefore would have to provide some of the funding for some of the Council's residential care options himself, and because of demand for the available places, the quickest option to move Mr C out of the home would be for Mr C to go into private rented accommodation at which the Council could arrange ancillary care.
50. Mrs C continued to press for Mr C to go into Home 1 or Home 2. These were not care homes as such, they were rather assisted living developments where aged residents including those with extra care needs could live as a community with some support on hand.
51. Home 1 catered more for those with higher needs. It had a 'hub' in which residents could meet, eat and socialise and residential carers onsite who looked after those residents with extra care needs for whom several flats were earmarked. Home 2 had fewer community functions and was more like a gated community with a communal area included.
52. The Council was able to nominate service users for both facilities as was the district council. There was an assessment flat at Home 1 where potential residents could be assessed to see if the facilities were suitable.

Safeguarding complaint

53. In late June 2018, Mrs C, feeling there had been delay in her case, made a formal complaint to the Council saying it had failed to safeguard her from Mr C and to carry out a proper assessment of him.
54. The Council responded in late July 2018. Officer O's manager dismissed the complaint saying:
 - a) She was happy with the way Officer O and others were handling the case; and
 - b) The Council had no duty to safeguard Mrs C as she was not a vulnerable person.
55. Mrs C continued to press for the Council to find a place for Mr C. At a meeting at the family home in early August 2018, Officer O explained Mr C would be unlikely to qualify for a place at either facility because he was a home-owner and not sufficiently local to Home 2. He said, however, because of Mrs C's distress, he

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- would press for a respite break at another home, Home 3. They also explored other options further afield but Mr C did not appear to want to go far from home.
56. Officer O arranged a week's respite break at Home 3 with funding from the NHS. It took place in mid-August 2018. Officer O visited Mr C there. His notes say Mrs C said she disagreed with the care assessment. She also said she had recently taken a short holiday and realised the marriage was over and she was no longer prepared to look after Mr C.
57. Officer O says he told her the existing assessment would now need to be rewritten because Mrs C had previously said she would provide care so Mr C's care needs had changed.
58. The next day, Mrs C complained to her MP. She said she was concerned that, in the assessment, Officer O:
- a) Had not taken account of Mr C's cognitive and behavioural decline; and
 - b) Had not considered her welfare or safety;
59. She said she was prepared to care for Mr C until the end of September if the Council could put him into residential care by then.
60. Officer C arranged for a home visit with his manager on 30 August 2018. On 22 August, he sent application forms for Mr C to be considered for entry into Homes 1 and 2 to Officer Q, an advanced practitioner and best interests assessor who was responsible for applications to these homes.
61. The home visit took place in early September. Officer O and his manager attended. Officer O asked Mrs C what she had meant when she said the marriage was over at the previous meeting. She said she thought they should live separately but not divorce. She said she was concerned that Mr C was a criminal and his behaviour put her at risk.
62. She said no one was listening to her. She was doing all the work. She said Mr C should be seen as a special case. She said she felt Mr C should be dealt with by the older persons team which would improve his chances of being housed.
63. Officer O's manager said the Council was limited in what it could do. Mr C was low priority for Homes 1 and 2. She suggested commissioning an occupational therapist's report which might persuade the housing department to house him. There, he could get additional support.
64. Mrs C objected to an OT who might recommend putting equipment to help Mr C into her home. The manager explained that it might help get Mr C housed. Mrs C asked why it had not been done before.
65. Both Mr and Mrs C asked for a new social worker. They said they had no confidence in Officer O or the report he had prepared. They were told that this would be likely to cause some delay but continued to request a change. Therefore, the Council removed Officer O from the case and shelved his report.
66. After the meeting, Officer O continued to work on the case until a new officer took over. In mid-September 2018, Officer P took over as the officer in charge of the case and, the Council says, began work on the new assessment. She did not complete this until February 2019.
67. Another officer met Mrs C's MP to discuss her concerns. The next day, Officer O telephoned Mrs C and told her Mr C was now in band 1, the district council's highest band, for housing and had been since 15 August 2018. They could now bid for sheltered housing accommodation at Home 1 and Home 2 and elsewhere.

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68. Mr C moved into Home 1 for a three-week assessment on 18 September 2018. The records show both Mr and Mrs C found the move a relief. The assessment was meant to take three weeks. In fact, Mr C was there for nearly six months and, Mrs C says, no full care and support assessment was ever carried out.
69. Mrs C says that, for the first five weeks Mr C was there, staff told her of the severity of Mr C's needs and disability. She says she was led to believe Mr C would be accommodated at Home 1 once assessed.
70. At the end of the three-week period, the manager of Home 1 said, in a note, the evidence indicated Mr C would require supported living and extra care support. Both Mr and Mrs C seemed much happier and Mr C said he did not want to return home. The manager also identified some concerns with Mr C's mental health.
71. A new social worker visited Mr C and asked him about his wishes and needs. He said he wanted to live independently because his needs were increasing and it was less stressful. The social worker told him he would have to complete a financial assessment.
72. The officer began looking for suitable accommodation. One shared living house was identified in Mr and Mrs C's town and the officer arranged a viewing but this was cancelled because the Council's funding panel had not yet approved funding.
73. In late October 2019, Officer Q assessed Mr C. He said he wanted to stay at Home 1 because it had extra care and he had made friends there. Officer Q, though, felt his needs could be met in the community and he could travel to the hub daily by public transport.
74. Officer Q said, in a note, Mr C's current needs were not sufficient to justify putting him in an extra care flat. She said, if *'the extra care units [were] used for people that could be supported elsewhere [this would], reduce the abilities [to care] for people with extra care needs and impact on the use of long term care'...* *'the care and support needs evidenced in the care plan doesn't evidence that extra care is needed at this time'*. She said that, even though Mr C's needs would deteriorate, that could not be a consideration as this was true of many service users.
75. Mr and Mrs C were particularly upset at the way Officer Q spoke to Mr C and because she overrode other social workers who believed that Mr C's condition did merit a place in an extra care flat at Home 1.
76. Mrs C says Officer Q 'grilled' Mr C about his care needs and ability to afford the care. She says Mr C was distressed by this meeting and said Officer Q asked him questions he did not understand. She said she intended to complain to her MP again because no one was listening to her or Mr C. Officer Q told her she should wait until a planned meeting on 9 November 2018 when she could put her case.
77. Mrs C attended. She believed the meeting was due to start at 2pm. She was annoyed to find when she arrived that a meeting between Mr C, his advocate, Officer P and others had started at 1pm. She says Officer P applied inappropriate pressure on Mr C to divorce her during this meeting.
78. Shortly thereafter, Mrs C made a further complaint to the Council via her MP. She repeated her earlier complaint and said the Council had gone back on a previous agreement to house Mr C at Home 1 when his assessment was complete.
79. A senior officer responded in early November 2018 saying:
- a) It had been appropriate for Officer Q to assess Mr C who had not objected;

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- b) Officer Q had found Mr C was not eligible for extra care. He could not, therefore, have an extra care flat. Other flats were limited in number, he could not take one of the extra care flats which would limit availability.
- c) However, he was eligible to apply for one of the other flats the Council had at Home 1 and Officer Q was supporting Mr C in an application for one such flat.
80. In the event, Mr C rejected the flat as it was too far from the hub and too big. The notes show that, in January 2019, the district council offered Mr C a flat at another similar facility, Home 4. Home 4 was another residential facility with some community functions on site. Unfortunately, this was on the second floor and therefore, all parties agreed, unsuitable for Mr C who could not take the stairs in the event of a fire.
81. Both the Council and the district council had use of several flats at Home 4 and could nominate people to live there. The district council had no flats left on the ground floor whereas the Council had some. The district council manager wrote to the Council and suggested it could nominate Mr C for a place there itself.
82. The Council initially refused. It said that its policy was that *'an individual who has more than £23,250 in assets (excluding the value of their home or land) will not usually be placed within the Council's nominated units of Extra Care accommodation. Instead, such an individual can opt to apply to the housing provider to live within one of the other general needs housing units on the scheme and buy in their own care support'*.
83. After internal discussions, the Council decided to use its discretion to override its policy in this case. However, in late January 2019, Mr C spoke to Officer P and said he did not want to go there because there was no hub there which, he felt, would place him at risk.
84. Mrs C says Officer P placed inappropriate pressure on Mr C to take a place at Home 4 or lose his priority place at Home 1. She says management at Home 1 told her exactly the opposite.
85. At a meeting on 31 January 2019, Mr C said again that he wanted to stay at Home 1 with extra care as he felt this would give him the support and the independence he wanted.
86. In February, Officer P completed a further care assessment. By this time, there were concerns that Mr C had begun to fall at night.
87. At around this time, Mrs C phoned the Council again to say that there were three empty properties at Home 1 and to insist that Mr C should have one of them. At around this time, a place became available in a residential care home, Home 5. Mr C moved in there and has remained there since.
88. Mrs C says it is safe and the care provided is good though she has said it is not suitable as the residents are older than Mr C who requires mental stimulation,
89. Mrs C also says she confronted Officer P and asked to see Mr C's completed needs assessment in February 2019, eight months after Officer O's initial report. She was told that it had not been completed. Officer P completed an assessment in February 2019.

Was there fault causing injustice?

Safeguarding

90. Mrs C says the Council failed in its duty to safeguard her. I do not accept this. Mrs C does not have care needs of her own, independent of her need for support as a carer for Mr C. There the Council does not owe her a safeguarding duty.

Delay in assessing Mr C's eligibility for care

91. Officer O first visited Mr and Mrs C in April 2018. The records show he was diligent in dealing with this case. The notes show he made numerous efforts to progress the assessment. For example:
- a) He visited Mr and Mrs C at their home twice;
 - b) Made numerous phone calls and sent numerous emails to Dr D;
 - c) Appointed an independent advocate to represent Mr C.
92. He also made diligent efforts to find solutions to Mr and Mrs C's problems sending a continuing healthcare checklist to the local NHS care commissioning group and trying to find residential care and respite placements for Mr C.
93. He produced his first draft assessment in June 2018. Mr and Mrs C did not agree with it but it did find that Mr C was eligible for care. There was delay in finding care for Mr C but that was not Officer O or the Council's fault. This was a difficult case where Mr C's specific needs and the dynamics of Mr and Mrs C's relationship made it difficult to find a solution that was acceptable to them.
94. In August 2018, when Mrs C told him she would not care for Mr C in future, he told her he would have to carry out a new assessment. Shortly thereafter, Mr and Mrs C asked for him to be replaced.
95. I do not find any fault with the way Officer O conducted his assessment.

Errors in eligibility assessment

96. Mrs C says Officer O's initial assessment understated Mr C's disability. She says Officer O understated Mr C's cognitive impairment and wrongly concluded he had greater capacity to decide on his own behalf than was the case. She also says he understated the severity of his need.
97. I cannot uphold this part of the complaint. Officer O and other Council officers have met Mr C repeatedly and have experience in assessment of social care need. I cannot find fault with their decision because Mrs C disagrees with it. There must be fault with the way the decision was reached.
98. The records show that, over the period covered by this complaint, Mr C's condition deteriorated markedly. In April 2018, he was working in a charity shop and able to function without support, if taking his medication. Therefore, on the evidence, it does seem that Officer O's conclusions were fair.
99. In summary, Officer O made an evidence-based decision after making the proper enquiries. I do not find fault.

Delay in providing Mr C with a suitable care placement

100. The Council says, *'the implementation of a care and support plan cannot take place until the assessment has been completed and the determination of eligibility been made. However, under section 19(3) of the Care Act 2014 the local authority does have powers to provide immediate support where there appears to be urgent need and prior to completion of the assessment function. This support*

was offered to both Mr and Mrs C at numerous points between April and August 2018, but was not accepted, as Mrs C was focussed wanting a more permanent solution being quickly arrived at without due process being followed'.

101. Officer O investigated various options for Mr C's care. In April 2018, Mr C's level of need, was not as great as it later became and did not justify residential care which Mr C would not, in fact, want as he was relatively young: residential care homes catered for people who were up to 30 years older than him.
102. Officer O told Mrs C that, given Mr C's level of need, it would probably be quickest if he found a flat at which the Council could provide care. However, he also looked for respite care, assisted living placements such as in Home 1 and Home 2 and other options to alleviate the problems Mr and Mrs C were facing.
103. Officer O also looked at using the Council's Shared Lives service where Mr C would have moved in with a suitable carer but there were no suitable carers available.
104. He also investigated residential care options. However, the notes show that Mr and Mrs C, who, as property owners, were required to pay a contribution towards such care, did not wish to pay. Officer O cannot be at fault for this.
105. Officer O also looked at Homes 1 and 2. The notes show that Officer O found that both had waiting lists. Also, priority was given to applicants whose applications were placed in a high priority band. The highest band was Band 1. The lowest was Band 5. As a householder, Mr C was in Band 5. This made it very unlikely he would be housed soon. Officer O approached the district council and managed to get Mr C's priority changed from Band 5 to Band 1 in August 2018.
106. Further some of the flats were earmarked for those requiring extra care. In the end, Officer O and the Council got Mr C moved into Home 1 into the assessment flat to see if he would qualify for an extra care flat.
107. While some staff at Home 1 believed Mr C would qualify, Officer Q, a senior officer, did not believe he did. This was a professional judgment made on the facts. The Ombudsman does not usually find fault with such judgments. Officer Q has the training and the experience to make such a judgment and had observed Mr C at close hand for a month. The Ombudsman is not, therefore, in a position to question that judgment even if, as is clear from the notes, others did not agree.
108. Mrs C believes this was a financially-motivated decision. The care notes do not support this view.
109. Mrs C says officers had made it clear to her that Mr C would get a flat at Home 1 after assessment. I cannot comment on whether any officer said such a thing. The available evidence does not support her claim. As we make our decisions on the evidence, I cannot find that they did.
110. Thereafter, the Council offered Mr C a place in Home 1 and another in Home 4, both of which he rejected for entirely understandable reasons. The Council also overrode its own guidance and was preparing to offer Mr C a place on the ground floor at Home 4 in January 2019 but Mr C said he did not want to go there.
111. In deciding whether the Council is at fault, particularly in a case where the service user has highly complex needs, I cannot find fault if, as in this case, a council made diligent efforts to meet those needs.

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112. Both Mr and Mrs C believe Mr C should have been given a flat on the ground floor near the hub in Home 1. However, case law is clear that wishes are not the same as needs. I do not find fault.

Delay in Officer P's assessment

113. Officer P replaced Officer O in September 2018 and was tasked with carrying out an assessment of Mr C's needs. There is no set timeframe within which a needs assessment must be completed but our guidance says they must be completed in a 'reasonable' period.
114. The Council says Officer P completed this assessment within a reasonable time but accepts it was not typed up until February 2019. I have accepted this and, on that basis, I have found the Council at fault. The Council has accepted this finding but says there were ongoing difficulties and differing opinions between the Council and Mrs C, and this caused some of the delay. The Ombudsman accepts this. Nonetheless, the delay was fault.
115. This fault caused Mr and Mrs C some injustice in that it led to continuing uncertainty in their case and caused some distress, anxiety and a need for Mrs C to spend further time pursuing the Council on Mr C's behalf.
116. However, from September 2018 onwards, until he moved to Home 5, Mr C lived in the assessment flat at Home 1 where he was happy. Mrs C lived at home and received a carer's allowance. Therefore, the injustice to both was limited to anxiety and distress, and time and trouble. The Council was meeting their needs.

Abusive treatment by Officer Q during Home 1 assessment

117. Mr and Mrs C say Officer Q was abusive during a meeting with Mr C in October 2018. However, Officer Q denies she was. In the absence of independent evidence, I cannot make a valid decision. I do not, therefore, find fault.

Excluding Mrs C from November 2018 meeting and divorce pressure

118. Mrs C says she was excluded from a meeting at Home 1 during which inappropriate pressure was put on Mr C to divorce her. I have seen no evidence of this. The Council says it was obliged by the law and guidance to ensure that the views of Mr C, the individual receiving care, were explored and respected.
119. The Council says Mrs C's presence might have prevented Mr C from being heard. Officer P therefore split the meeting into two halves with Mrs C invited to the second part at 2pm. This was a professional decision she was entitled to make though I understand that Mrs C found it insulting. I do not find fault.
120. With regard to the suggestion that Officer P pressured Mr C to divorce Mrs C, The Council says that Officer P says, *'Mr C is able, with the support of his independent advocate, to express his viewpoint. Mr C was clear that he wanted his support plan to be one based around living independently of yourself and in fact this was part of the discussions that were held before he went into [Home 1] for an assessment period and which [Mrs C was] party to'*.
121. I am not in a position to judge whether divorce was discussed but, if it was, that is not a matter for the Ombudsman. I do not find fault.

Pressure to accept Home 4 accommodation

122. Mrs C says the Council pressed Mr C to take accommodation at Home 4 when this would have reduced his chances of being accommodated at Home 1.
123. The Council says this is not a fair interpretation of what happened. It says Officer P wanted Mr C to realise that, as he was now in Band 1 for housing by the district

council, 'she was unsure what would happen if Mr C refused appropriate accommodation which was not part of [Home 1 or home 4] should he refuse to accept accommodation which was deemed to be appropriate to him, this may incur some kind of consequence'....At no point did Officer P suggest that if Mr C did not take a place at Home 4, he would lose his place in the queue at Home 1'.

124. There is a conflict of evidence. I cannot, therefore, find the Council at fault.

Agreed action

125. Within one month, the Council has agreed to write to Mr C and:
- a) Apologise for the delay in giving them Officer O's needs assessment;
 - b) Pay Mr and Mrs C £100 each in recognition of the distress caused and time and trouble spent in dealing with this matter.

Final decision

126. I have decided the Council was at fault. The Council have accepted this finding and agreed to my proposed remedy. I have closed my investigation.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: On behalf of Mr B, Ms X complains about the amount of money the Council leaves Mr B to live on given his weekly expenses due to his disability. The Ombudsman will not investigate the complaint because there is no evidence of fault by the Council and an investigation by the Ombudsman will not lead to a different outcome.

The complaint

1. Ms X complains on behalf of her son, Mr B, that the Council's assessment of Mr B's level of contribution towards his care costs does not properly take into account his expenses and leaves him with insufficient funds.

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
 - 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*)

How I considered this complaint

3. In considering the complaint I reviewed the information Ms X provided, including the Council's letters sent following its review of Mr B's income and expenditure. I gave Ms X the opportunity to comment on my draft decision and considered what she said.

What I found

4. Mr B is disabled and receives benefits. His income is taken into account by the Council in determining his contribution to the care package he receives.

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5. In deciding what a person's contribution will be, councils must ensure that a person's income is not reduced below a specified level after charges have been deducted. This is called the Minimum Income Guarantee (MIG). The amounts are set out by national government in the Care and Support (Charging and Assessment of Resources) Regulations but they are a minimum and councils have discretion to set a higher level if they wish.
 6. Previously the Council had set higher Minimum Income Guarantee (MIG) figures than the national guidance figures. However, in 2018 it decided to change its policy which brought it more in line with the national guidance and other local councils and this has resulted in an increase in the contributions people receiving care have to pay.
 7. Mr B's contribution increased because of the change in the Council's policy. The Council agreed a temporary waiver of Mr B's increased contribution until August 2019 but it has now advised Ms X the new amount has to be paid.
 8. Ms X complained to the Council because she feels Mr B has not been left with sufficient funds. The Council carried out a review of Mr B's income and expenditure but concluded that in its view Mr B has sufficient income and savings to be able to pay the new contribution amount. It explained to Ms X that its complaints procedure could not override or change a policy decision made by Council Committee.

Assessment

9. As a result of the Council's change in policy, Mr B must now contribute more towards the cost of his care than he did before. However, while Ms X is concerned about the lower amount of money he now has to live on, there is no evidence of fault in the way the Council assessed his finances and calculated his contribution.

Final decision

10. The Ombudsman will not investigate this complaint. This is because there is no evidence of fault by the Council and an investigation by the Ombudsman will not lead to a different outcome.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs C complains about the conduct of an independent school admission appeal panel hearing. We uphold the complaint finding the panel did not properly engage with the grounds of Mrs C's appeal. This causes uncertainty as Mrs C does not know if the outcome of the appeal may have been different but for the fault. The Council has agreed to apologise to Mrs C in recognition of this injustice. It will also brief clerks and panel members on the lessons to be learnt from the complaint.

The complaint

1. I have called the complainant 'Mrs C'. She complains that an independent school admission appeal did not properly consider an appeal for her child 'D' to attend a local primary school.
2. Mrs C says as a result she faced the difficulty of transporting her two children to different schools. While Mrs C has now resolved this by arranging for the children to attend a different school, she remains unhappy with how the appeal panel conducted her appeal, saying it caused distress.

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 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*)
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. Before issuing this decision statement I considered:
 - Mrs C's written complaint to the Ombudsman and any supporting information she provided. This included information Mrs C provided to me in a telephone conversation.

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- Background papers provided by the Council. These included details of Mrs C’s application for D to attend her preferred primary school and her written case to the appeal panel. I also considered the case made by the Council to the appeal panel and the minutes kept by the panel Clerk of the panel hearing and discussion. Finally, I considered the letter sent to Mrs C of the panel’s decision.
 - Relevant government guidance referred to in the text below.
6. I also sent both Mrs C and the Council a draft decision statement which set out my proposed findings in this case. The Council accepted my draft findings and agreed to remedy the complaint as I suggested, while Mrs C did not comment further.

What I found

Relevant law and guidance

7. Local authorities must ensure that primary and secondary education is available to meet the needs of the population in their area. (**Education Act 1996, section 13**). While parents have a duty to ensure that their child of compulsory school age receives suitable full-time education either at school or otherwise. (**Education Act 1996, section 7**)
8. Parents may apply for their child to switch schools during their primary education. They can do so with a view to transfer at the end of the school year, or during the school year (for example when moving into the local authority area). The admission authority must usually comply with any preference expressed by a parent. But it can make exception where to do so “*would prejudice the provision of efficient education or the efficient use of resources*”. (**School Standards and Framework Act 1998, section 86**).
9. So, when a council receives an application for a child to transfer schools it should provide a place at the preferred school if there is a vacancy. If there is no vacancy at the school(s) applied for the council should write to the parent refusing the application and informing them of the right of appeal.
10. If a parent appeals a decision not to provide a place, then any appeal must go to an independent appeal panel. They must follow law and statutory guidance which sets out how an appeal will be heard (**School Admissions Code 2014**).
11. The panel must consider whether:
- The admission arrangements comply with the law.
 - The admission arrangements were properly applied to the case.
 - Whether admitting another child would prejudice the education of others.
12. If the panel finds there would be prejudice it must then consider the appellant’s individual arguments. If the panel decides the appellant’s case outweighs the prejudice to the school, it must uphold the appeal.

The key facts – background

13. Mrs C lives in an urban location within the Council’s area. She has two children I will call ‘D’ and ‘E’. In December 2018 Mrs C applied for D to transfer from ‘School W’ to ‘School X’. D was in Year 2 of her education and the application was for September 2019 admission, meaning D would join the school at the start of Year Three. This would coincide when D’s younger sibling, ‘E’, began school in the

Reception Class. The Council had offered E a place in the reception class at School X. Mrs C wanted to send both her children to the same school.

14. D has mild learning difficulties and attention deficit hyperactivity disorder (ADHD). This means she has special educational needs (SEN) and received support for this from School W.
15. The Council's school admission service refused D a place at School X. Instead it offered D a place at 'School Y' which Mrs C put as a second preference if D could not have a place at School X.
16. Mrs C does not live within the catchment area for School X which is around 0.7 miles from her home address to the east. School Y lies between 1.1 and 1.5 miles from the home address to the north west. The distance between the two schools is around two miles. School Y is located close to School W.
17. Mrs C has a closer primary school to all those mentioned above, 'School Z' and her address is in the catchment area for that. Mrs C did not initially want her children to attend that school.

The appeal

18. Mrs C appealed the refusal of D's application to join School X to the Council's Education Appeals Team which is separate to and independent of its Admissions Team. She appealed in writing and attended an appeal hearing in person in late June 2019. I summarise Mrs C's grounds of appeal as follows:
 - That she would find it 'impossible' to take D and E to different schools so far apart. Mrs C does not drive.
 - That School X could cater better than other schools for D's SEN. School W provided a letter of support for Mrs C.
19. The Council, which acts as admission authority, argued that it could not provide a place for D at School X without prejudicing the education of other pupils. It said the school had a planned admission number of 90 pupils in the Year 3 group and this is how many pupils it had on the school roll. It said that admitting more pupils would create problems with overcrowding in places such as the assembly hall or corridors. It said there would be less teaching time for other pupils and fewer financial resources per pupils. It explained the School had other pupils with SEN and this also placed pressure on existing resources.
20. I noted the Panel asked various questions of the Council about its case. For example, it asked about the school structure and teaching arrangements. It decided unanimously that to admit more pupils would cause prejudice. The minutes of the panel discussion show the panel members put particular weight on the number of existing pupils at the school with SEN.
21. The Panel therefore went on to consider Mrs C's grounds of appeal as summarised in paragraph 18. The minutes record the Panel asking questions about whether Mrs C had support in taking her children to school. For example, did she receive support from friends or family, including the children's father. It also asked a question about how Mrs C managed currently, taking D to School W. Mrs C says these questions were unduly personal in nature. For example, asking if the children's father "*was still in their lives*", although this level of detail is not contained in the Clerk's notes. I note also the Panel asked questions about D's SEN and Mrs C's plans if her appeal failed.
22. The Panel agreed by a majority to refuse Mrs C's appeal. The Clerk's notes of the discussion show the two panel members who refused Mrs C's appeal, both

believed School X was not the only school which could meet D's SEN. The Clerk noted one panel member saying the appeal "*was all about the travel arrangements*". But there is no note of any discussion of Mrs C's concerns about taking her children to two different schools.

23. The decision letter sent by the Panel noted Mrs C's grounds of appeal. It noted that E was due to attend School X. But it said the Panel did not consider Mrs C had made a case that was "*sufficient to over-ride the prejudice*" caused to the school by admitting an extra pupil.
24. After receiving this decision, Mrs C re-considered her options for sending D and E to the same school. She re-considered sending the children to School Z and found it could accept both children. They began attending the school in September 2019. Mrs C does not want either child to now move schools and so does not seek a further appeal for D. But she has continued with her complaint as she is unhappy with how the panel considered her appeal.

My findings

25. I can find no fault in the Council's decision to refuse D a place at School X. I find the school had reached its published admission number for Year Three pupils from September 2019. As such, the Council was not under a duty to provide a place for D so long as it could offer an alternative, which it went on to do. It follows from this that I cannot fault the appeal panel for also finding the Council acted properly in initially refusing D's application.
26. I also consider the appeal panel made a sound decision that to admit further pupils to School X would cause prejudice. The Council provided it with information showing the difficulties caused by admitting pupils over the planned admission number. I find evidence the Panel did not simply accept the Council's case at face value. But asked probing questions to satisfy itself that admitting extra pupils would cause the prejudice claimed. I cannot see the Panel ignored any relevant information in reaching that view. Or took anything irrelevant into account. I have no reason to fault its decision on this part of the appeal.
27. The Panel therefore had to go on to consider if Mrs C's reasons for wanting D to attend School X outweighed this prejudice. I find evidence in the minutes of the appeal and its decision letter that the Panel properly understood the grounds of Mrs C's appeal. Its line of questioning shows that it gave some consideration to the arguments made by Mrs C around the difficulties faced in transporting her children to two different schools. Also, that it considered her view that School X could best meet D's SEN.
28. I have considered Mrs C's unhappiness with some of the questions asked by the Panel. I understand why the Panel would want to know if Mrs C had any support from family or friends to take her children to and from school. That would be relevant to her argument at appeal that taking two children to different schools was 'impossible'. The Clerk's notes are not a word for word account of all that was said at the hearing and so cannot provide for a finding on this point. But I accept on Mrs C's account that some of the questions may have been put more sensitively. I ask the Council to note the concern even though I cannot uphold Mrs C's complaint on this point.
29. However, I do find fault on other grounds. My concern is with how the Panel engaged with one of the two lines of argument raised by Mrs C in her appeal. In neither the minute of the Panel discussion nor the decision letter sent to Mrs C did the Panel address her case that she could not take her children to two different

schools. So, while the Panel asked about family or friends' support, it is not clear what account it took of the answers given by Mrs C. I also note it did not ask such questions as what times the schools opened or if there were public transport links between the two.

- 30. I do not find therefore the Panel reached a sound decision when considering if Mrs C's case at appeal might outweigh the prejudice caused to the School. I am not satisfied it considered all evidence relevant to that decision.
- 31. This causes injustice to Mrs C as uncertainty, which we regard as a form of distress. Because she cannot be satisfied the Panel would have reached the same decision had it properly considered her case.

Agreed action

- 32. Usually, for the injustice identified in paragraph 31 we would want the Council to arrange a fresh appeal. However, in this case Mrs C has advised she does not want this as her children have both settled at School Z and she would not want to disrupt their education.
- 33. Instead, the Council has agreed that within 20 working days of a decision on this complaint its Education Appeals team will apologise to Mrs C accepting the findings of this investigation.
- 34. The Council has also agreed to learn lessons from this case. In February 2020 it will hold annual meetings with its appeal panel clerks and members. It has said this will include reminding both of the need to engage with all key arguments made by appellants in their appeals. It will also include a session on sensitive questioning of appellants.

Final decision

- 35. For reasons set out above I uphold this complaint finding fault by an independent education appeal panel causing an injustice to the complainant. The Council has agreed action that I consider will remedy the injustice. I can therefore complete my investigation satisfied with its actions.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: There was fault in the way the Council investigated allegations against Mr X. The Council offered a financial remedy, but Mr X feels the Council should offer more. The Council should offer additional financial remedy to recognise the significant and prolonged period of distress. The Ombudsman is not able to assess Mr X's claim for reduced earnings.

The complaint

1. Mr X complained about the Council's handling of a safeguarding investigation against him. The original investigation findings have been overturned and Mr X is unhappy the Council did not follow the recommendations of the review Panel and adequately compensate him for distress and loss of earnings.

What I have investigated

2. I have considered the Council's offer of a remedy to Mr X. I have not investigated the Council's handling of the allegations because an independent investigation and review Panel has already done this, and the Council has accepted it was at fault.

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. As part of the investigation I have considered the following:
 - The complaint and the documents provided by the complainant, as well as the information we discussed in a telephone conversation.
 - The Investigation Review Panel's report and recommendations.

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- Documents provided by the Council and its comments in response to my enquiries.
6. Mr X and the Council both had an opportunity to comment on a draft decision and I considered their comments before making a final decision.

What I found

7. Mr X was working as a teaching assistant in January 2017. He told me he is a qualified teacher but had not worked as a teacher for several years. This was part of his phased plan to return to teaching by September 2017.
8. In January 2017 allegations were made about Mr X's conduct at the school he was working in. The school informed the Council and Mr X was sent home on 9 January 2017 while it investigated.
9. The Council referred the matter to the Local Authority Designated Officer (LADO), an officer who oversees investigations when allegations are made about people who work with children. The LADO started the Council's Allegations Against Professionals (AAP) process, which considers allegations about adults who work with children.
10. The allegations were considered at two Multi Agency Strategy Meetings (MASM), held on 13 January 2017 and 3 February 2017. A MASM involves agencies and professionals such as the police and social services. Most of the allegations were deemed unfounded or unsubstantiated but two allegations against Mr X were considered substantiated.
11. The Council confirmed the findings to Mr X by letter on 23 March 2017. It considered Mr X was still fit to work with children despite the substantiated allegations. It said there were mitigating reasons, such as naivety and a lack of training.
12. Mr X said the findings meant he could not gain employment with children in any capacity while the substantiated allegations remained in place. Instead he found work as a carer for adults with special needs.
13. Mr X complained to the Council about its investigation 13 July 2017. He said the investigation was inadequate, unfair and biased. He said the Panel took false information into account and failed to consider other relevant matters. The Council considered the complaint at all three stages of the statutory children's complaints process. This is a formal procedure, set out in law, which involves investigation by an independent investigator and review by an independent Panel (the Panel).
14. The independent investigator found failings in the original AAP process and recommended all the allegations against Mr X be reconsidered.
15. A new MASM was held on 24 April 2018. It overturned the original findings. It found all the allegations against Mr X were either unfounded or unsubstantiated.
16. The Panel was convened to meet on 30 April 2018 to consider Mr X's complaint at stage 3 of the complaints process. It said there was maladministration by the Council and recommended it consider offering a remedy to Mr X for the distress, loss of opportunity and reduced earning capacity its maladministration had caused over an eight-month period.
17. The Panel's decision was communicated to Mr X on 18 May 2018.

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18. The Council wrote to Mr X on 18 June 2018. It accepted some fault in the investigation process and apologised. It offered him £2,300 to recognise the distress he suffered. It said it could not consider his reduced earnings without evidence. It said it would reconsider its offer if Mr X provided further information.
 19. Mr X wrote back to the Council on 21 July 2018. He said he intended to return to work as a teacher and the Council's maladministration delayed this by 15 months. He said he had already supplied evidence of refused job applications because of the wrong findings against him. He said he had enrolled on a return to teaching course and registered with a supply teaching agency to start work in September 2018. He also said he had interviews at three schools and a college. He said his earning capacity reduced by over £22,000 over a 15-month period. He also claimed an added £1,805 for a seven-week delay by the Council communicating its original decision. He claimed a further £1,352.40 for legal advice he sought to bring his complaint.
 20. The Council responded on 15 August 2018. It accepted a three-week delay in communicating its decision and increased its offer to £3,073 to reflect this. It said it could not simply accept Mr X's assertion that he planned to return to teaching as he had only recently started temporary employment when the allegations were made. It therefore rejected his claim for loss of earnings. It also rejected his claim for legal fees as it said the process did not need legal advice. The Council directed Mr X to the Ombudsman if he disagreed with its decision.
 21. Mr X wrote to the Council again in April 2019. He provided evidence of the return to teaching programme he completed and that he took up full time employment as a supply teacher in February 2019. This led to contracted employment by April 2019 which he also provided evidence of. Mr X said he had completed his return to teaching. He provided updated loss of earnings calculations of £41,000 which he asked the Council to consider.
 22. The Council responded on 30 April 2019. It told Mr X its complaints process had finished and he should complain to the Ombudsman if he remained dissatisfied.
 23. Mr X complained to the Ombudsman on 28 May 2019 as he was unhappy with the Council's offer of a remedy. He said it had failed to consider his loss of earnings as the Panel had recommended.

Response to my enquiries

24. The Council told me it carefully considered the Ombudsman's guidance on remedies when it decided on the maladministration payment it offered to Mr X.
25. It said its policy is to offer a fair remedy, but not compensation payments comparable to what the Courts might order. It said the Courts would consider reasons beyond the scope of its maladministration policy.
26. It said the Council only had limited evidence about Mr X's claim of reduced earnings. At the time of his complaint, it was not clear he intended to return to work as a qualified teacher.
27. It said its primary duty is to safeguard children. It is normal for investigations to take a certain period and this is unavoidable. It fully understands the difficulties this can cause but it considers its apology and offer of payment to be a suitable remedy.
28. The Council said at stage 2 of the complaint process a new MASM was recommended to reconsider all the allegations against Mr X. When the new MASM overturned the original findings, the Council said this was a reasonable

and fair remedy as it put Mr X back in the position he would have been in if the fault had not occurred. It said this was the outcome Mr X was seeking when he complained. It only considered a financial remedy after the Panel recommended it should.

Analysis

29. The independent investigation identified serious failings by the Council. It found faults in the early AAP process. These were about the independent chair, safeguarding process, conclusions reached, delay, and wording of the final letter from the LADO.
30. The faults included a lack of clarity on details of two of the allegations discussed in the AAP meetings; lack of detail in the minutes of the meetings to explain how the allegations were examined and findings reached; lack of clarity of the chair about the roles of the different agencies and professionals involved in the AAP process; delay of seven weeks by the LADO in sending the final letter and; the final letter lacked clarity and was contradictory.
31. The Council has accepted responsibility for its mistakes in Mr X's case and offered a remedy using guidance published by the Ombudsman. It has apologised and offered Mr X £3,073.68.
32. Mr X complains the Council has failed to address the impact of its mistakes. He says the Council's response to the allegations had an adverse impact on his ability to work in the area he is qualified to work in and reduced the money he could earn.
33. Mr X says he has lost out on £41,000 in earnings because of the Council's fault. He has provided a detailed breakdown of his claimed earning potential over the course of the Council's investigations. He also incurred legal fees of £1,352.40.
34. Mr X has provided evidence to show his applications for work as a teacher, and to join teaching agencies, were rejected while there was a substantiated allegation against him. He has also shown he could join a teaching agency as soon as the findings were overturned.

Mr X's claim

35. The Council did initially consider Mr X's potential reduced earning capacity but told him there was limited evidence and his intention to return to teaching was not clear. Mr X went back to the Council after he returned to teaching and provided further evidence, but the Council did not consider this and told him the complaint was closed.
36. The Council became involved because allegations were made against Mr X and it has a duty to investigate where children may be at risk of harm. Such investigations will inevitably cause significant distress to those involved.
37. However, the Council's handling of the investigation has clearly caused Mr X notable added avoidable distress. This was recognised by the Panel, who recommended the Council offer Mr X a remedy. A significant payment for distress is justified in this case. The Council has offered Mr X a total of £3,073. This is broken down as follows:
 - £750 in recognition of the prolonged period of distress experienced.

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- £750 to recognise the distress caused by the wrong findings being in place for several months.
 - £500 for loss of opportunity of working with children.
 - £300 for time and trouble.
 - £773.58 for loss of earnings caused by the delay in issuing its decision.
38. I do not consider this a satisfactory remedy for Mr X's distress.
39. The Ombudsman has published guidance to explain how we calculate remedies for people who have suffered injustice because of fault by a council. Our primary aim is to put people back in the position they would have been in if the fault by the Council had not occurred. When this is not possible, we may recommend the Council makes a symbolic payment to recognise what could have been avoidable distress, harm or risk. However, we do not recommend compensation payments in the same way as the Courts. We can consider quantifiable losses. Where large sums of money are claimed it is more fitting for the Courts to consider the matter, particularly where the losses are not certain and need professional consideration.
40. We have broad discretion to recommend remedies which we judge to be suitable. Our remedies guidance exists to help decide remedies in a consistent way, but every case must be considered individually according to the scale and significance of the injustice.
41. The Ombudsman's guidance on remedies states up to £1,000 may be justified in cases where the distress is severe or prolonged. The Council has recognised the distress was prolonged in this case. I also consider it to be severe. It should increase its payments for distress to £1,000 for the two separate heads of distress it has identified.
42. The Ombudsman's guidance also includes loss of opportunity under the heading of distress. The Council should increase its offer for loss of opportunity of working with children to £1,000, again based on the severe and prolonged nature of distress.
43. The Council's offer of £300 for time and trouble is in line with the Ombudsman's guidance.
44. Mr X asked the Council to pay £1,805.02 in lost earnings for the seven-week delay in sending its decision letter. The Council said there was no set timescale for LADO decision letters, but it considered 20 days to be a reasonable timeframe. As its decision letter took an added three weeks on top of the 20 days it offered Mr X £773.58 as a gesture of good will. This is reasonable.
45. The Council did not agree to repay Mr X's legal fees because the complaints process did not need him to seek legal advice. I agree with its position. There is a three stage complaints process which includes an independent investigation that found in Mr X's favour. I have seen no evidence the Council refused to allow Mr X to complain until he took legal advice.
46. The Council has not made an offer for Mr X's reduced earning capacity or claimed loss of earnings as a qualified teacher. I do not propose to consider this further as the Ombudsman cannot assess Mr X's claim. Our informal means of investigation are not suited to assess claims for compensation of this nature. While we can make findings about the Council's actions, and decide where there was fault, we do not have the expertise to judge the impact of the Council's fault on Mr X's

employment and financial position. These decisions need specialist judgement and are usually made by the Courts.

47. The Ombudsman can only make recommendations to remedy injustice. To make recommendations, there must be a direct link between any fault we identify, and the injustice claimed. In Mr X's case, the fault is clear, but the link with the claimed injustice is less so. I do not doubt Mr X's plan to return to teaching by September 2017. However, even if there had been no fault by the Council, I cannot say he would have been able to do so. I cannot assess the impact of the Council's faults on Mr X's earnings separately from the impact of the allegations themselves. In these circumstances, we can only recommend a payment for the distress and uncertainty caused by the Council's mistakes.

Agreed action

48. Within one month of my final decision the Council agreed to pay Mr X £4,073.58. This is made up of:
- £3,000 to cover the separate heads of distress it has already considered (including loss of opportunity).
 - £300 for time and trouble.
 - £773.58 for the lost earnings caused by the delay in issuing its decision letter.

Service improvements

As part of the Panel's findings it made recommendations to the Council about how it checks reports and manages timescales for complex complaints. I have therefore not made any recommendations to the Council about the failings leading to Mr X's complaint.

Final decision

49. I have completed my investigation. There was fault in the way the Council investigated allegations against Mr X. I have recommended the Council offers additional financial remedy to recognise the significant and prolonged period of distress. The Ombudsman is not able to assess Mr X's claim for reduced earnings.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs X complains about the Council's refusal to accept her and her husband to stage 2 of the process to become adoptive parents, causing distress. The Ombudsman finds no fault in the Council's decision making process.

The complaint

1. Mrs X complains about the Council's refusal to progress her and her husband to stage 2 of the process to become an adoptive parent. She believes the Council has discriminated against her because she suffered from anxiety in the past and because of her age and religion. This has caused her and her husband hurt, upset and fear this will affect their future adoption prospects with other agencies.

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. 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 Mrs X and I reviewed documents provided by Mrs X and the Council. I gave Mrs X and the Council the opportunity to comment on a draft of this decision and I considered the comments provided.

What I found

Statutory Guidance

6. The Department for Education publishes statutory guidance on the process to approve adopters.

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7. At Stage One the adoption agency will focus on training and preparation. It will decide, through checks and references, whether the prospective adopter is not suitable to adopt a child and should not proceed further.
 8. Where an agency decides a prospective adopter is not suitable it must inform them of the decision and provide a clear written explanation.
 9. Those who wish to complain about this decision may make a complaint using the agency's local complaints procedure. The Independent Review Mechanism is not available for decisions made during Stage One.
 10. The guidance says mild chronic conditions are unlikely to prevent people from adopting provided the condition does not place the child at risk or limit adopters in providing children with a range of beneficial experiences and opportunities. Agencies should bear in mind the possibility of providing support in appropriate cases. More severe health conditions may raise a question about the suitability of the prospective adopter, but each case will have to be considered on its own facts and with appropriate advice.

Equality Act 2010

11. It is unlawful to treat someone less favourably someone because of age, race, religion or disability. It is not within the Ombudsman's jurisdiction to say whether a council has acted unlawfully or in breach of the Equality Act. If someone considers they have been discriminated against, they can make a claim to the County Court or make a complaint to the Equality and Human Rights Commission.

What happened

12. In April 2018 Mrs X and her husband expressed an interest in adoption.
13. In June a Council officer visited them at home. In July the Council officer visited again and asked them to complete a form to register their interest.
14. Mr and Mrs X then attended training sessions. Mrs X says the Council did not raise any concerns or issues.
15. On 30 October the Council asked to meet Mrs X to discuss concerns. Mrs X was unavailable and asked to reschedule.
16. The Council then sent Mrs X a letter to say it would not progress her and Mr X to stage 2 of the process to become adoptive parents. It was concerned about the level of anxiety shown by Mrs X in needing to check every detail of the process. It said:

“When considering the impact of placing a child with you we were very concerned about how you would manage all the uncertainties in being considered for a child, plus the whole process around placing and supporting a child. We also had concerns about the impact of the raised anxiety levels on your daughter.”
17. The Council offered Mr and Mrs X a meeting to discuss this further if they wished.
18. In November Mr and Mrs X met with the Council. The Council's records show Mrs X explained the need to check details with the Council and confirmed she no longer suffered from anxiety, offering to get a letter from her GP to evidence this. Mrs X said she had a good employment record with no time off for sickness and positive references from others. The Council said it would consider everything they had said and write to them again.

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19. The Council sent Mrs X a further letter confirming its decision not to progress the couple to stage 2.
 20. In December Mrs X complained to the Council. She said no-one had raised concerns with her previously and she denied showing any signs of anxiety. The Council made its decision without asking her GP for information or considering her good employment record. The Council knew she suffered from post natal anxiety in the past but she overcame this in 2016. The Council's poor communications meant she had to constantly chase and check details, which the Council now perceived as a symptom of anxiety. She felt the Council decided without full information and was discriminating against her. She felt the Council had shown prejudice based on her age and religion.
 21. The Council acknowledged there were teething problems in the process. It explained the decision not to proceed was based on the level of anxiety Mrs X showed during stage one. For example, the number of emails, questions and phone calls in between groups was significant. The Council said:

"In our view, your high level of anxiety would be unmanageable should you progress further and this is based on the fact that adopters need to be able to face uncertainty, delay and rejection which they personally can deal with. Based on interactions between yourself and a number of different staff, it is our view that you would not be able to manage these challenges and would be unlikely to be matched with a child."
 22. The Council apologised for not discussing its concerns with Mrs X sooner. It found no evidence its decision was influenced by race or religion.
 23. Mrs X asked to escalate her complaint.
 24. In its further response the Council reiterated concerns had been raised about the high level of anxiety Mrs X had shown, through the high number of calls and correspondence during the process. It decided based on the information available at the time and did not feel any information from her GP would change this. It explained its social workers could "form a view on whether a person is displaying tendencies typical of anxiety and the possible impact of this on the children who they are seeking to place for adoption".
 25. Mrs X contacted the Ombudsman. She disputed her contact with the Council had been excessive and complained she felt discriminated against.
 26. In comments on the complaint the Council said:

"Mrs X was not discriminated against. The departments concerns about Mrs X's anxiety arose from the observations of her behaviour by a range of staff. They were based on our assessment of her behaviour, not a medical diagnosis."
 27. As part of my enquiries I asked the Council whether it had considered providing support to Mrs X for her perceived anxiety. In response the Council said:

"We are a child focused service and thus would not provide additional support for anxious applicants. As professionals we know the added stresses of adoption and thus would seek robust applicants to meet the needs of our children."
 28. The Council also provided a copy of the information it relied upon in deciding whether to progress the couple to stage 2. I note this details the Council's concerns and explains the basis for those concerns, with reference to its observations of the couple's behaviour. Although the Council references Mrs X's

history of anxiety it notes she is currently stable. The Council records it has decided to end the couple's application because:

- It was not clear how Mrs X would manage with the rest of the process due to her need for constant reassurance;
- It felt Mrs X's behaviour would impact on a child;
- It felt the family would need intense support both in the process and with any child.

Findings

29. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider if there was fault in the way the council reached its decision.
30. The Council considered the information it held about Mr and Mrs X and decided not to progress them to stage 2. It told them its decision and gave reasons. The Council then met with Mr and Mrs X and took account of the further information provided, including Mrs X's assurance that she no longer suffered from anxiety. In consideration of all the information the Council reached a final decision. There is no evidence this decision was based on irrelevant factors, such as Mrs X's age, race or religion. Having reviewed the information provided, I am satisfied the Council followed a proper decision making process. I therefore do not find the Council at fault and I cannot say its decision was wrong.
31. Mrs X is unhappy the Council did not seek further information from her GP. However, the Council says this would not have changed its decision. I note the Council's decision was based upon its observations of Mrs X's behaviour and actions rather than any formal diagnosis. I am therefore satisfied with its reasoning that further GP evidence would not have affected its decision.

Final decision

32. I have completed my investigation. This is because I find no evidence of fault in how the Council decided whether to progress Mr and Mrs X to the next stage of the process to become adoptive parents.

Investigator's final decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr E complains the Council failed to investigate an allegation against him in an appropriate and timely way. There is evidence of Council fault in it not allowing Mr E to challenge information about him presented to the Council in 2013. The Council has agreed to consider this now and to make a payment to reflect the distress its fault caused to Mr E.

The complaint

1. The complainant, whom I shall call Mr E, complains the Council failed to investigate an allegation against him in a fair, transparent and timely manner. In particular, it failed to provide necessary information to him, including in relation to historical complaints, interfered in his family life and caused him to give up his teaching career.
2. Mr E also complained about his school's actions and lack of support he received. He wanted me to tell the Department for Education its procedures for investigating allegations needed to be changed. He also asked me to tell the Council that information it holds about him is incorrect and to remove it from the record and for previous allegations that have been made not to be accessed again because of the inaccuracies and untruths within them.

What I have investigated

3. I have investigated Mr E's complaint against the Council. I have not investigated his complaint about the actions of the school or contacted the Department for Education. I have not asked the Council to remove information from the record or asked it not to access previous allegations. I explain why at the end of this statement.

The Ombudsman's role and powers

4. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)

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5. 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*)
 6. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
 7. 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.
 8. We normally expect someone to refer the matter to the Information Commissioner if they have a complaint about data protection or if they believe a Council holds incorrect data about them. However, we may decide to investigate if we think there are good reasons. (*Local Government Act 1974, section 24A(6), as amended*)
 9. 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

10. I considered the information received from Mr E and spoke to his representative on the telephone. I have accessed relevant guidance, which I outline below, and the Council’s own procedures for dealing with allegations. I sent Mr E and the Council a copy of my draft decision and took the comments they made into account before issuing my decision.

What I found

Background

Working together to Safeguard Children

11. The Children Act 1989 says councils have a duty, with other agencies, to safeguard and promote the welfare of children and young people in their area.
12. The Department for Education issued statutory guidance to support the Act, which is called ‘Working Together to Safeguard Children’. This was last updated in 2018. ‘Working Together’ says councils should identify an officer to be involved in managing and overseeing allegations against people who work with children. This officer is known as the Local Authority Designated Officer or LADO.

Keeping children safe in education

13. The Department for Education issued specific safeguarding guidance to schools called ‘Keeping children safe in education.’ The latest version of this is from October 2019. This sets out what schools should do when an allegation is made that an employee may pose a risk of harm to children.
14. Where the police or children’s social care services are involved, the employer should consult with them and agree what information it can give to the accused person. Employers should only suspend an employee if ‘there is ‘no reasonable alternative’. The employer should keep the accused person informed of the progress of the case and provide support.

The Council's procedures

15. The Council's 'Allegations Against Persons who Work with Children' procedure sets out the role of the LADO and what agencies should do if they receive an allegation. The procedure applies where it is alleged that a person who works with children has:
 - a) behaved in a way which has harmed a child, or may have harmed a child;
 - b) possibly committed a criminal offence against or related to a child; or
 - c) behaved towards a child in a way which suggests they may pose a risk to children.
16. The LADO's role is to
 - a) receive reports about allegations and be involved in the management and oversight of cases;
 - b) to provide advice and guidance to employers;
 - c) to liaise with the police and other agencies;
 - d) to oversee the progress of cases to ensure they are dealt with quickly and consistently; and
 - e) to provide advice to employers on making referrals to the DBS and regulatory bodies.
17. At the initial strategy meeting, those present share information about the accused person and the alleged victim. They plan the investigation and set timescales for completing tasks or gathering information. They consider if any other children are affected by the allegations and if action needs to be taken to safeguard them. Attendees will decide how the accused person, and the child and their family, will be kept informed and supported. They will also offer a view to the employer about whether the accused person should be suspended from contact with children (if they have not been suspended already).
18. The views of the 'adult of concern' must be fed into the strategy meetings by their Social Worker on an ongoing basis. The Social Worker should provide feedback about the process with the content of this feedback agreed at the strategy meeting, particularly taking into account police views.
19. The LADO will write to the accused person at the end of the process outlining the findings of the investigation and the outcome.

What happened

20. When the Council was made aware of an allegation against Mr E, it referred the matter to the Local Authority Designated Officer (LADO). Mr E had been in a position of trust with the young person who made the allegation.
21. Mr E was unaware of the nature of the concerns until he was suspended from his position at the school where he worked in December 2018. The school had been made aware, at a strategy meeting, of what Mr E was accused of. We would not expect individuals under investigation to be invited to strategy meetings, which are for professionals to discuss the way forward.
22. Mr E says his employer should not have suspended him. This is a matter for the employer to decide, in the same way as the employer would decide how to support Mr E through the investigation. His employer is not in the Ombudsman's jurisdiction so this is not something I can consider. Mr E has criticised the Council for recommending suspension. As this was a possible outcome, it could not be

fault for the Council to suggest it. According to the notes of the meetings, Mr E had been advised, by the school, to speak to his union and was given a single point of contact. Mr E says his employer should have given him the full details of the allegation when he was suspended. This may have impacted on the criminal investigation the police were conducting at the time. The Council explained that if the allegation had gone to court, Mr E would have received all the information. There is no evidence of Council fault.

23. On 28 February, Mr E had a meeting with social workers at which one of the allegations was detailed. Council officers could not tell Mr E the date the incident was said to have happened and would not share with him the identity of the person who made the allegation. Officers would not detail how the allegation had arisen. Although I understand Mr E was extremely frustrated that the information presented was partial, we would not expect children and young people to be able to pinpoint dates. We would not necessarily expect them to 'have any concerns' about what happened either; it is for the LADO process, and the police, to decide whether there are concerns or not. The Council would not be expected to share the identity of the person making the allegations. There is no evidence of Council fault.
24. As part of the safeguarding process, Mr E was asked about an incident of domestic violence (which would have been shared with the Council by the police if a child was in the household, and, in line with best practice, if someone held a position of trust with children). Mr E's employer was approached, to check there were no current safeguarding concerns, and his daughter was seen. Social workers visited his daughter's nursery and made enquiries of the school where Mr E's wife worked. The purpose of this was to check children were safe. There is no evidence of fault. The Council apologised if Mr E had the impression social workers would continue to be involved after the case had concluded, which is appropriate.
25. Mr E was told the police were taking no further action. He was concerned social services were still asking him questions and intruding into his life. The criminal standard of evidence is 'beyond reasonable doubt' whereas social services, like us, look at 'the balance of probabilities'. Therefore, Councils continue investigations even when the police have ceased to be involved. There is no evidence of Council fault. Mr E was unhappy with some of the questions being asked but asking questions is not fault.
26. On 22 March 2019, Mr E was told the allegations were 'unfounded'. He was told the person who made the allegation had refused to give their name or to make or sign any formal statement. I accept Mr E considers the allegations were malicious but this is for the LADO meeting to establish. I also accept Mr E was caused stress by the investigation but this is not wholly because of the actions of the Council.
27. Mr E says this was not dealt with quickly enough. I do not consider a period of just over three months from when Mr E was suspended is slow. There is no evidence of fault.

Previous investigation

28. One issue that was raised in LADO meetings was about a previous investigation about Mr E in 2013. Mr E says he was told by the headteacher of the school he worked at, in 2013, the allegation made was malicious and he could continue teaching. He was told his probation period would be extended as a result of the

allegation and that he would receive mentoring but he says he was not made aware of any formal investigation.

29. There is no evidence he was spoken to by social workers at that time. The letter he was apparently sent on 25 July 2013 (at the end of the 2013 investigation) refers to a letter of 12 June 2013, which cannot be found on the Council's file. I have no grounds to say it was sent. Even if Mr E received the 25 July letter, which he says he did not, it does not show he was able to contribute to the LADO process given it was sent when the investigation was complete. Nevertheless, it was accepted, through the 2018/19 meetings, Mr E was aware of the 2013 allegations and able to participate in the process. On the balance of probabilities, I disagree. The reference from his old to his new school mentions an allegation but not that this led to a LADO process. This echoes Mr E's views that he was unaware of any formal referral.
30. That Mr E 'would have known' what happened in 2013 appears to have negatively influenced the views of some of those present. Mr E was not told about this at the time of the 2018/19 investigation either – he was only told when he made a formal request for the records held on him by the Council. This is fault. The Council should have shared information with him in 2013 and in 2019. If he was teaching throughout the time the 2013 allegations came to light and were investigated, this should have been noted. Mr E also says that the allegation detailed in the 14 December 2018 minutes i.e. that he 'confessed to having slept with the student more than once' is false as he disputes he has ever done this or been given the chance to say he did not do it. If he had done this, on the balance of probabilities, he would not have been allowed to continue to teach through the 2013 investigation. The school would not have failed to alert his new school to this in his reference. Indeed, there may have been a referral to the Teaching Regulation Agency (or what it was named at the time) as the allegation is so serious. As there is no evidence Mr E was involved in the 2013 LADO process, I consider he has good reasons to be upset about this. This is something he can pursue with the Information Commissioner.
31. I cannot see evidence to show the LADO meetings reflect on whether the 2018 allegations had similarities to the 2013 allegation, which is one of Mr E's contentions.

Fault

32. There is no evidence Mr E was involved in the LADO process in 2013. He was not told about concerns relating to 2013 through the 2018/19 LADO process either. He was not given the opportunity to challenge some of the information presented (sometimes as fact) about him in 2019, which relate to the 2013 investigation.
33. There has been insufficient detail provided to him about any similarities between the 2013 and 2018/19 allegations.

Agreed action

34. The Council's failure to properly involve Mr E in 2013, and to fail to alert him to allegations from this in 2018/19 has caused Mr E distress. Given the significance of the allegations presented in 2018/19 a token amount to reflect this distress is appropriate. Given the severity of the effect, the Council has agreed to make a payment of £700. The Council should also apologise to Mr E. The Council should do this within two months of the date of my decision.

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35. The Council should provide Mr E with the opportunity to challenge what was said about him in 2013. It should check with the school Mr E taught in at the time what information it provided to Mr E. It may be appropriate to hold another LADO meeting to discuss this. The Council should also inform Mr E whether there are similarities between the 2013 and 2018 allegations. The Council has agreed to hold a meeting with him to discuss these matters and should do so within two months of the date of my decision.
36. The Council should ensure that people subject to LADO investigations receive as much information as possible at as early a stage as possible. I can see no reason why the 2013 allegations would not have been shared and confirmed with Mr E once the LADO became involved in 2018. The Council should consider whether its procedures could be further elaborated and tell me what action it will take within four months of the date of my decision.

Final decision

37. My final decision is that there is evidence of fault leading to injustice. A remedy has been agreed to remedy the injustice.

Parts of the complaint that I did not investigate

38. I did not investigate Mr E's complaints about the actions of the school as this is not a body in jurisdiction. I do not have the authority to tell the Department for Education to change its procedures for investigating allegations. If Mr E wants information removed from the record, he should refer the request to the Office of the Information Commissioner (ICO) as the agency best placed. This would also cover his request that information from previous LADO investigations should not be accessed.

Investigator's decision on behalf of the Ombudsman