

## **The Ombudsman's final decision**

Summary: Ms Y complained the Council failed to pay her son, Mr X, the correct amount of money to allow him to commission his care through direct payments. The Council was at fault. This caused Mr X and Ms Y frustration and meant Mr X was underpaid. The Council will apologise to Ms Y and Mr X, pay Mr X the money he should have received, and pay Ms Y and Mr X £100 each in recognition of the injustice they experienced. The Council will also carry out training to ensure staff are aware they should update care and support plans without delay, so people know what money is available to them to commission their care.

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## **The complaint**

1. Ms Y complained on behalf of her adult son, Mr X. She said the Council failed to pay Mr X the correct amount of money for his personal care. Ms Y said this meant Mr X did not receive the money he was entitled to, which caused him frustration.
2. In addition, Ms Y complained the Council:
  - a) delayed in assessing Mr X's need for care and support after his discharge from hospital;
  - b) did not give her adequate information about her employment status when she became Mr X's personal assistant;
  - c) discharged Mr X from the support of a worker helping him to increase his independence;
  - d) delayed in arranging Mr X's care;
  - e) delayed in arranging Occupational Therapy equipment;
  - f) wanted Ms Y to attend a meeting to discuss whether to approve her as a personal assistant based on her DBS check;
  - g) initially treated Ms Y as an employee paid through PAYE rather than as self-employed;
  - h) refused to backdate Ms Y's status as a self-employed employee once it accepted she was not PAYE; and
  - i) placed the responsibility for the issues in setting up Mr X's direct payments on him.

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## What I have and have not investigated

3. I have investigated the issue set out in paragraph one. I have not investigated the issues in paragraph two. I have set out my reasons below.
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. The events in points (a) to (c) occurred in early 2021 but Ms Y did not complain to the Ombudsman until December 2022. I have seen no good reason to exercise discretion to look at those issues.
5. The Ombudsman investigates complaints about ‘maladministration’ and ‘service failure’, which we call ‘fault’. We must also consider whether any fault has had an adverse impact on the person making the complaint, which we call ‘injustice’. We provide a free service, but must use public money carefully. We do not start or may decide not to continue with an investigation if we decide there is not enough evidence of fault to justify investigating. The Council sent Ms Y a comprehensive response to her complaint and addressed points (d) to (i) in detail. I have reviewed that response and there is insufficient evidence of fault to justify investigation.

## The Ombudsman’s role and powers

6. We investigate complaints about ‘maladministration’ and ‘service failure’. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as ‘injustice’. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
7. If we are satisfied with an organisation’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*)
8. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. As set out in paragraph 4, Ms Y complained about issues dating back to early 2021. I have seen no reason to exercise discretion to investigate that far back. I am therefore investigating the period from January 2022 to February 2023, when my investigation began.

## How I considered this complaint

9. I have considered:
  - all the information Ms Y provided and discussed the complaint with her;
  - the Council’s comments about the complaint and the supporting documents it provided; and
  - the Council’s policies, relevant law and guidance and the Ombudsman’s guidance on remedies.
10. Ms Y and the organisation had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

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## What I found

### Relevant law and guidance

11. The Care Act 2014 gives councils a legal responsibility to provide a care and support plan for an adult with eligible needs for care and support. The plan sets out what needs the person has, what they want to achieve, what they can do by themselves or with existing support and what care and support the council will provide. The support plan must include a personal budget, which is the money the council has worked out it will cost to arrange the necessary care and support for that person.
12. Direct payments are monetary payments made to individuals who ask for them to meet some or all of their eligible care and support needs. They enable people to arrange their own care and support to meet those needs. The amount of money a person will receive as direct payments is set out in their personal budget.

### What happened

13. The Council pays Mr X direct payments, which he uses to pay his mother Ms Y to provide his care. There have been several changes to Mr X's care and support plan and personal budget since he began receiving direct payments.
14. Since 2021, the Council paid Mr X money, in the form of direct payments, so that he could receive 17.5 hours of care per week from Ms Y, who had employed status. She received £8.91 per hour for the care she provided to her son between Monday and Saturday and £10.50 on Sundays. This meant she was paid £187.24 a week.

### Increase in care package- 18 March 2022

15. On 18 March 2022, the Council reviewed Mr X's care package and decided he now needed 19 hours of care per week.
16. However, the Council did not reissue Mr X's care and support plan and personal budget to reflect the increase in his care package. It continued to pay him £187.24 a week.

### Ms Y became self-employed

17. On 28 March 2022, Ms Y provided evidence she was self-employed (and Ms Y became responsible for paying her own tax and national insurance). This meant her hourly rate changed to £15. For a care package of 19 hours a week, this totalled £285.
18. The Council did not reissue Mr X's care and support plan and personal budget until late May. It did not change the amount it paid Mr X in direct payments until at least mid-July. By the time the Council updated Mr X's care and support plan and direct payments, they were no longer accurate as there had been further changes.

### Ms Y's hourly rate increased to £16

19. On 1 April 2022, the Council increased Ms Y's hourly rate to £16. It did not update Mr X's care and support plan and personal budget.

### Ms Y's hourly rate increased to £17.50

20. The Council increased Ms Y's hourly rate to £17.50 on 24 August 2022. The Council sent me a copy of a new care and support plan with personal budget dated 10 January 2023.

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21. That plan showed that for the period 1 April 2022 to 24 August 2022, Mr X's direct payments were for 18 hours of care a week at £16 an hour. From 24 August 2022 the direct payments were also for 18 hours at a cost of £17.50 an hour.
  22. Mr X was not happy with how the Council was managing his direct payments so he complained to the Council. Ms Y also made a complaint. The Council made a back-payment in June 2022 and February 2023 to remedy some of its errors. Ms Y remained dissatisfied, so she complained to the Ombudsman on Mr X's behalf.

## **Findings**

### **Direct payments**

23. The Council's administration of Mr X's direct payments has been poor. Direct payments are used by people who need greater flexibility in their care. They allow the person to directly commission care to meet their needs. They can be complex to manage and it is therefore vital that councils implement changes to a person's direct payments promptly and accurately. The Council did not do this; it did not increase Mr X's direct payments when it increased his care package from 17.5 to 19 hours a week, delayed increasing the payments when Ms Y became self-employed and from 1 April, paid Mr X for one hour less than it should have. This failure to properly administer Mr X's direct payments was fault.
24. The fault meant the Council underpaid Mr X. This caused him frustration and impacted Ms Y because she continued to provide care to Mr X without being appropriately compensated. This caused her frustration.
25. Mr X and Ms Y's frustration was compounded by the fact that when they complained, the Council made some back-payments but did not properly identify all of its errors.
26. The Council underpaid Mr X's personal budget by one hour per week for the period between April 1 2022 to present. It made direct payments for 18 hours of care each week rather than for the 19 hours of support he required and received. The Council has confirmed it will amend Mr X's current direct payment amount, but it should also pay him the budget he missed out on, so that he can pay Mrs Y for the care he received. I have made a recommendation below to ensure this happens.
27. The Council did not pay Mr X correctly for the period between 18 March 2022 and 27 March 2022. It had decided to increase Mr X's care package by 1.5 hours to 19 hours a week, but continued to make direct payments for 17.5 hours. This was fault and meant Mr X did not receive the correct personal budget and Ms Y was not paid appropriately for the hours of support she provided. I have therefore recommended the Council consider this issue, determine what the shortfall was and pay Mr X that amount.

### **Personal budgets**

28. The purpose of personal budgets within care and support plans is to ensure the person receiving care is aware of the cost of their care and what the council will contribute towards it. For people receiving direct payments, they are the main way the person knows what funds are available to them. As such, if a council is making a change to a personal budget, they should update it and reissue the care and support plan without delay.
29. The Council was at fault for not doing this. The Council delayed issuing some of Mr X's care and support plans and did not issue others after changes to his personal budget. This meant neither Mr X nor Ms Y had a clear idea of what care

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package the Council had assessed Mr X as needing, or what money was available for him to arrange that care. It also meant he lost timely opportunities to identify the errors with the direct payments. This caused him and Ms Y further avoidable frustration.

### **Agreed action**

30. Within one month of the date of my final decision, the Council will:
- apologise to Mr X and Ms Y;
  - pay them £100 *each* in recognition of the frustration they experienced due to the Council's faults;
  - pay Mr X the amount of personal budget he should have received between 1 April 2022 and now;
  - determine what the Council would have paid Mr X for the period between 18 March 2022 and 27 March 2022, when he should have received 19 hours of care from Ms Y on an employed rate of pay. It should pay Mr X any shortfall; and
  - amend Mr X's care and support plan and associated personal budget to show his care package is for 19 hours of support at £17.50 per hour. It should update Mr X's direct payments to reflect this also.
31. Within three months of the date of my final decision, the Council will:
- remind relevant staff that when there is a change to a person's care arrangements, including the amount of care they receive or the value of their personal budget, they should update the care and support plan without delay.
32. The Council should provide us with evidence it has complied with the above actions.

### **Final decision**

33. I have completed my investigation. I have found fault leading to personal injustice. I have recommended action to remedy that injustice and prevent reoccurrence of this fault.

### **Investigator's decision on behalf of the Ombudsman**