6 February 2020

Complaint reference:
19 007 722

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr and Mrs F complain on behalf of his adult son, Mr M, that the Council is charging too much for the care it provides. The Ombudsman has found no fault by the Council.

The complaint

1. Mr and Mrs F complain on behalf of his adult son, Mr M, that the Council is charging too much for the care it provides. They say Mr M cannot afford to pay the amount demanded and to do so would cause him financial hardship.

The Ombudsman's role and powers

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

3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

4. I spoke to Mr and Mrs F about their complaint and considered the Council's response to my enquiries and:

- The Care Act 2014 ("the Act")
- The Care and Support Statutory Guidance ("the Guidance")
- The Care and Support (Charging and Assessment of Resources) Regulations 2014
- The Council's "Calculating Contributions towards a Personal Budget" Policy

5. I sent Mr and Mrs F and the Council my draft decision and considered the comments I received.

What I found

Personal budget

6. Everyone whose needs the local authority meets must receive a personal budget as part of the care and support plan. A personal budget sets out the cost to the

local authority of meeting eligible needs, the amount a person must contribute to that cost, and the amount the council must contribute. A personal budget can be administered as direct payments to enable people to commission their own care and support.

Charging for care and support

7. Councils can make charges for care and support services they provide or arrange. Charges may only cover the cost the council incurs. If a person has less than the upper capital limit (£23,250), they only have to pay an assessed contribution towards the cost of their care.

8. The Council has discretion to allow short term waivers from collecting contributions for reasons of financial difficulty or extreme hardship.

Financial assessments and disability related expenses

9. In assessing what a person can afford to pay, a council must take into account their income, such as pensions or benefits.

10. If a council takes a disability benefit into account, they must also assess disability-related expenses (DREs) in the financial assessment. This is because the 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.

11. DREs are costs that arise from a disability or long-term health condition. Councils should not be inflexible in the costs they accept and should always consider individual circumstances. The Guidance gives examples of what may be disability related expenditure. These include the costs of any specialist items needed to meet the person's disability needs, for example maintenance of disability-related equipment, and transport costs over and above the mobility component of DLA.

12. The Council makes a standard allowance of £20.00 per week for DREs. If a person's costs are higher than this a full assessment of their costs will be made.

Minimum income guarantee

13. Councils must ensure that a person's income is not reduced below a specified level after charges have been deducted. The minimum amounts are set out in the Regulations. Councils have discretion to set a higher level if they wish and the Council previously had a more generous level than in the Regulations.

14. The Council decided to change its policy to bring it in line with the Regulations. In April 2019 it reduced the minimum income guarantee level to £154.45 per week, in line with national levels.

NHS continuing healthcare

15. NHS continuing healthcare is a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs that have arisen because of disability, accident, or illness. It may be provided at home or in a care home. ***(NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012)***

What happened

16. Mr M has physical and learning disabilities and does not have capacity to make decisions about his care or finances. He lives with his parents, Mr and Mrs F, who are his court appointed deputies. Mr F says they divide bills and household costs equally between the three members of the household.

17. Mr M received direct payments to meet his care and support needs, which include attending a day centre. He also received some continuing healthcare funding from the NHS.

18. The Council had assessed Mr M as needing to contribute to the cost of his care. In February 2019 Mrs F told the Council Mr M could not afford to pay his contribution and that to do so would leave him in financial hardship and debt. She completed an income and expenditure form. She says a social worker helped the family assess its expenditure to see if money could be saved, but this had not proved possible.

19. In April 2019 the Council implemented its new policy which reduced the minimum income guarantee level.

20. The Council assessed Mr M's finances in April 2019. It calculated his income, capital, and his level of minimum income. It then considered any extra expenses Mr M has because of his disability. The Council included the following weekly DREs:

    - incontinence items £3.46
    - wheelchair repairs £12.50
    - a nebuliser £0.83

21. Mr and Mrs D had also asked the Council to consider physiotherapy costs and transport costs. DRE allowances are unlikely to be approved for health-related treatments as these are the responsibility of the NHS. Transport costs are covered by the mobility component of DLA.

22. The Council determined Mr M should contribute £25.87 per week to the cost of his care. It then considered Mr and Mrs F's income and expenditure form, which showed that Mr M could not afford to pay this contribution as doing so would leave him with a deficit of £24.63 per week. The Council therefore wrote to Mr and Mrs F on 3 May 2019 agreeing to waive Mr M's contribution for a month. It then extended the waiver until 4 August 2019.

23. Mr and Mrs F complained that Mr M would not be able to pay the contribution once the waiver ended.

24. The Council wrote to Mr and Mrs F on 1 August 2019. It said it considered that "the household had sufficient weekly income and savings for you to be able to make provision for the payment of your new contribution amount." As a result, it decided a waiver could not be applied for reasons of financial difficulty or extreme hardship. The Council directed Mr and Mrs D to the Ombudsman if they remained dissatisfied. Mr and Mrs F complained to the Ombudsman

Events since the complaint

25. The Council assessed Mr M's finances again in August 2019 and completed an audit of his direct payments. It concluded Mr M had not had to pay a contribution from March 2018 to February 2019. He had however paid a contribution, and so was owed a refund of £896.

26. On 12 August 2019 the NHS agreed Mr M was eligible for full CHC funding. The Council therefore wrote to Mr M to confirm his direct payments would be ending.

My findings

27. The Council told Mr and Mrs D that it considered the household had sufficient weekly income and savings. When assessing Mr M's finances and the

contribution he should make to his care costs, the Council must only assess Mr M's income and savings, not the household's.

28. I have reviewed the April 2019 and August 2019 financial assessments. They only take into account Mr M's benefits and correctly disregard the relevant benefits. The Council left Mr M with a minimum income of £170.23 per week and allowed disability related expenditure of £20 per week, in line with its policy, which is sufficient for the DREs it had identified.

29. I therefore find there was no fault in the Council's calculations and the financial assessment was completed in line with the requirements of the law, statutory guidance and the Council's own policy.

30. The Council considered an Income and Expenditure form completed by Mr and Mrs F which showed Mr M did not have enough income to pay his contribution. It therefore agreed to waive his contributions for three months.

31. When it considered whether to continue the waiver it decided there were no reasons of financial difficulty or extreme hardship. This is a decision the Council is entitled to make and without evidence of fault in the way it was made, the Ombudsman cannot challenge it, even though Mr and Mrs F disagree with it.

32. The contribution towards his care costs left Mr M with a deficit in his disposable income, but this injustice is not caused by any fault of the Council. Mr M might be able to seek some money management advice to consider any areas he could reduce his expenditure and provide more disposable income.

Final decision

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

Investigator's decision on behalf of the Ombudsman

10 February 2020

Complaint reference:
19 004 080

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Council failed to ensure domiciliary care services provided to Mrs Y were of a satisfactory standard. It also failed to properly address complaints about this.

The complaint

1. Mrs X complains about the poor standard of domiciliary care provided to her mother, Mrs Y. She says despite many complaints there has been no improvement. Mrs X believes her mother should not have to pay for an inadequate service.

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. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

4. I have:

- considered the complaint and discussed it with Mrs X;
- considered the correspondence between Mrs X and the Council, including the Council's response to the complaint;
- made enquiries of the Council, and considered the responses;
- taken account of relevant legislation;
- offered Mrs X and the Council the opportunity to comment on a draft of this statement, and considered the comments made.

What I found

Relevant legislation

5. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 apply to care providers. The Care Quality Commission (CQC) monitors, inspects and regulates adult care services providers to ensure they meet fundamental standards of quality and safety.

6. The CQC has provided guidance on the regulations. This says that:

- The care and treatment of service users must be appropriate, meet their needs and reflect their preferences (regulation 9).
- The care and treatment must be provided in a safe way for service users (regulation 12). The intention of this regulation is to prevent people from receiving unsafe care and treatment and prevent avoidable harm or risk of harm. Providers must assess the risks to people's health and safety during any care or treatment and make sure that staff have the qualifications, competence, skills and experience to keep people safe.

What happened

7. Mrs Y is a centenarian. She lives in her own home. She is registered blind and is hearing impaired. Mrs X and her sister provide emotional and practical support.

8. The Council commissioned home care services from Comfort Call Care Agency (the care agency) in January 2019. Mrs X says the care planning was done without her or her sister present. She says Mrs Y would not have been comfortable partaking in any sort of meeting without the support of her family, and says Mrs Y would not have been able to articulate all her needs properly, neither would she be able to identify the level of support Mrs X and her sister provide.

9. Mrs X became concerned about the quality of the care soon after it started. She complained to the Council and the care agency about:

- poor hygiene in kitchen and bathroom
- an open tin can in the fridge with the lid up
- dirty fridge – out of date food in the fridge
- bins not emptied, and a carer leaving a bag of rubbish in the hallway
- carers not washing hands prior to food preparation and medication administration
- a carer recording inaccurate visit times

10. Mrs X says when the carers arrive they ask Mrs Y what tasks need doing. Mrs Y does not like giving instruction and is not always aware of household tasks because of her impaired eyesight. She says Mrs Y is reluctant to shower and she needs much encouragement, but carers do not make any real attempt to encourage her.

11. Mrs X complained to the Council in January and February 2019. The Council offered Mrs X the option of changing to a different care provider or moving to direct payments so Mrs X could employ her own carers. Mrs X declined both options saying there were three or four carers who provided good care, and Mrs Y had a good relationship with these individuals. The Council offered to review Mrs Y's care. The officer asked Mrs X to contact the Council if she wanted to go ahead.

12. Following Mrs X's complaint, she, and her sister met with the care agency on 6 March 2019 to discuss the problems. An officer from social services was also present. Mrs X was unhappy with the attitude of the council officer. She says the officer said "…*if it isn't in the care package it would not be done… you have received the services therefore you will have to pay."* And, as the officer was leaving she said she sometimes left knives in the sink in her own house. Mrs X says the officer did not seem to realise the implications for someone who is blind.

13. As a result of this meeting the care agency completed a new care plan on 11 March 2019. It included a risk assessment and information about Mrs Y's capacity to make decisions about her care. I have seen a copy of this document. It records Mrs Y's comments, that her family help her a lot and that she would like family present for important decision making. The assessor recorded Mrs Y has intermittent confusion, a visual impairment and that she wears a hearing aid and needs people to speak loudly and slowly in front of her.

14. Information about Mrs Y's day to day needs is detailed. It gives specific instructions about keeping Mrs Y's environment safe from clutter and that spills should be mopped up immediately. Storage facilities should be kept tidy and sharp objects/breakables removed. Kitchen sides should be clean, and bins emptied. Mrs Y's bathroom and toilet should be kept clean and tidy. Carers should ensure Mrs Y's kettle is refilled after use. Other domestic tasks include washing pots and ensuring they are put back in the same place, ensuring food in the fridge is in date, assistance with laundry and making/changing the bed, and that Mrs Y needs encouragement and support to have a shower, and some assistance with dressing.

15. On 14 March 2019 Mrs Y submitted a formal complaint to the Council, in addition to her complaint about the quality of care provided, she also complained about the attitude of the council officer present at the meeting on 6 March 2019. An officer from the Council's complaints team contacted Mrs X on 26 & 27 March 2019. She apologised for the delay in acknowledging the complaint. She said she would contact the care agency to ask it to respond to the complaint and said she *"presumed that your desired outcome is for the charges in the sum of £324.29 to be waived".*

16. The care agency responded to Mrs X's complaint on 3 April 2019. It acknowledged a carer wrongly documented her exit time from Mrs Y's home and apologised for this. It said it had already apologised to Mrs X for a carer leaving an open tin can in the fridge, and that it had addressed this with the carer. It apologised for bins not being emptied and said this would be added to the care plan. It addressed matters of kitchen and bathroom hygiene and said this would be addressed in the care plan and with carers.

17. Mrs X complained repeatedly to the care agency about the same issues. In addition to the complaints Mrs X praised one of the carers, saying she was dedicated, went the extra mile, and was an asset to the company.

18. Mrs X also continued to complain to the Council saying the standard of care was not adequate and despite assurances from the care agency the problems continued. She said Mrs Y should not have to pay for a service she was not receiving. She asked the Council to waive Mrs Y's contribution towards her care, at that time, a total of £604.80.

19. The Council responded to Mrs X's complaint on 9 April 2019. The author said she had spoken to the council officer who attended the meeting on 6 March 2019, and the officer accepted she had made a comment about knives being left in the sink.

She said she was trying to explain how this could happen if carers were distracted talking to Mrs Y. The officer could not recall making any other comments. The officer who undertook the initial care planning with Mrs Y acknowledged it may have been better if Mrs X or her sister had been present meeting. The author of the letter apologised that this had not happened. She went on to say, "*[council officer] has regularly engaged and listened to your concerns and has promptly responded by liaising with Comfort Call and Adult Care Financial Services, ACFS, to support you to resolve the issues regarding your mother's care package".* The Council says the knife left in Mrs Y's sink was a butter knife.

20. Mrs X continued to have concerns about a lack of cleanliness by carers and discussed this with the care agency on 20 May 2019. The officer from the care agency asked Mrs X for dates and times when this happened and said she would read the care logbook in Mrs Y's home. The officer completed a task checklist for carers which she said would be put on Mrs Y's fridge door. She asked Mrs X to approve the list.

21. Mrs X asked that the duties list be placed on Mrs Y's fridge as soon as possible. She also asked that carers refill Mrs Y's sugar and teabag bowls. She said she should not have to keep sending emails to remind carers to complete basic tasks and that the situation was getting her down.

22. Mrs X says the task list was not put in place.

23. As a result of Mrs X's continued complaints, the care agency sent a manager to Mrs Y's house on weekly basis to check cleanliness. It contacted social services on 29 May 2019 to 'confirm that everything was in order'.

24. I have seen a log of the managers visits to Mrs Y's home. On one occasion, 30 May 2019, the manager sent Mrs X an email to says she had recently visited Mrs Y and *"was happy with the standard of cleanliness of the property".* She then went onto explain she had completed some domestic tasks herself, including wiping the fridge, and cleaning a utensil pot on the draining board. She told Mrs X *"as long as we work together and continue to communicate with each other im hopeful we can overcome these issues".*

25. On 4 June 2019 the Council wrote to Mrs X responding to her complaint. The author of the letter said she was responding to Mrs X's complaint about the quality of care, and Mrs X's request for the Council to waive Mrs Y's contributions towards her care. The officer said, "*I understand that you recently confirmed to [council officer] that there were still problems with the care package and as result of this you would like the care charges, as stated above, to be waived. You reported to [council officer] that there were problems with the care package on a daily basis".* The officer went to say "*If you are dissatisfied with the quality of care provided by Comfort Call, which you clearly are, the remedy would be to consider a change of care provider or for your mother to have a Direct Payment so you could employ your own care agency or Personal Assistant".*

26. Mrs X responded to the Council in writing on 5 June 2019 saying although she was "…*disputing the invoices she had paid them even though the complaints were continuing. She said she wanted "to keep the financial side of matters in hand".* Mrs X said she was willing to pay but expected decent quality care. She reiterated her complaint about her absence from the initial care planning meeting.

27. On 25 June 2019 Mrs X sent an email to the care agency again to say a carer had not given Mrs Y the correct medication, Mrs Y had realised and told the carer, and the carer had said she had got the wrong day. Mrs X expressed concern

about this. The manager responded and said the carer had given a different version of events, that she realised she had taken the wrong medication out of the packet and rectified it straight away. The manager said she had told the carer to be more conscientious when dealing with medication.

28. Mrs X gave an example of poor care that occurred during this investigation. On the weekend of 14/15 September 2019, Mrs Y was unwell, and an ambulance service was called. Paramedics attended and after undertaking checks, they advised Mrs X to contact Mrs Y's GP. Mrs X contacted the GP early on Monday 16 September 2019. She then went to Mrs Y's home around 8.30am to await the GP's visit. When she arrived, she found Mrs Y in a soiled nightdress and tissues soiled with faeces strewn around the bedroom floor and in the bathroom. The carer had left shortly before Mrs X arrived.

29. Mrs X contacted the care agency to complain and was told the carer did not see the tissues and did not notice Mrs Y was in a soiled nightdress because she did not mobilise whilst the carer was present. Mrs X says she does not understand how the carer could not notice.

30. Mrs X says she is exhausted with complaining to the care agency and the Council about the same issues. She says the care agency manager no longer responds.

31. In a recent discussion with Mrs X she confirmed there to be ongoing issues of poor care. She says she was reluctant to change providers or accept direct payments because there are three carers who provide an excellent service, and Mrs Y has a good relationship with these individuals. However constantly having to deal with issues that arise is having a detrimental effect on her wellbeing. She expressed a wish to explore direct payments but said she did not understand how it works

Analysis

32. The Council had a duty under section 8 of the Care Act 2014 to meet Mrs Y's eligible needs. It did so by an arrangement with the care agency. Any failings in the care agency's service to Mrs Y is fault by the Council because the care agency provided services on the Council's behalf under section 8.

33. It is clear the standard of care provided to Mrs Y did not meet Mrs X's expectations. The issue to be considered is whether the standard of care was good enough, and whether the Council did enough to address the issues Mrs X raised.

34. There is also the matter of Mrs X having been excluded from the initial care planning meeting. Mrs X and her sister provide significant support to Mrs X. They should have been involved in the care planning from the outset. The Care and Support statutory guidance says, (10.21) "*In considering the person's needs and how they may be met, the local authority must take into consideration any needs that are being met by a carer. The person may have assessed eligible needs which are being met by a carer at the time of the plan – in these cases the carer should be involved in the planning process".*

35. The care plan completed by the care agency contained key information, but it is not easily readable. It is not a document that could be read quickly by carers visiting Mrs Y. The tasks are lost in the narrative. However, carers are aware Mrs Y is blind and it is difficult to understand why a carer would place a tin can with the lid open in a fridge. The raises questions about carers competency, training and indicates a basic lack of common sense. This should have caused the Council concern. It did not, instead the Council told Mrs X if tasks were not in the

care plan they would not get done. The care plan did record that sharp objects and breakables should be removed, but even if had not, it is a reasonable expectation that carers have awareness of health and safety.

36. During a meeting Mrs X had with the Council and the care agency, a council officer made a comment about leaving knives in the sink. Even allowing for differing interpretation. The comment was inappropriate and insensitive. There are no circumstances which excuse carers leaving any type of knife in a bowl in the home of a blind service user. The same can be said for any other obvious hazard, such as an overflowing bin.

37. In response to Mrs X's repeated complaints, a manager from the care agency made several inspection visits to Mrs Y's home. On one occasion, the manager said she was satisfied with the standard of cleanliness then went on to describe some domestic tasks she had completed during the inspection. This is contradictory, if the standard of cleanliness was satisfactory then there would have been no tasks to complete. Mrs X's lack of confidence in the care agency is understandable.

38. Mrs X repeatedly complained to the Council about the care and said Mrs Y should not have to pay for a service she was not receiving. In its response the Council said officers had regularly engaged with Mrs X, listened to her concerns, and promptly engaged with the care agency. This was not good enough. I have not seen any evidence which shows the Council properly addressed the issues with the agency, some of which presented a real risk to Mrs Y's safety. It appeared to accept the care agency's assurances and gave little weight to the information provided by Mrs X. Consequently, unacceptable practice continued. Other service users may also have been affected.

39. The Council said if Mrs X was dissatisfied with the care provided then the remedy would be to change care providers or change to a direct payment. This is not an acceptable response. Service users are entitled to expect good quality care and should not be expected to change providers or accept direct payments because they complain about poor care. The Council should have taken robust action to address the issues and monitor the ongoing quality of care provided to Mrs Y and any other service users it commissions care for.

40. Mrs X says Mrs Y should not have to pay for poor quality care. I note Mrs X has not withheld payment of Mrs Y's contributions. She has paid in full. Mrs X would like the Council to waive Mrs Y's contributions in full. She acknowledges that not all the care was poor and praised three or four carers. On that basis I cannot recommend the Council refund all the contributions Mrs Y paid. However, Mrs Y has experienced ongoing instances of poor care. The Council missed several opportunities to address this. Because of this it should refund Mrs Y 50% of the contributions she paid towards her care.

41. Mrs X is in her seventies. She has been put to significant time and trouble pursuing her concerns with the care agency and the Council. She has been caused worry and uncertainty about the care Mrs Y is receiving. This has caused her anxiety and low mood. The Council should apologise for this. It should also offer a carers assessment.

42. The Council should provide Mrs X with information about direct payments and provide support should she wish to proceed.

Agreed action

43. The Council will within four weeks:

- apologise to Mrs Y for the poor care highlighted above
- refund her 50% of all contributions paid towards her care from January 2019 to the date of the final decision
- complete a review of Mrs Y's needs and update her care and support plan as necessary
- apologise to Mrs X for the worry and uncertainty she has suffered and apologise for the time and trouble she has been put to pursuing the complaint with the Council, care agency and the Ombudsman, and pay her £500 in acknowledgement
- offer Mrs X a carers assessment
- provide Mrs X with information about direct payments and provide guidance and support should she wish to proceed.
- monitor the care agency's performance including records, care plans, call time adherence and client satisfaction as part of its regular contract monitoring and take appropriate action to address any concerns in service

44. Under the terms of our Memorandum of Understanding and Information Sharing Protocol, I will send CQC a copy of the final decision statement.

Final decision

45. The Council failed to ensure Mrs Y received a satisfactory standard of care. It also failed to properly address the concerns raised about this.

46. It is on this basis; the complaint will be closed.

Investigator's decision on behalf of the Ombudsman

12 February 2020

Complaint reference:
19 015 804

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about the Council's decision not to pay the complainant £30 for helping his ex-partner move house. This is because there is insufficient evidence of fault by the Council and insufficient evidence of injustice.

The complaint

1. The complainant, whom I refer to as Mr X, says the Council has refused to pay him £30 for helping his former partner move home. He is also unhappy with the way a social worker has treated him.

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 an investigation if we believe:

- it is unlikely we would find fault, or
- the injustice is not significant enough to justify our involvement.

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

How I considered this complaint

3. I read the complaint and the Council's responses. I invited Mr X to comment on a draft of this decision.

What I found

What happened

4. Mr X's former partner moved home. A family member had agreed to borrow a van. The Council had agreed to pay the relative up to £30 for the cost. This arrangement fell through. Mr X stepped in to help and arranged a van. Mr X helped with the move.

5. Mr X asked the Council for the £30. The Council said it had not made any agreement with Mr X and had not agreed to pay him any money. However, the Council paid Mr X £10.58 for the petrol.

6. Mr X complained about the Council not giving him £30. He also complained about a social worker involved in the case. He said she had wrongly accused him of being aggressive and had wrongly said he was not allowed contact with his child. In response, the Council confirmed it would not give him £30. It apologised for the poor service Mr X felt he had received. It said there was no suggestion Mr X is not allowed to contact his child but said the social worker had raised concerns about Mr X's conduct with the mother. It also said the social worker had been advised to stop replying to Mr X's messages because, in the Council's view, they were aggressive. Mr X denies being aggressive.

Assessment

7. I will not start an investigation because there is insufficient evidence of fault and injustice. There is nothing to suggest the Council had made an agreement to pay any money to Mr X so no suggestion of fault in its decision not to pay him £30. Despite this the Council did reimburse his petrol costs. The Council also apologised because Mr X thought he had been badly treated.

8. Mr X thinks he should be given £30 which is the amount he believes the Council had agreed to pay to someone else. But, Mr X has received £10 and a dispute over less than £20 des not represent a level of injustice which requires an investigation by the Ombudsman.

Final decision

9. I will not start an investigation because there is insufficient evidence of fault and injustice.

Investigator's decision on behalf of the Ombudsman

21 February 2020

Complaint reference:
19 000 929

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: There was fault in the way the Council decided to reduce Mr B's support package without a clear explanation. The Council has agreed to apologise to Mr B.

The complaint

1. Mr B complains that the Council reduced his support package in September 2018. He says the reduction was not in line with the statutory guidance as the Council had not properly explained what the reasons for the reduction were.

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. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

4. I have discussed the complaint with Mr B's representative. I have considered the documents that he and the Council have sent, the relevant law, guidance and the Council's policies and both sides' comments on the draft decision.

What I found

Assessing needs

5. The Care Act 2014 says the Council has a duty to assess adults who have a need for care and support. If the needs assessment identifies eligible needs, the Council will provide a support plan which outlines what services are required to meet the needs and a personal budget which sets out the cost of meeting the needs.

6. The needs assessment decides how a person's needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing. Councils must consider whether:

- The adult's needs arise from a physical or mental impairment or illness.
- As a result of the adult's needs the adult is unable to achieve 2 or more of the specified outcomes.
- As a consequence of being unable to achieve these outcomes there is a significant impact on the adult's wellbeing.

7. The outcomes are:
   - Managing and maintaining nutrition.
   - Maintaining personal hygiene.
   - Managing toilet needs.
   - Being appropriately clothed.
   - Being able to make use of the home safely.
   - Maintaining a habitable home environment.
   - Developing and maintaining family or other personal relationships.
   - Accessing and engaging in work, training, education.
   - Making use of necessary facilities or services in the local community.
   - Carrying out caring responsibilities for children.

Needs met by a carer

8. The local authority is not required to meet any needs which are being met by a carer who is willing and able to do so, but it should record where that is the case. This ensures that the entirety of the adult's needs are identified and the local authority can respond appropriately if the carer feels unable or unwilling to carry out some or all of the caring they were previously providing.

Carer's assessment

9. If it appears that the carer may have any level of needs for support, local authorities must carry out a carer's assessment. Carers' assessments will establish not only the carer's needs for support, but also the sustainability of the caring role itself, which includes both the practical and emotional support the carer provides to the adult.

Reviews of the care plan

10. Councils are expected to review the care plan at least every 12 months.

11. The review should be proportionate to the needs to be met, and the process should not contain any surprises for the person concerned. Reviews must not be used to arbitrarily reduce a care and support package. Such behaviour would be unlawful under the Act as the personal budget must always be an amount appropriate to meet the person's needs. Any reduction to a personal budget should be the result of a change in need or circumstance.

What happened

12. Mr B is registered severely sight impaired and has needs for care and support. His wife, Mrs B is his main carer.

May 2016 – assessment

13. The social worker assessed Mr B's needs.

14. Mr B needed support to achieve the following outcomes. Mrs B was the main carer in these areas:

- Managing and maintaining nutrition.
- Maintaining personal hygiene.
- Being able to make use of the home safely.
- Maintaining a habitable home environment.
- Developing and maintaining family or other personal relationships.

15. Mr B received Council support for the following:

- Maintaining a habitable home environment. Mrs B did the cleaning tasks and paid the bills, but Mr B's personal assistant supported him in accessing emails.
- Accessing the local community. Mrs B did some of the shopping and Mr B also did this task with support from his personal assistant. He also received support from his personal assistant to go to social outings and medical appointments.

16. Mr B told the social worker he would benefit from more time to access the community because of his rural location and the time that was spent travelling to places.

17. The Council agreed a care plan of six hours support by a personal assistant.

June 2017 – review of care plan

18. The Council reviewed Mr B's care plan.

19. Mr B asked for more support to access the local community. The social worker agreed an increase and explained the reasons:

- Mr B's needs has not changed, but sadly Mrs B's health and wellbeing had deteriorated. Therefore, Mrs B was unable to provide the level of support that she had been providing.
- Mr B lived in a rural area and this meant any community amenity was a long drive away. So a lot of the time allocated to access the community was actually spent travelling. Mrs B had provided some support to Mr B in this area in the past, but was unable to do so because of the decline in her health

20. The Council increased the support to 8 hours.

July 2017 – review of carer's needs

21. The Council reviewed Mrs B's needs as a carer. Mrs B said her caring role was all consuming and she often felt stressed and exhausted trying to juggle the responsibilities of her caring role. She had medical conditions affecting her hips which meant it was difficult to mobilise and she rarely accessed the community unless necessary. Mrs B said she was also the primary carer for her sister who had mental health problems.

22. The Council allocated a £150 personal budget and NHS short breaks funding to fund essential breaks throughout the year.

April 2018 – review of carer's needs

23. The review said there had been no changes and the support package for Mrs B remained the same.

May 2018 – agency closure

24. The agency which the Council employed to provide care and support to Mr B closed down. The Council offered other agencies, but Mr B said they were not suitable. Mr B agreed to consider direct payments so that he could pay for his personal assistant.

25. Mrs B had an NHS ‘carers planned short breaks’ review in September 2018 which said she continued to be eligible.

September 2018 – assessment

26. The social worker re-assessed Mr B’s needs and noted that Mr B did not have a personal assistant.

27. This meant he had been unable to access the community, keep in touch with friends or help in the shopping. He had relied on Mrs B’s support a lot more and said that taxis were not willing to pick him up because of his remote location.

28. He did have a befriender/volunteer from a charity who visited him for one and a half hours every other week and they would go for a walk locally.

29. The social worker said Mr B needed support with shopping, reading his correspondence and connecting with friends. Mr B agreed to consider a period of rehabilitation from a rehabilitation officer for help with assistive technology so that he could access the internet and emails independently.

30. The Council reduced the support to 4 hours support for social inclusion.

November 2018 - complaint

31. Mr B complained to the Council for cutting his support in half. He said:

- His needs had not decreased, if anything, his health had deteriorated.
- Mrs B’s own health had deteriorated and she suffered from a number of medical conditions which affected her ability to provide care. Mrs B now also had caring responsibilities for her sister. Therefore, she was no longer able or willing to provide the support she had provided in the past. The social worker had not considered this when he reduced the support.
- When Mr B raised the issue of Mrs B’s ability to provide the support, the social worker ended the review assessment.

32. The Council responded and said:

- Mrs B supported Mr B in the majority of the tasks and she had said she could continue to do so, although she was finding it increasingly difficult.
- Mr B had been offered support from a rehabilitation officer in regards to assistive technology so he could access emails and the internet independently.
- Mr B was also receiving support from a charity to help with social inclusion so the Council reduced his support in this area.

January 2019 - complaint

33. Mr B complained again. He said:

- The charity volunteer already supported him at the time when he received 8 hours support so this could not explain the reduction in support.
- The charity volunteer only visited him 1.5 hours every two weeks, not 4 hours every week.
- His main need for support was in ‘accessing the community’ and the charity volunteer did not assist in this.
- The Council had not properly considered whether Mrs B could continue to provide care at the level that she was providing.

34. The Council said:

- Mr B had now received a period of rehabilitation from the rehabilitation officer.
- It offered Mr B a review of his needs.

February 2019 - assessment

35. The social worker said that:

- Mr B had still not found a personal assistant.
- Maintaining personal hygiene. Because of the extent of Mrs B's caring responsibilities and her own ill-health, Mrs B was using the NHS Carers Break funding to help in laundry tasks.
- Maintaining a habitable environment. Mr B had encountered problems in using assistive technology and his current state of mind precluded him from engaging in reablement. Mrs B had withdrawn her support with reading emails and correspondence so Mr B was not receiving support in this area and needed a personal assistant to help him with this.
- Maintaining personal relationships. Mr B needed a personal assistant to go into the community, but had been unable to find one. This had a knock-on effect on his ability to meet people and make friends and he was entirely reliant on Mrs B in this area. The volunteer continued to meet him for 1.5 hours every two weeks, but this may be coming to an end as volunteers were only meant to work with an individual for 6 months.
- Accessing the community. As Mr B did not have a personal assistant, he had been unable to access the community. This also affected his ability to attend medical appointments. He had been unable to do any shopping so this role had fallen on Mrs B. However, because of Mrs B's own ill-health and the extent of her caring role, she was unable to continue to do the shopping.
- Mr B also needed to monitor his blood pressure 3 times a day and required assistance with this.
- The lack of support in the previous months had had a significant impact on Mr and Mrs B's health and wellbeing and had contributed to Mrs B's carer's stress.
- The social worker said it was hoped that Mrs B's health would improve so she could increase her carer's role again in the future. The social worker proposed a review in two months.

36. The Council agreed 9 hours support via direct payments and assisted in finding an agency which could deliver the care.

37. The social worker provided a more detailed breakdown on how she arrived at the 9 hours provision. I have put in brackets the 'outcomes' this corresponded to for clarity.

- 4 hours – social inclusion and attendance at appointments ('accessing the community')
- 2 hours – shopping ('accessing the community')
- 2 hours – access to written and digital information ('maintaining a habitable environment')
- 1 hour – laundry ('maintaining personal hygiene').

38. Therefore, in essence the Council had reinstated the provision of the June 2017 care plan with an extra hour for laundry.

February 2019 – complaint

39. Mr B complained again and said that, although he had agreed to the offer of a re-assessment, the Council had still not provided a good reason for cutting his support in half.

40. The Council said:

- The provision of 8 hours for social inclusion had been excessive and he had previously been 'over-provisioned' in this area.
- Mrs B's health had deteriorated and she was no longer able to provide the care she provided in the past in relation to shopping. The Council had reviewed Mr B's needs and was in the process of finding a care provider.

Analysis

41. The Ombudsman cannot say what the care plan should be or how many hours support Mr B needed. Only the Council can do this, based on the assessments.

42. I have investigated whether the Council has assessed Mr B in line with the law, guidance and policies.

43. The first and main purpose of Mr B's package of 8 hours support was to meet Mr B's need to 'access the community'. Mr B was unable to drive because of his impaired sight. The support was high because he lived in a remote area and a lot of the time was taken up driving to the destination.

44. The second aim of Mr B's support package was to help him in accessing emails and the internet. The Council said this met the outcome of 'maintaining a habitable home environment.'

45. In the complaint correspondence, the Council said it reduced Mr B's support by 50% in September 2018 for two reasons, so I will consider those reasons in more detail.

46. The first reason for reducing the support was the Council's offer of rehabilitation through a rehabilitation officer. The aim was to make Mr B more independent through the use of assistive technology and therefore to reduce his need for support. However, the Council reduced the support before Mr B started the rehabilitation process and before the Council knew what the effect would be on his ability to live independently and his need for support. This was fault.

47. This failure became clear when the Council then re-assessed Mr B in February 2019, after he had completed the rehabilitation. The assessment noted that Mr B encountered problems in using assistive technology and had been unable to engage in reablement. So essentially the rehabilitation had failed and this need continued to be unmet. The Council then decided to reinstate the provision.

48. The Council's second reason for reducing the support in September 2018 was the fact that a volunteer visited Mr B for 1.5 hours every two weeks. I agree with Mr B that this did not properly explain the reduction in support.

49. The volunteer did not really help Mr B in 'accessing the community'. The volunteer did not drive Mr B anywhere or take him to appointments or help him shopping which were Mr B's main needs in this area. In any event, the volunteer provided the equivalent support of 45 minutes a week so this would not explain a reduction of 4 hours.

50. The Council then said in its later complaint correspondence that it reduced the support from 8 to 4 hours because 8 hours was too high. If this was the case, the

Council should have explained why 8 hours was too high and why 4 hours was sufficient. It failed to do so.

51. I also agree with Mr B that the September 2018 assessment did not properly consider whether Mrs B was 'able and willing' to provide the support that the Council was no longer providing. The only mention of Mrs B in Mr B's needs assessment was that she was willing to continue her caring role in certain areas (meal preparation, personal hygiene, clothing, laundry and cleaning), although she was finding this increasingly difficult.

52. However, I cannot find evidence that the social worker asked Mrs B whether she was willing or able to provide an extra 4 hours of support to access the community. There is also no evidence that the social worker properly considered what the impact of the reduction would be on Mrs B's ability to provide care and this was fault.

53. Therefore, to conclude, I have found fault in the way the Council reduced Mr B's support package as it was not done in line with the statutory guidance. The assessment did not clearly explain what the changes in need or circumstances were that led the Council to conclude that Mr B's support package should be reduced.

54. I have considered the injustice Mr B suffered as a result of the fault. This is difficult to say as during the time that the Council made the reduction, Mr B did not have a personal assistant (May 2018 until April 2019). Therefore, regardless of the hours of support in the care plan, Mr B would have not received the support.

Agreed action

55. Mr B says that the main outcome he wanted from his complaint was for the Council to reinstate the provision that he received before the reduction. This has happened.

56. The Council has agreed to apologise in writing for the fault within one month of the final decision.

Final decision

57. I have completed my investigation and found fault by the Council. The Council has agreed the remedy to address the injustice.

Investigator's decision on behalf of the Ombudsman

4 March 2020

Complaint reference:
19 014 753

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mrs X complained about the Council's actions when concerns were raised about her handling of her father's finances. We will not investigate this complaint as it is unlikely we would find fault by the Council.

The complaint

1. Mrs X complained about the Council's management of a safeguarding alert. Her complaint included that it:

- Decided to carry out a safeguarding investigation after her father's (Mr Y's) bank raised concerns about Mrs X's management of his finances.
- Told Mrs X about the allegations over the telephone, rather than in writing.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe it is unlikely we would find fault. ***(Local Government Act 1974, section 24A(6), as amended)***

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)***

How I considered this complaint

4. I considered the information Mrs X provided when she complained to the Ombudsman.

5. I considered Mrs X's comments on my draft decision.

What I found

6. The Council contacted Mrs X after her father's (Mr Y's) bank raised concerns about how she managed his finances. Mrs X says the bank's accusations were false. She says the Council told her about the concerns over the telephone, rather than in writing, meaning she had nothing in writing to help her get advice.

7. Mrs X disagrees with the Council's reasons for becoming involved, but that does not mean it was at fault. The Council has a duty to consider all safeguarding alerts made to it. The Council took steps I would expect it to, including contacting Mrs X promptly to discuss the concerns and attempting to speak directly to Mr Y. There is no requirement for councils to communicate allegations in writing.

8. Mrs X has also explained the distress she has experienced. Safeguarding investigations are naturally stressful. However, if we investigated Mrs X's complaint it is unlikely we would decide her distress, or the police investigation, were due to fault by the Council. We should not investigate this complaint.

Final decision

9. The Ombudsman will not investigate this complaint. This is because it is unlikely we would find fault.

Investigator's decision on behalf of the Ombudsman

9 March 2020

Complaint reference:
19 014 250

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr and Mrs G question the Council's recalculation of a special guardianship allowance paid to Mrs G for the care of her grandson. We find some fault in the consideration given by the Council to parts of the recalculation. This caused some uncertainty for Mrs G. We have completed the investigation as the Council has now offered a remedy to the complaint which will provide for a satisfactory outcome.

The complaint

1. I have called the complainants 'Mr and Mrs G'. Their complaint concerns the Council's remedy of an earlier complaint made to the Ombudsman. They question the Council's recalculation of a special guardianship allowance paid to Mrs G for the care of her grandson 'Child X'. In particular:
   - Why the Council retrospectively reduced the allowance paid to Mrs G between January and April 2017.
   - Why the Council has not allowed for birthday and festive allowances which are paid to foster carers.
2. Mr and Mrs G say as a result they do not know if the Council has now correctly paid special guardianship allowance to Mrs G.

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. Before issuing this decision statement I considered:
   - Mr and Mrs G's complaint in writing to this office and further information provided in telephone conversations and emails.

- Information provided by the Council in response to written enquiries.
- Previous decisions taken by us considering earlier complaints made to us by Mr and Mrs G and relevant to this complaint also.
- Relevant law and guidance as referred to in the text below.

6. I also gave both Mr and Mrs G and the Council an opportunity to comment on a draft decision statement setting out my thinking about the complaint. Both confirmed they were satisfied with the content of the draft decision statement.

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.

What I found

Background

8. Mrs G is Child X's parental grandmother. She lives outside the Council's area. Mr and Mrs G keep separate houses, with Mr G living around 200 miles from Mrs G. Mrs G works one evening a week and at weekends.

9. Child X has a diagnosis of autism, a learning disability, mental health issues, attention deficit hyperactivity disorder (ADHD) and an attachment disorder. These contribute to Child X displaying behavioural issues with episodes of self-harming, smearing, violent outbursts of temper towards people and property and so on. Because of his mental illness, Child X receives disability living allowance, a non-means tested benefit, at the highest rate for support with his care and at a low rate for support with his mobility needs.

10. Previous investigations by this office have found:
    - Child X entered Mrs G's care as a looked after child.
    - The Council failed to pay Mrs G enough financial support for the period July 2015 to November 2016 when she acted as a family and friends foster carer.
    - The Council failed to pay Mrs G enough financial support for the period after January 2017 when she was Child X's special guardian.

11. Our most recent decision on a complaint made by Mrs G (March 2019) found the Council had partially remedied these faults. But we remained dissatisfied with its consideration of the financial support paid to Mrs G as a special guardian. The Council agreed to a further reconsideration of Mrs G's special guardianship allowance taking account of:
    - Child X's disabilities and disability benefits paid in respect of those. We did not consider the Council properly took account of Special Guardianship Regulations which require it to take account of the needs of children who have disabilities.
    - Childcare costs Mrs G incurred which Regulations allow the Council to take account of when paying special guardianship allowance.
    - Costs incurred in facilitating contact between Child X and his birth family.

The current complaint

12. The Council completed its consideration of all these matters by November 2019. It sent Mrs G an updated support plan setting out the financial support it would provide. This included revised amounts to cover childcare and to facilitate contact.

The Council also recalculated the special guardianship allowance paid to Mrs G this time disregarding some of the disability payments Child X receives on account of his needs. The net impact of these changes meant in September 2019 the Council paid over £5000 to Mrs G to cover allowance previously underpaid and for contact visits previously arranged.

13. While welcoming these reassessments Mr and Mrs G still had those concerns listed in paragraph 1. On the first point, while the recalculation of Mrs G's special guardianship allowance had resulted in a net underpayment to her; the detailed calculation showed the Council had offset this against an overpayment for the period January to April 2017. It did this after receiving new information from Mrs G suggesting her wages at that time were higher than it had previously understood (the allowance being means tested).

14. On the second point the Council said that while it based special guardianship allowance on foster care payments it did not consider birthday and festive payments as *"enhancements"*. It explained that it expected special guardians would provide gifts at holiday times.

Our enquiries and the Council's response

15. We made enquiries of the Council to further understand its position on these matters. In doing so we noted:

- The Council's written policy: *"Special Guardianship – Financial Support"* says that maximum payments for special guardians are "*based on 100% of fostering allowances"*. Its website also contained a *"table of allowances"* made to foster carers. This described four elements – a basic fostering allowance, a fostering supplement, a birthday allowance and a festive allowance.
- The same policy also referred to circumstances where a special guardian previously fostered a child and "*received an element of renumeration in the allowance paid to them*". It said the Council may continue to pay that *"element of renumeration for two years from the date of the special guardianship procedure"* (I took this as a reference to the date of the special guardianship order). I asked the Council how it applied this policy to former family and friends foster carers such as Mrs G.

16. In reply the Council said that it recognised its policy in respect of both areas could be clearer. It said it was now undertaking a full review of its policy towards family and friends foster carers which would address these matters, along with certain other matters.

17. In the meantime, the Council wished to offer a remedy to Mr and Mrs G's complaint. It proposed this would involve:

- The Council recalculating the special guardianship allowance paid to Mrs G for the first two years of the special guardianship order on a non means-tested basis. It would base its award on its fostering allowance less child benefit only (a benefit payable to special guardians but not foster carers).
- It would pay birthday and festivity allowances to Mrs G for this two-year period also.

My findings

18. I consider the Council has offered a fair remedy to the complaint. I consider it was at fault for not providing sufficient explanation to explain why it did not pay birthday and festive allowances to Mrs G as part of her special guardian allowance. Also, for not considering if it should have non means-tested Mrs G's

special guardianship allowance for two years. I consider these faults caused Mrs G some unnecessary uncertainty about whether the payments made to her were correct.

19. However, I could not say the Council was necessarily obliged to do either. I could only recommend it *consider* making these additional payments. So, the Council's offer to go beyond this and re-assess the special guardianship payments again, giving the benefit of both considerations to Mrs G, is more than I could achieve through continued investigation. It will provide a financial payment to Mrs G greater than anything I would recommended for the uncertainty caused to her.

20. The Council's offer also removes any need for me to consider in further detail its initial reassessment of Mrs G's special guardianship allowance between January and April 2017.

Agreed action

21. The Council has agreed to remedy this complaint, it will therefore carry out the steps outlined in paragraph 17 within 20 working days of this decision.

Final decision

22. For reasons set out above I uphold this complaint finding fault by the Council causing injustice to Mrs G. The Council has made an offer to remedy this complaint which I endorse as I consider it will provide a fair outcome to the complaint. So, I have completed my investigation satisfied with its response.

Investigator's decision on behalf of the Ombudsman

2 April 2020

Complaint reference:
19 019 794

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Miss C's complaint about the circumstances in which her children were placed in the Council's care. This is because we cannot investigate matters relating to a decision made in court.

The complaint

1. The complainant, who I will refer to as Miss C, complains that the Council took her children into care.

The Ombudsman's role and powers

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

3. We cannot investigate a complaint about the start of court action or what happened in court. ***(Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended)***

   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 we cannot achieve the outcome someone wants. ***(Local Government Act 1974, section 24A(6), as amended)***

How I considered this complaint

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

What I found

5. Miss C complains that the Council took her children into care without evidence to justify its action. She also complains that social workers lied throughout the process. She says she has lost two years of family life as a result. She wants the Council to help her with court action to have the children returned to her care.

6. The Ombudsman cannot investigate Miss C's complaint. The decision to place her children into the Council's care was for the court to make, not the Council. By law, the Ombudsman cannot consider what happens in court. This includes both the court's decision and the evidence it considered, including evidence presented by the Council.

7. Even if the law permitted the Ombudsman to intervene, we could not achieve anything significant. It is not the Council's responsibility to assist Miss C in court, so the Ombudsman cannot achieve the outcome she is seeking.

Final decision

8. The Ombudsman cannot investigate this complaint. This is because we cannot investigate matters relating to a court decision.

Investigator's final decision on behalf of the Ombudsman

3 April 2020

Complaint reference:
19 011 110

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's draft decision

Summary: Mr X complained the Council failed to provide services and support for his son, F who has severe disabilities and a life limiting condition. The Council was at fault. It failed to provide the educational provision for F in line with his Education, Health and Care Plan and delayed consulting for an alternative placement between September 2018 and March 2019. The Council also failed to carry out a parent carer needs assessment on Mr X in line with relevant legislation and statutory guidance and failed to properly handle his complaints. The Council agreed to pay Mr X a total of £3900 to use for F's benefit, and £350 to recognise the injustice caused to him. It also agreed to carry out service improvements and carry out a parent carer needs assessment on Mr X.

The complaint

1. Mr X complained the Council failed to provide services and support for his child, F, who has severe disabilities and a life-limiting condition, and also to him in his role as a carer for F. Mr X complained:
   - The Council failed to ensure F received provision in line with his Education, Health and Care Plan (EHC Plan) between August 2018 and August 2019.
   - Failed to carry out an adequate safeguarding investigation following Mr X's referral about incidents involving F at his school.
   - Failed to offer him a parent carer needs assessment.
   - Failed to carry out and progress home adaptations.
   - Failed to respond to Mr X's complaints in line with the Council's complaints procedure and the children's statutory procedure.
2. Mr X said the Council's faults caused F loss of education opportunity and distress. Mr X said he has suffered distress, frustration, uncertainty and time and trouble.

What I have investigated

3. I have investigated Mr X's complaints about
   - the EHC Plan provision
   - delays in consulting for an alternative placement
   - the parent carer needs assessment, and

- how the Council dealt with his complaints.

4. I have not investigated the other matters for the reasons explained in paragraph 81.

The Ombudsman's role and powers

5. 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)***

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

7. SEND is a tribunal that considers special educational needs. ***(The Special Educational Needs and Disability Tribunal ('SEND'))***

8. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. Mr X appealed to the SEND tribunal in July 2019 about the educational provision outlined in F's EHC Plan. Mr X also appealed about F's social care provision and about the provision of home adaptations. Therefore, although referred to, I have not investigated these matters as Mr X has appealed about them to the SEND tribunal. ***(Local Government Act 1974, section 26(6)(a), 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***

10. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

How I considered this complaint

11. I spoke to Mr X about his complaint and considered the information he provided.

12. I wrote to the Council and considered its response to my enquiry letter.

13. Mr X and the Council had an opportunity to comment on my draft decision. I considered comments before I made a final decision.

What I found

The law and guidance

Alternative provision

14. Section 19 of the Education Act 1996 says Councils must arrange suitable full-time education, or education adapted to the student's ability and needs, for pupils who cannot attend school because of illness, exclusion or otherwise.

15. The Department for Education issued guidance entitled 'Alternative Provision'. This guidance says 'Local authorities are responsible for arranging suitable education for permanently excluded pupils, and for other pupils who - because of

illness or other reasons - would not receive suitable education without such arrangements being made'.

16. The courts have ruled that what is 'suitable education' is a matter for the council to decide. Whether an alternative placement is 'suitable' is not based on the parent or child's view but upon objective consideration of whether the education offered is reasonably possible or reasonably practicable for the child to access.

Education, Health and Care Plans (EHC Plan)

17. Children with complex needs may require an Education, Health and Care Plan (EHC Plan). This is a legal document which sets out a description of a child's needs (what he or she can and cannot do). It says what needs to be done to meet those needs by education, health and social care. This can include support needed in school.

18. Councils have a legal duty to ensure the special educational provision in section F of an EHC Plan is delivered from the date they issue a final Plan. This duty is non-delegable.

19. Once the Council completes the EHC Plan it has a legal duty to deliver the educational and social care provision set out in the Plan. The local health care provider will have the duty to deliver the health care provision.

20. The Ombudsman cannot investigate the Council's decision whether to conduct an assessment for an EHC Plan, nor can it investigate the content of a Plan. These decisions are appealable to the Special Educational Needs and Disability Tribunal (SEND).

21. The Ombudsman can look at any delay in the assessment and creation of an EHC Plan as well as any failure by the Council to deliver the provision within a Plan.

22. Councils must review an EHC Plan every twelve months. Reviews must focus on the child's progress towards targets in the Plan and on what changes might need to be made to help the child achieve those outcomes. Councils can require a school to convene and hold a review meeting on their behalf. The Special Educational Needs and Disability Code of Practice says reviews are generally most effective when led by the school. The Council must be invited to attend a review meeting.

23. Councils must decide whether to maintain the EHC Plan in its current form, amend it, or cease to maintain it within four weeks of the review meeting. It must then write to the parents/ young person setting out its decision. The Council should issue the final amended EHC Plan or the maintained Plan within eight weeks of this decision letter.

24. If there is a dispute about the EHC Plan, mediation can be a way of settling the dispute. It usually involves a meeting with the council and an independent mediator who will try and help reach an agreement on the disputed points. Representatives from the school or college may also attend the meeting.

25. Decisions to amend or cease a plan can be appealed to the SEND Tribunal.

Child in Need

26. Section 17 of the Children Act 1989 imposes a duty on the Council to safeguard and promote the welfare of children within their area who are 'in need'. A child in need is defined in the Act as a child who is unlikely to achieve or maintain a satisfactory level of health or development or their health or development will be

impaired, without the provision of services; or a child who is disabled. The Council undertakes an assessment of the child's needs to determine what services to provide and what action to take.

Protecting children from harm

27. A Council has a duty to investigate if they have reasonable cause to suspect that a child who lives in their area is suffering, or is likely to suffer, significant harm. This duty comes under Section 47 of the Children Act

28. A Council must have reasonable cause to suspect that a child is suffering or is likely to suffer harm before it can enquire. The Council cannot investigate to see if there is a problem unless it has reasonable cause for concern.

Parent carer needs assessment

29. Councils must assess whether a parent carer of a disabled child whom they have parental responsibility for has needs for support if either:

- It appears to the Council that the parent carer may have needs for support, or
- The Council receives a request from the parent carer for support.

30. The assessment considers parent carer circumstances and determines the parent's level of needs. The assessment enables Councils to come to an informed decision about the holistic package of support the disabled child and their family require.

Complaint handling

31. The statutory children's complaints procedure sets out the procedure Councils must follow to investigate complaints about Children's Services. It has three stages:

- Local resolution by the Council (Stage 1);
- an investigation by an independent investigator who will prepare a detailed report and findings (Stage 2). The Council then issues an adjudication letter which sets out its response to the findings; and, if the person making the complaint asks
- an independent panel to consider their representations (Stage 3).

The law says that when a Council investigates a complaint under this procedure, it must consider the complaint at all three stages, if the complainants requests this.

32. The Council's corporate complaints procedure has three stages.

- Stage 1 - where complaints are dealt with at departmental level.
- Stage 2 - if the customer is not satisfied at stage 1, an independent investigation is carried out by the corporate complaint's manager.
- Stage 3 - If the customer is still dissatisfied, the customer can ask for a review panel to consider the details of their complaint and decide if further action is necessary.

What happened

Background

33. Mr X has shared parental responsibility for his son, F, who is 9 years old. Mr X is separated from F's mother. F has a life limiting illness and severe disabilities, which means he is blind, deaf and immobile. F spends half his time each week

with Mr X and the other half which his mother. F is dependent on his parents and carers for all aspects of his life. F has social care and health support at both Mr X's and his mother's home.

34. F attends a special school and has an EHC Plan which specifies the provision and support he requires during the school day.

35. Mr X complained to the Ombudsman in October 2019. His complaint consisted of several elements around the Council's services and support of F. While this complaint is made by Mr X, it is important to state that F's mother was involved in many of the decisions. However, I have only referred to Mr X in the body of this document.

Complaints about F's EHC Plan and the school

36. F has an EHC Plan. The Council held an annual review of F's EHC Plan in January 2018. The Council issued F's amended EHC Plan in February 2018. In April 2018 Mr X disagreed with the provision outlined in the Plan and requested mediation. The main concern was around F's 1:1 support at school. Mr X was concerned about the role of the 1:1 support. Mr X said 1:1 provision should be intensive to meet F's needs. Mr X also raised concerns about adaptations and equipment at his home which he said he required to keep F safe.

37. In June 2018 the records show that following confirmation of continuing health care support for F's 1:1 support in school the issues around this were resolved. The Council amended F's EHC Plan to include provision for a 1:1 carer during the school day for 32.5 hours each week. F's EHC Plan stated he would stand five times per week for 45 minutes while at school and would walk each day if well enough to do so. The plan included a block of sensory swim sessions, accompanied by his 1:1. It also stated F should wear his hearing aids at the times he had the intensive support.

38. Mr X agreed to the amended Plan in July 2018, and in August 2018 the Council issued a final version. Mr X said he did not agree with it but felt forced into accept the plan. However, records show Mr X was dissatisfied with aspects relating to home adaptations and not educational provision at this point.

39. In September 2018, Mr X raised several concerns with the School and the Council. He said:

- F was not receiving provision in line with his EHC Plan
- The school was refusing to ensure F walked everyday
- F was not having the 1:1 support outlined in the Plan
- The school did not have proper safeguarding in place to ensure F could wear his hearing aids and there was an incident where F nearly swallowed one of them
- The school was leaving F in wet bibs and he had also come home with an inflamed and spotty bottom due to being left wet and soiled for long periods
- The school were regularly leaving F in his leg splints which had left him in pain.

Mr X said the lack of provision was unacceptable and the lack of basic care was a safeguarding matter.

40. The Council wrote to Mr X and told him that it had contacted the School about his concerns and was waiting for a response. The school wrote to Mr X in response to his concerns. It said it was complying with the provision set out in F's EHC

Plan. The School said neither F, nor any other student at the school had a named 1:1 and in its view, ring-fenced 1:1 support could be counterproductive. The School acknowledged the incident where F nearly swallowed one of his hearing aids. The School said it had investigated the matter and, in its view, it was a historic incident. It said it had measures in place to manage F wearing his hearing aids. The School said it would ensure F's bib was regularly changed and said at no time was F ever left wet on the School premises. The School said it took its duty of care seriously and refuted Mr X's allegations.

41. The Council said it was clear at this point that F's placement at the School was at risk. The Council therefore agreed to an early annual review of F's EHC Plan. The Council agreed in November 2018 to consult for an alternative school for F.

42. Mr X continued to have concerns about F's care at the school and raised these with the Council in January 2019. He said F was often wearing incorrect leg splints, returning home with clothes wet through from dribble, and also returning home wet. Mr X said the Schools care of F was neglectful and was leaving him at risk of infection. Mr X repeated his concern that F was not receiving the provision set out in his EHC Plan. The Council decided to carry out a Child and Family Assessment and the school should investigate Mr X's concerns and respond to the parents following its investigation.

43. Mr X wrote a formal complaint to the Council in January 2019, however the records show the Council did not respond to the complaint. The complaint was about the Council's failure to ensure F received the provision set out in his EHC Plan.

44. The school carried out an investigation and wrote to Mr X with the outcome in February 2019. It recognised it had not used F's splints correctly and also accepted F was left in wet bibs on occasions. The School said it had carried out a new risk assessment and put measures in place to prevent reoccurrence of the incidents.

45. Mr X was unhappy and made a safeguarding referral to the Council which was referred to the Local Authority Designated Officer (LADO). Records show the LADO decided the referral would not meet the criteria for a child protection investigation and felt it was a matter for the school and its governors to investigate. The school had concluded the incidents were not intentional and were not safeguarding concerns.

46. Mr X remained unhappy and removed F from the school in March 2019.

47. The Council completed its Child and Family assessment in March 2019. The Council acknowledged that the complaints raised by Mr X were not one offs, and he had a history of reporting concerns to the school. The Council said the Governing body was investigating how the school managed its investigation. The Council confirmed there were no safeguarding issues within F's homes. The assessment did however state F was being 'discriminated and disadvantaged' by not being able to use his hearing aids continuously. The Child and Family assessment recommended the governing body feedback to the Council with the outcome of its investigation and the Council should ensure F received the provision in his EHC Plan following transition to an alternative educational setting. It said no individuals have been identified as causing F any harm at this time.

48. The Council held meetings following the conclusion of the Child and Family assessment. It was satisfied with the school's actions and the processes it had put in place following the outcome of the investigation.

49. The Council found an alternative school, School A which could meet F's needs in March 2019, but F was unable to start until September 2019. The Council offered F interim provision at School B from March 2019. Records show however that Mr X declined the offer of the interim placement at School B as he felt it could not meet F's needs.

50. The Council amended F's EHC Plan in April 2019 to show School A as the new placement. The Council continued to offer interim provision at a different school. Records show the School also offered F the use of its resources, such as sensory swim sessions.

51. Mr X complained to the Council again in April 2019. He said:

- The Council had poorly handled his complaint about safeguarding matters at the school and he remained dissatisfied with the outcome
- The Council was wrong to say the school was suitable for F despite F coming to repeated harm and the school not providing the provision in the EHC Plan
- The Council failed to respond to his complaint in January 2019
- The Council had failed to properly consult him in its search for an alternative placement
- The Council's offer of interim education for F whilst he was out of school was inappropriate and it had failed to show how the interim provision would meet F's needs.

52. The Council's responded to Mr X in June 2019 and told him it would not put his complaint through its procedure on the basis that its various departments have already explained their positions on the matters. It said it had a clear plan for F's transition to School A in September 2019. The Council said the school had appropriately investigated the safeguarding concerns. The Council said if Mr X's ongoing concern was about the named school in F's EHC Plan then he should appeal to the SEND tribunal, and it was not appropriate for the Council's complaints procedure.

53. In July 2019 Mr X submitted an appeal to the SEND tribunal. The matters appealed were about the accuracy of F's SEN and the lack of detail as to how School A would deliver F's provision. Mr X also appealed about social care provision and about the Council's handling of his request for a Disabled Facilities Grant to fund adaptations to Mr X's home.

Mr X's request for a parent carer assessment

54. In June 2019 Mr X asked the Council to carry out a parent carer needs assessment. Mr X said he wanted the assessment to consider his need to earn an income and his own health needs. Mr X said he was unable to provide financially for F because he had no income and did not claim benefits. Mr X said he relied on his wife as the only source of income. The Council considered Mr X's request.

55. The Council wrote to Mr X and informed him the Council would not carry out an assessment, and that Mr X should seek advice about his entitlement to benefits.

56. In response to my enquiry letter the Council said it did not offer standalone parent carer assessments, but instead considered a parent's needs as part of the wider assessment process. The Council said it incorporated the parent's needs into a Child and Family Assessment. The Council said Mr X's referral for a parent carers

assessment did not meet the threshold for a Child and Family assessment in terms of safeguarding, therefore it advised him to contact the DWP.

57. F started at School A in September 2019 and records show he has settled in well and is receiving provision in line with his EHC Plan. Mr X's appeal was heard by the SEND tribunal in January 2020.

58. Mr X remained unhappy and complained to the Ombudsman.

My findings

59. There were several elements to Mr X's complaints, therefore I have separated my findings on each issue below for ease of reading.

Failure to provide F with provision as set out in his EHC Plan between September 2018 and March 2019

60. The evidence shows the school did not provide the provision set out in F's EHC Plan between August 2018 and March 2019, when Mr X removed him from the School. Mr X first raised concerns in September 2018. Records of mediation show the Council note that the lack of School funding were not good enough reasons for failing to provide the provision. Following Mr X's concerns the Council started consultation on looking for an alternative placement for F. Therefore, I am satisfied the Council was aware of Mr X's concerns.

61. Mr X raised several issues about the provision. The key matter was around F's provision of 1:1 support. F's EHC Plan stated he had a 1:1 carer funded by Continuing Healthcare to support him at school for 32.5 hours per week. The school's response in September 2018 made it clear it did not 'ring-fence' funds for a student and said F's EHC Plan did include named 1:1. Therefore, F did not receive a 1:1 carer in line with his plan which meant his needs were not fully met. The Council should have ensured F received this provision as stated within the EHC Plan and its failure to do so is fault.

62. Had F received the 1:1 support it is likely the issues around walking, wearing his hearing aids, bib changing, sensory swim sessions, and the leg splints may not have occurred. The Council's Child and Family assessment recognised F was being disadvantaged by not wearing his hearing aids. I have seen no supporting evidence of how either the school or the Council addressed this.

63. There is an absolute duty on the Council to provide the provision stated in the EHC Plan. The Council were aware of Mr X's concerns but there is a lack of records from October 2018 onwards which showing how the Council addressed Mr X's concerns. The Council failed to meet the provision laid out in F's ECH Plan between September 2018 and March 2019. That was fault.

Delay in consulting for an alternative placement for F

64. The Council started consultation and searching for an alternative placement for F in September 2018 after agreeing to do so following Mr X's concerns. There are no clear records between October 2018 and March 2019 which show how the Council progressed consultations with alternative placements.

65. The records I have seen show the Council made progress from March 2019 onwards, after Mr X withdrew F from the school. Therefore, I have concluded the Council did not make any significant efforts to consult alternative placements between October 2018 and March 2019 and that was fault. The delay meant F was left a placement which was not meeting his needs for longer than necessary. It is possible F could have started at School A much earlier than September 2019 had the Council not delayed.

Failure to provide F with alternative provision between March and September 2019

66. Mr X withdrew F from the School in March 2019 due to his concerns about provision and safeguarding matters. The Council consulted with alternative placements and found School A could meet F's needs, beginning in September 2019. The Council offered two forms of interim provision for F, one at School B and also the use of facilities and provisions at the school, which he remained on roll at.

67. Mr X declined the offers of the interim placement which meant F was without education between March and September 2019. However, I cannot find the Council at fault for this because it had offered an interim alternative placement which could meet F's needs. Mr X decided both offers would not meet F's needs, however, as explained in paragraph 16, the courts have ruled that it is for the Council to decide what is suitable. Therefore, the Council met its duty to arrange education for F and is not at fault.

The Council's handling of Mr X's safeguarding referral

68. Mr X raised several safeguarding matters which involved F at the school. The Ombudsman cannot investigate what happens in a school. In this case I can only look at whether the Council carried out its processes correctly.

69. The Council received Mr X's referral and decided it did not meet the criteria for it to carry out an investigation. It carried out a Child and Family assessment and decided the school and its governors should investigate the matter. The Council also met with the school and said it was satisfied with its actions. There was no fault in the Council's actions or how it considered the safeguarding referral. As the substantive matters occurred in the school, I have not investigated them any further as I do not have any jurisdiction to.

Mr X's request for a parent carer needs assessment

70. The law says councils must carry out an assessment if a parent carer of a disabled child requests one, or it appears to the Council that the parent carer has needs for support. It must also be satisfied that the disabled child the parent cares for is someone it may provide services for under Section 17 of the Children act 1989.

71. The Council said it does not offer standalone parent care assessments and considers circumstances as part of the child and family assessment. It said it only carries out an assessment if it identifies safeguarding concerns. However, the legislation is clear, and it cannot be interpreted differently. The Council's interpretation of the legislation is flawed. Mr X is a parent carer for a disabled child, and he requested an assessment. Therefore, the Council must carry out an assessment and not doing so was fault. The failure to complete an assessment means Mr X may have lost out on services and assistance he was entitled to.

Complaint handling

72. Mr X first complained to the Council about matters in May 2018. The Council responded at stage 1 of its procedure but refused to escalate it to stage 2 on the basis the outcome would have been no different. Mr X's complaint was complex and about Children's services. The Council should have considered it under the Children's Statutory complaints procedure, which would have meant an independent investigation at Stage 2 and a right to escalate to Stage 3 if still dissatisfied. The Council failed to consider Mr X's complaint under the statutory procedure which denied him the opportunity to escalate and have his complaint

considered at all three stages. Mr X's complaint was not handled correctly and that was fault.

73. Mr X complained to the Council again in January 2019, mainly about safeguarding matters occurring in the School and around concerns about the EHC Plan. The Council did not respond to the complaint and there are no records of it following this up with him. That is fault

74. Mr X complained to the Council again in April 2019. The Council did not respond until June 2019 when it told him it would not put his complaint through its procedure. The Council has relied on various correspondence, meetings and EHC Plan reviews. None of them have been investigated at stage 2 of its process which appears in conflict with its own stage 2 policy, which subsequently denied Mr X the opportunity for a review panel to consider the matters at stage 3. Mr X's complaints about lack of provision, delay in consultation, and the concerns about interim provision were all suitable for a stage 2 investigation. The Council failed to properly investigate Mr X's complaint in line with its own procedure at stage 2 and that is fault.

Injustice to F

75. F has severe disabilities and a life limiting condition, therefore every day is important. Past time cannot be made up at a later time. The Council failed to ensure F received the provision set out in his EHC Plan between September 2018 and March 2019. F lost out on opportunities to develop and on educational opportunity. The Council's delay in consulting for an alternative provision increases the injustice to F.

Injustice to Mr X

76. Mr X has experienced distress, uncertainty and significant time and trouble because of how the Council handled his complaints. Had the Council dealt with his complaint under the statutory procedure in the first place, he may not have needed to bring his complaint to the Ombudsman. Mr X has also experienced distress and time and trouble following the Councils refusal to carry out a parent carer needs assessment.

77. In deciding the recommended action below, I have consulted the Ombudsman's Guidance on Remedies. Any agreed payments are outside of any provision allocated for F's EHC Plan.

Agreed action

78. To remedy the injustice caused by the faults the Council agreed within one month of the final decision to:

- pay Mr X a total of £3900 to recognise the loss of development and educational opportunity caused by the failure to deliver the provision set out in F's EHC Plan and the delay in consulting for alternative placements between September 2018 and March 2019. The payment should be used for F's educational benefit.
- pay Mr X £350 to recognise the distress, uncertainty and time and trouble caused to him by the faults identified in the Council's handling of his complaint.

79. The Council agreed within six months of the final decision to:

- review its complaints procedures to ensure complaints about Children's Services are considered appropriately under the correct procedure in future.

- write to Mr X to apologise for not carrying out a parent carer needs assessment after his request. It should now do so In line with the relevant legislation and statutory guidance.
- review its policy on how it considers and carries out parent carer needs assessments to ensure it is in line with the legislation and statutory guidance.
- the Council should provide the Ombudsman with evidence it has carried out the recommendations.

80. These recommendations and timescales are made during the Coronavirus (Covid-19) pandemic. The Council should make every effort to complete them within the agreed timescales, or sooner if possible. However, extensions will be considered given the ongoing crisis which is impacting all public services.

Final decision

81. I have completed my investigation. I found fault causing injustice and the Council agreed to my recommendations to remedy that injustice and improve Council services.

Parts of the complaint that I did not investigate

82. I have not investigated Mr X's complaints about the Council's failure to assist with home adaptations. This was because he appealed to the SEND tribunal about the matters. I have also not investigated the safeguarding incidents which occurred at the School for the reasons explained in paragraphs 68 and 69.

Investigator's decision on behalf of the Ombudsman

05 May 2020

Complaint reference:
19 021 010

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint about the residential care received by his mother. This is because the complaint is late and there is no reason Mr X could not have complained much sooner.

The complaint

1. The complainant, whom I shall call Mr X, complains about the residential care his mother received between September 2016 and December 2018. The Council has refused Mr X's request for a reduction in his mother's care fees.

The Ombudsman's role and powers

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

3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. ***(Local Government Act 1974, sections 26B and 34D, as amended)***

How I considered this complaint

4. I considered Mr X's complaint to the Ombudsman and the information he provided. I also gave Mr X the opportunity to comment on a draft statement before reaching a final decision on his complaint.

What I found

5. Mr X's mother (Mrs Y) was a resident of a care home between September 2016 and December 2018. Mr X has complained to the Council about the level of care his mother received. Mr X says he raised his concerns directly with the care provider, but things did not improve. Mr X has asked the Council for a reduction in his mother's care fees because of the poor service he says she received.

6. In its responses to Mr X's complaints the Council said:

   - A care review took place in December 2016 and no concerns were raised.
   - A further review was held in January 2018. One concern was raised but this had been resolved by the care provider.
   - In October 2018, a family member contacted the Council to say there had been a sudden decline in Mrs Y's care. A review took place in November 2018, but

no family members attended. It was decided moving Mrs Y could be distressing for her. A review held the following month did not identify any concerns about Mrs Y's care.

- Mrs Y was eventually moved from the care provider because it closed – but this does not mean Mrs Y's care was poor.
- It would not reduce the charge for Mrs Y's care.

7. The Ombudsman normally expects people to complain to us within twelve months of them becoming aware of a problem. We look at each complaint individually, and on its merits, considering the circumstances of each case. But we do not exercise discretion to accept a late complaint unless there are good reasons to do so. I do not consider that to be the case here. I see no reason why Mr X could not have complained much earlier, and so the exception at paragraph 3 applies to his complaint.

Final decision

8. The Ombudsman will not investigate Mr X's complaint. This is because the complaint is late and there is no reason Mr X could not have complained much sooner.

Investigator's decision on behalf of the Ombudsman

11 June 2020

Complaint reference:
19 011 813

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr and Mrs X complain the Council delayed making changes to their daughter's Education and Health Care Plan. The failure led to a lack of provision by the school and resulted in a worsening of their daughter's health and absence from school. The Council were at fault. We recommended the Council make a payment to Mr and Mrs X and their daughter. The Council should take remedial action and also review whether other children were similarly affected.

The complaint

1. Mr and Mrs X complain the Council delayed making changes to their daughter's Education Health and Care Plan (EHCP) following a review meeting in March 2018. They explained the existing EHCP only specified support should be provided up to their daughter's 16th birthday. The changes were required to prepare for her transition to the sixth form. The EHCP had not been amended and issued before she began the sixth form in September 2018, aged 16.
2. Mr and Mrs X say the school stopped providing the support specified in the EHCP when their daughter started sixth form.
3. The failure to provide the support specified in the EHCP led to their daughter's absence from school. Mr and Mrs X complain that as a result, the Council failed to ensure their daughter was receiving a suitable education. They say the lack of support and absence from school caused their daughter to be isolated from her peers and it worsened her mental health.

What I have investigated

4. I have not investigated the school's actions as part of this complaint. The reason for this is set out in the last section of this statement.

The Ombudsman's role and powers

5. 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)***

6. 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)***

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

How I considered this complaint

8. I considered Mr and Mrs X's complaint and the information they provided. I asked the Council for information and considered its response to the complaint.

9. Mr and Mrs X and the Council had an opportunity to comment on my draft decision. I considered the comments received before making a final decision.

What I found

Background

10. Mr and Mrs X complain about the way the Council dealt with a review of their daughter's EHCP. I have referred to their daughter, as Y in this statement.

11. Y's existing EHCP was completed in January 2017. The plan explains that Y's needs are associated with her diagnoses of anxiety, Autistic Spectrum Disorder (ASD) and motor dyspraxia. Y's anxiety fluctuates and can be unpredictable. The plan notes that when Y's anxiety is heightened, her health and school attendance is likely to be affected.

12. Y's 2017 EHCP specified the support that she should receive. Amongst other things the plan states Y needs access to staff who understand her conditions. It states key staff should be available throughout the day to enable issues to be resolved as they arise, both in lessons and during unstructured times. It states key staff will allow her to build relationships, establish trust and build confidence in those supporting her learning.

13. The plan also says Y and her family will be supported to identify an appropriate to post-16 setting for continuing Y's education and everyone should work together to ensure an effective and smooth transition.

Review of Y's EHCP

14. A meeting took place to review Y's 2017 EHCP in March 2018.

15. The notes from the meeting show what was discussed. Y highlighted a smooth transition to sixth form as one of the things that was important to her. She stated she needed familiar trusted support at school and freedom to use strategies to cope with anxiety, including walking and use of headphones. The notes from the school under "questions to answer" stated "KS5 funding required".

16. A report prepared by the school ahead of the review meeting described Y's progress for the year. It stated Y had built a good trusted relationship with a teaching assistant and she had confidence in that member of staff. It stated "[Y] will need support to identify how she can build trusted relationships with new staff in her post 16 setting…"

17. The report stated Y would "require an extended transition to help her build relationships with key staff in sixth form".

18. The Council explained that Y attended an independent school. She chose to move to the sixth form at the school. The Council says, following the review, the

school would usually inform the Council what the cost of Y's placement would be. The Council would then agree this. Its commissioning team would then process the funding and draft a contract for the private school.

19. Mr and Mrs X say they had numerous meetings with school and were assured the plan agreed in March would be in place for Y. However, Y's EHCP statement had not been amended by the time she returned to sixth form in September 2018.

20. Unfortunately, Y struggled in sixth form for a number of reasons. Mr and Mrs X say the school presented Y with a timetable that was different to what was expected following the March 2018 review meeting. In the previous year, Y worked almost exclusively with one teaching assistant. In the sixth form she was being expected to interact more and be part of a group, without the close support of someone who knew and understood her. Staff had also discussed with Y the possibility of her attending college which she was not expecting. She also found the removal of her phone, under new rules, difficult. She used this to play music, one of her coping mechanisms when she was anxious.

21. Mr and Mrs X told us they had been given the impression by the school that the teaching assistant Y trusted would be supporting her in sixth form. They say this did not happen. Mr and Mrs X raised the issue with the school. They noted Y's EHCP required her to be supported by familiar staff. They stated Y did not know many of the other staff in the sixth form. So, when Y experienced problems she did not feel she could raise them. This led to anxiety.

22. After discussion with Mr and Mrs X about the issues, the school agreed a different timetable and agreed a list of points to address. However, it stated it could not provide 1-2-1 support for Y. After a period of absence Y tried to return to school but she still found things too difficult.

23. On 10 October, Mr and Mrs X contacted the Council. They explained the issues and stated the existing 2017 EHCP was no longer up to date. The outcomes and provision related to Key Stage 4. Y was now in sixth form in Key Stage 5 and her EHCP needed to be amended as quickly as possible.

24. The Council's response on 16 October apologised that the changes were not made after the March 2018 review. The Council stated its assessment team had a significant backlog of EHCP amendments following reviews and Y's case was sitting in that backlog. The Council acknowledged it needed to have a better way to identify priority cases such as Y's, where she was moving into a new phase of education. It stated it had been unaware that Y was not attending school and had raised this with the school. The Council brought forward the next review of Y's plan from December to November.

25. The Council sent an amended EHCP to Mr and Mrs X on 18 October.

26. A further review meeting was held in early November 2018. In follow up emails the Council stated some of what was discussed was contingent on funding; resources to enable Y to access a work placement or to visit a college. The Council agreed to liaise with the school about this. Mrs X noted that a plan for Y's post-16 education was agreed at her Annual Review in March. It was agreed that to help Y to take the next steps, this year she would need to concentrate on her independence skills and work experience opportunities whilst also looking at suitable courses and visiting other post-16 placements and apprenticeships. If funding was needed for this it ought to have been resolved in March. They were concerned that at a late stage the school seemed unable to meet the needs

identified back in March. I understand they separately raised concerns about the school's actions with the governors.

27. In December Mr and Mrs X commented on the proposed revisions to the EHCP. I have not set out their concerns here. In December the Council stated it would finalise the ECHP to open up Mr and Mrs X's right to appeal if they disagreed with the content. The final EHCP was sent on 2 January 2019.

28. Mr and Mrs X explained that because of the uncertainty around Y's timetable and the support available, Y's anxiety was heightened. Because Y was not familiar with the staff supporting her in sixth form, she had not felt able to address her concerns. She found it too difficult to attend school as a result. As Y's social group is through school this also led to social isolation. Y was unable to attend school from the end of September 2018 to the end of February 2019.

Was there fault by the Council?

Delay in issuing a revised EHCP

29. The first part of Mr and Mrs X's complaint is that the Council delayed making changes to their daughter's EHCP following a review meeting in March 2018. Y was due to start sixth form in September 2018 so the review was also required to plan for a change to a new phase of education.

30. Paragraph 9.179 of the SEN Code of Practice states an EHC plan must be reviewed and amended in sufficient time prior to a child or young person moving between key phases of education. Paragraph 9.180 states that for young people moving from secondary school to a post-16 institution, the review and any amendments must be completed by 31 March in the calendar year of transfer.

31. The move between schools is an important moment for any child and especially those with SEN. This is why the Code says that advance planning for these moves is essential. The importance of everyone working together to achieve a smooth, effective transition to post-16 education was also stated in Y's existing 2017 EHCP.

32. Where a council decides to amend the ECHP it must notify the parent of this decision within four weeks of the review meeting. There is no statutory timeframe for how long the Council can take to do the amendments. However, the Code says this should happen 'without delay'.

33. There was clearly fault by the Council in Y's case. The review of Y's plan should have been completed by 31 March given Y was moving to another phase of education. However, there was significant delay well beyond 31 March, and well beyond the date that Y started sixth form in September 2018.

34. It was not until 19 October 2018 that a proposed ECHP was sent to Mr and Mrs X, and even then, this appears only to have been prompted by their complaint. A revised version of the EHCP was sent on 27 November after a further review meeting and a final amended EHCP was issued on 2 January 2019.

35. The Council told us it could not see evidence on its files to explain why the final statement was only issued in January 2019. However, it explained to Mr and Mrs X in response to their complaint that the delay was because of a backlog in the team responsible for dealing with changes to EHCPs.

36. This delay was significant and represents fault by the Council. It also raises questions about whether the backlog of EHCP amendments may have similarly affected other young people with special education needs in the Council's area.

Lack of provision

37. As Mr and Mrs X have rights of appeal specifically to enable them to challenge the content of the EHCP when it was issued, I have not investigated whether the provision specified was suitable for Y.

38. In addition, I cannot investigate the actions of a school, so I am unable to investigate the elements of Mr and Mrs X's complaint that refer to the school.

39. However, the SEN Code makes it clear that where young people are moving between specific phases of education, it is important to review their plan in good time. This is specifically to allow for planning, and where necessary, commissioning of support and provision at the new institution to happen before the term starts and to enable any phased introductions and work to help familiarise young people about what to expect. In Y's case, it seems clear that the delay in following up the review meeting and the delay in issuing an amended EHCP significantly contributed to the problems that occurred when Y began sixth form in September 2018.

40. Y's attendance at school had always been affected by her anxiety to a degree, but the Council's fault was a significant contributory factor in the fact that Y was not able to attend school between the end of September 2018 and the end of February 2019. In this period she missed both education provision and the EHCP provision she was entitled to. The lack of support and absence from school caused Y to be isolated from her peers and it worsened her mental health.

Agreed action

41. Within four weeks of our final decision the Council should take the following action:

- Provide a written apology to Y for the failure to properly ensure her EHCP plan was reviewed and issued in good time for her move to sixth form.
- Make a payment of £2500 to Y. This is to recognise the period in which Y was less able to attend school and did not receive a suitable education or the support in her EHCP. It is also to recognise the distress and social isolation that being away from school caused her.
- Make a payment of £250 to Mr and Mrs X to recognise the time and trouble they were put to in following up the delayed EHCP with the Council and in bringing the complaint.
- The Council should provide us with details of how many other cases it has in the backlog of EHCP amendments, what action it has taken to reduce the backlog and what steps it has taken to prioritise the most urgent cases.
- The Council should provide the Ombudsman with confirmation of whether there are similarly affected children to Y, caused by the backlog of EHCP amendments and how it intends to remedy any injustice caused to them.

Final decision

42. There was fault by the Council. I have now completed my investigation on the basis the Council has agreed to remedy the complaint as we recommended.

Parts of the complaint that I did not investigate

43. I have not investigated the actions of the school. The Ombudsman does not have any jurisdiction to consider complaints about schools.

Investigator's decision on behalf of the Ombudsman

22 June 2020

Complaint reference:
19 016 569

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Council failed to follow the statutory process for dealing with complaints by children about social care when Miss X complained it failed to deal properly with an allegation that a teacher caused her son physical harm. The Council will arrange a second stage investigation under the statutory procedure for children's complaints about social care.

The complaint

1. The complainant, whom I shall call Miss X, complains her son was physically harmed by a teacher and the Council did not properly investigate this, or deal with her subsequent complaint properly, causing the matter to remain unresolved.

What I have investigated

2. I have investigated whether the Council has dealt with Miss X's complaint properly. I give my reason for not investigating the Council's response to the allegation at the end of this statement.

The Ombudsman's role and powers

3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

4. 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)***

5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

How I considered this complaint

6. I read the Council's final response to Miss X and spoke to her on the telephone. I referred to *Getting the Best from Complaints 2006*, which is statutory guidance laying out the mandatory procedure councils with social care duties must follow when dealing with complaint by or on behalf of children. I shared a draft of this

decision with both parties and invited their comments. I considered those I received.

What I found

Background

7. Miss X told the Council her son was physically harmed by a teacher. The Council did not substantiate the allegation.

8. Miss X was unhappy and complained about the conduct of the investigation.

What should have happened?

9. The Council considered Miss X's complaint at Stage 1 of the statutory procedure laid out in *Getting the Best from Complaints 2006*. It could only refuse to move her complaint to Stage 2, which is an investigation by an officer with an independent person overseeing it, in limited circumstances. These are where it has upheld the whole complaint, or where it becomes clear the complainant is not entitled to complain on the child's behalf.

What happened, and was it fault?

10. When the Council did not uphold her complaint at the first stage, Miss X asked the Council to consider it at Stage 2. The Council wrote back, refusing, saying this would not lead to a different outcome. This was fault. The Council had accepted Miss X's complaint under the statutory procedure, and she was dissatisfied by the Council's response at Stage 1 of that procedure, which had not upheld her complaint. Regardless of the Council's views about the likelihood that a Stage 2 investigation would lead to a different outcome, it is not for the Council to substitute its own methods for a statutory procedure.

Agreed action

11. The Council will arrange a Stage 2 investigation in accordance with *Getting the Best from Complaints 2006* within one month of the final decision.

Final decision

12. I have upheld the complaint about the Council's failure to deal with Miss X's complaint properly. I have closed the case as the Council will carry out a Stage 2 investigation under the statutory complaints procedure.

Parts of the complaint that I did not investigate

13. I have not investigated the Council's handling of the original allegation. This is because it is for the Council to do so in accordance with statutory guidance. Should Miss X remain dissatisfied at the end of the statutory complaints procedure, she is welcome to return to the Ombudsman. She should do so promptly unless she is prevented from doing so.

Investigator's decision on behalf of the Ombudsman

22 June 2020

Complaint reference:
19 008 583

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Miss B complaints about the Council's handling of safeguarding referrals about her partner's son, Child D. The Ombudsman has found no fault in the way the Council has dealt with the concerns raised about Child D's welfare while in his mother's care.

The complaint

1. The complainant, whom I have called Miss B, complains about the Council's handling of safeguarding referrals about her partner, Mr C's son, D. Miss B complains the Council has not taken her and Mr C's concerns about D's welfare while with his mother seriously. She feels the Council has failed to obtain key evidence she and Mr C have to support their concerns about D's mother. Miss B and Mr C remain very worried about D's welfare while he remains in his mother's care.

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)***

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. We may investigate complaints made on behalf of someone else if they have given their consent. ***(Local Government Act 1974, section 26A(1), 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 have spoken to Miss B and considered the information she has provided in support of her and Mr C's complaint. Mr C has given his consent for Miss B to make the complaint on his behalf.

7. I have considered the Council's response to my enquiries, which includes some confidential information I am unable to share with Miss B and Mr C or refer to in this decision.

8. I have also considered the Council's procedures and the statutory guidance - Working Together to Safeguard Children 2015.

9. Miss B, Mr C and the Council had an opportunity to comment on my draft decision. I received no comments from Miss B, Mr C or the Council to consider before issuing this final decision.

What I found

10. The Children Act 1989 says councils have a duty to safeguard and promote the welfare of children within their area who are in need. If a local authority receives a report of concern about a child it must decide what response is required. This includes determining whether:

- the child requires immediate protection, or
- the child is in need and should be assessed under section 17 of the Act, or
- there is reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm

What happened

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

12. Mr C and his ex-partner, Ms E, share parental responsibility for their son, D, who lives with his mother and spends time every week with his father.

13. In late August 2018, the police made a safeguarding referral to the Council about Mr E's care of D following a report from Mr C. Mr C reported concerns about drug use by Ms E and others in her home while D was in her care.

14. The Council assessed the referral and made an unannounced visit to Ms E's home a few days later. The Council completed a Children and Families Assessment, which involved speaking to D, his half-sibling and Ms E. The Council observed no evidence of drug use in the property and found the two children showed no signs of neglect or abuse. The Council concluded its assessment of Ms E and the two children on 11 September 2018, when it decided no further action or involvement was required.

15. The Council received another safeguarding referral about D from the National Society for the Prevention of Cruelty to Children (NSPCC) in late January 2019, following a report of concern to it by Mr C. Mr C reported his continued concerns about D's welfare while with his mother. Mr C believed D's behaviour was evidence that Ms E was not caring for him appropriately.

16. The Council made enquiries with D's school and found it had seen no signs of neglect or abuse. The Council noted the concerns reported by the NSPCC following Mr C's contact related largely to the same issues he had raised about D the previous year, which suggested there may be acrimony between the parents. The Council concluded its assessment as further action was not required.

17. The Council received another referral about D from Miss B in April 2019. Miss B had concerns that Ms E had neglected to provide medication to D to help treat an illness he had developed and continued to use drugs while caring for D. The

Council carried out another assessment of D, which included obtaining information from his school and doctor, and an unannounced visit to Ms E's house. The Council undertook direct work with D to check if there was evidence of any risk to him while in his mother's care. The Council concluded its involvement following these checks.

18. Mr C made a further referral to the Council in June 2019. He continued to express concerns that Ms E was using drugs while caring for their son. The Council decided not to take further action in respect of Mr C's referral because it noted this repeated the previous concerns he had raised which it had thoroughly investigated.

19. The Council received another referral from D's doctor in August 2019. This was following an appointment D had attended with Mr C. The referral related to Mr C's concerns about D using offensive language and crying. The Council assessed the referral and concluded there were no safeguarding concerns highlighted. The Council advised Mr C to seek legal advice if he considered his son was unsafe in Ms E's care.

20. The Council received another referral following a disclosure by D about his father. The Council conducted an unannounced visit to Ms E's home to speak to D and his mother about the matter. The Council also spoke to Mr C about D's disclosure. The Council concluded there was insufficient evidence of harm being caused to D by Mr C and closed the case.

21. Miss B escalated her and Mr C's complaints and concerns to the Ombudsman because they felt the Council was ignoring the safeguarding issues they had reported.

Analysis

22. The Council's records show it has acted on each of the referrals it received about D since August 2018. It has undertaken several unannounced visits to the home D shares with his half-sibling and mother. The Council has spoken directly to D and the other child in the household as well and Ms E. There are case notes which clearly show the Council's focus on the wellbeing of the children.

23. The information the Council has shared with me during my investigation also includes copies of the evidence Miss B and Mr C have provided in support of their concerns. This mirrors the information Miss B has shared with me. There appears no evidence the Council has ignored or not properly considered the information Miss B and Mr C have provided.

24. The Council's focus when assessing the matters brought to it will be on the children involved. The approach the Council has taken to obtain its own evidence to assess the situation is reasonable and entirely appropriate in circumstances where there is clear acrimony between separated parents.

25. There is no doubt Miss B and Mr C have remained very concerned about D's welfare throughout this time. I have seen nothing to suggest the Council has not taken those concerns seriously. The Council was however entitled to reach its own conclusions about whether it needed to take further action. I have seen no evidence of maladministration in the Council's handling of these referrals which would allow me to question the decisions or the professional judgement of the social workers that have assessed the children involved in this case.

26. The Council's suggestion that Mr C seeks independent legal advice if he continues to have concerns about his son remaining in Ms E's care was entirely appropriate because the existing contact arrangements were made via the courts.

Final decision

27. I have completed my investigation and found no evidence of fault by the Council.

Parts of the complaint that I did not investigate

28. I have not investigated any concerns relating to the Council's action during or for court proceedings as such matters fall outside the Ombudsman's jurisdiction and should be raised directly with the court.

Investigator's decision on behalf of the Ombudsman

25 June 2020

Complaint reference:
19 011 418

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: I cannot continue to investigate Mr X's complaint because his complaint relates to matters which have already been considered by the courts. I cannot continue to investigate the other parts of Mr X's complaint as the Council has not had an opportunity to investigate and respond first.

The complaint

1. Mr X complains the Council produced an inaccurate report for Court which meant his contact with his children was limited. Mr X says a further report produced by a social worker for the Children and Family Court Advisory Support Service (CAFCASS) meant he was able to challenge the courts decision and now has increased contact with his children.
2. Mr X also complaints the Council has not properly investigated safeguarding concerns he has raised in the past about his children.
3. Mr X says he was not able to spend quality time with his children as a result of the inaccurate report produced by the Council.

The Ombudsman's role and powers

4. We cannot investigate a complaint about the start of court action or what happened in court. ***(Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended)***
5. The law says we cannot normally investigate a complaint unless we are satisfied the council knows about the complaint and has had an opportunity to investigate and reply. However, we may decide to investigate if we consider it would be unreasonable to notify the council of the complaint and give it an opportunity to investigate and reply ***(Local Government Act 1974, section 26(5))***
6. 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

7. I have spoken to Mr X about his complaint and considered the information he provide to the Ombudsman. This includes court documents.
8. I have also considered the Council's response to Mr X's complaint.
9. Mr X and the Council now have an opportunity to comment on my draft decision. I will consider their comments before making a final decision.

What I found

What happened

10. Mr X applied to Court for contact with his children. The Council asked the Council to produce a report about the children, Mr X and his ex-partner. This is often referred to as a section 37 report. The Court will ask a council to prepare this where there are questions about the welfare of a child in private law proceedings.

11. In 2019 the Court ordered that Mr X be allowed daytime contact with his children. Mr X says this was based on an inaccurate section 37 report produced by the Council. Mr X said he felt he had no option but to accept the decision at the time and pursue the matter at a later date.

12. The Council responded to a complaint from Mr X in August 2019. The Council's response dealt with Mr X's complaints about:

- The Council's assessment process in relation to the section 37 report.
- The content of the section 37 report.
- A social worker failing to attend court.
- The handling of the case since the court decision in 2019.
- A social worker failing to attend a meeting in June 2019.

13. In early 2020 Mr X went back to Court to gain overnight contact with his children. His application was successful. Mr X says CAFCASS produced a report which contradicted the earlier report produced by the Council. Mr X says this is why he was able to gain overnight contact with his children.

14. In his complaint to the Ombudsman Mr X has raised concerns about the way the Council investigated safeguarding concerns he raised regarding his children. Mr X also complained that he did not receive minutes of child in need meetings in a timely manner and was upset at the way he had been spoken to in those meetings.

Findings

15. I cannot continue to investigate Mr X's complaint about the Council's section 37 report. This is because the report was produced for the courts. The Ombudsman cannot investigate matters which have been put before the courts. This includes the Council's assessment carried out as part of the report process.

16. The Council has not had the opportunity to respond to Mr X's complaints about how it dealt with his safeguarding concerns or the conduct of child in need meetings. If Mr X wishes to pursue these complaints, he should contact the Council in the first instance. I cannot investigate the complaint as the Council has not had an opportunity to investigate and reply first.

FInal decision

17. I have stopped my investigation into this complaint. This is because the part of the complaint relates to matters which were put before the courts and the Council has not had an opportunity to respond to the other matters Mr X has raised.

Investigator's decision on behalf of the Ombudsman

28 July 2020

Complaint reference:
19 007 570

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: the Council considered Ms X's disability-related expenditure appropriately, applied the Minimum Income Guarantee and sought to obtain accurate figures from her. There is no evidence of fault in the way the Council has acted.

The complaint

1. Ms X (as I shall call the complainant) complains the Council has assessed her contributions towards the cost of her care without properly taking into account her expenditure. She says as a result she is in debt and struggling to pay essential bills.

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. 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

3. I spoke to Ms X. I considered all the information provide by Ms X and the Council. Both Ms X and the Council had an opportunity to comment on an earlier draft of this statement before I reached a final decision.

What I found

Relevant law and guidance

4. Councils can make charges for care and support services they provide or arrange. Charges may only cover the cost the council incurs. ***(Care Act 2014, section 14)***

5. Councils must assess a person's finances to decide what contribution he or she should make to a personal budget for care. The scheme must comply with the principles in law and guidance, including that charges should not reduce a person's income below Income Support plus 25%. Under the Care Act 2014, charges must not reduce people's income below a certain amount but local authorities can allow people to keep more of their income if they wish. This amount is known as the Minimum Income Guarantee.

6. If a person incurs expenses directly related to any disability he or she has, the Council should take that into account when assessing his or her finances. The list of items which can be included as disability related expenses is not exhaustive but does not include items or services which should be provided by the NHS ***(Care Act 2014 Department for Health, 'Fairer Charging Guidance' 2013, and 'Fairer Contributions Guidance' 2010)***

7. The Council makes a standard allowance of £20.00 per week for disability-related expenditure (DRE).

What happened

8. Ms X is an adult with some learning disabilities. She uses a wheelchair and has a PIP mobility award. The Council funds support for her for 10.5 hours a week to support her with meal preparation and with prompting to carry out personal hygiene tasks and dressing appropriately. Her other eligible assessed need – making use of facilities in the community – is fully met by her friends who help her to access church and other activities.

9. In November 2018 Ms X contacted the Council to say her DRE was above £20 a week and she could not afford the £37.96 contribution she was assessed as able to make towards the cost of her care.

10. The Council says it awarded an additional amount of DRE to enable her '*to pay for items like thermacare pain relief pads, lifeline, electric wheelchair purchase and annual servicing of the wheelchair, specialist cutlery, specialist shoes, back heaters and gloves to assist with grip/pressure. The electric wheelchair was taken into account at £7 per week and £1.92 per week was taken into account for servicing the wheelchair*.' It also increased her DRE for taxis on which her expenditure was significantly greater than the national average owing to her mobility needs. The Council says as Ms X's expenditure on utilities was less than the national average, it did not award any DRE for those. The result of the reassessment was to reduce her contribution towards the cost of her care to £0.00.

11. In April 2019 the Council changed its contributions policy. It says this was to bring it in line with other local authorities, and with the Government guidance on Minimum Income Guarantee (MIG) levels. It implemented the change in policy in two phases. The effect of the policy change would have been that Ms X's contribution towards the cost of her care should have been £51.51 from 08 April 2019, and £70.29 from 04 November 2019. This was because from 9 April 2019, the MIG level for a person under pension age decreased from £189.00 per week to £170.23 per week and reduced again on 4 November 2019 from £170.23 to £151.45 per week.

12. The Council says it identified that Ms X would be unable to afford the contribution and so it applied a temporary waiver from 09 April so her contribution remained the same (£0.00). It wrote to explain it would review her income and expenditure in the next few months and would contact her again.

13. On 01 August 2019 a manager wrote to Ms X. She said her review of Ms X's finances showed she should be able to afford the assessed contribution towards the cost of her care and the waiver would end.

14. Ms X complained to the Council about the contribution of £87.55 she was assessed as able to make. She said she was saving to go to respite care which her doctor had recommended.

15. The Council says Ms X's social worker has tried to contact her to discuss her income and expenditure further. He has also asked her support workers to assist in this process but Ms X has been unwilling to engage. It says it cannot continue to waive her contribution indefinitely. Ms X owed £552 by the end of November 2019.

16. The Council says it cannot take into account any costs for respite care as this is not currently in place.

17. The Council's records show the MIG levels are met in its financial assessments for Ms X.

Analysis

18. The Council applied a waiver for several months but was unable to obtain accurate figures from Ms X despite several attempts.

19. There is no evidence of fault in the way the Council has considered Ms X's disability-related expenditure.

Final decision

20. There is no fault on the part of the Council.

Investigator's decision on behalf of the Ombudsman

5 August 2020

Complaint reference:
19 007 602

Complaint against:
Nottinghamshire County Council
Nottinghamshire Healthcare NHS Foundation Trust
Nottingham City Clinical Commissioning Group

Local Government & Social Care OMBUDSMAN

Parliamentary and Health Service Ombudsman

The Ombudsmen's final decision

Summary: The Ombudsmen did not take further action with Mr H's complaint about the mental health treatment provided to his daughter, Miss G, by a Council, CCG and a Trust. Although there was some fault by the Trust, we have not found this led to a shortfall in Miss G's treatment.

The complaint

1. Mr H complains on behalf of his daughter, Miss G, regarding the care and treatment she received from Nottinghamshire Healthcare NHS Foundation Trust (the Trust), Nottingham City Council on behalf of Nottinghamshire County Council (the County Council) and Nottingham City Clinical Commissioning Group (the CCG) between July 2016 and September 2017.
2. Mr H complains that after his daughter's discharges from section 3 of the Mental Health Act (MHA) in 2016 and 2017 the arrangements made for her aftercare under section 117 (s.117) of the MHA were inadequate. He also complains the transition from child to adult mental health services when his daughter turned 18 in 2017 was not properly planned or managed.
3. Mr H said failings by the Trust have delayed his daughter's recovery and that this has had significant implications for both her and the rest of the family. He also felt although some faults have been identified and apologies given, no changes or service improvements have been made to prevent this situation arising again.
4. Mr H would like an acknowledgment of failings and service improvements to prevent similar circumstances happening to other patients.

The Ombudsmen's role and powers

5. The Ombudsmen have the power to jointly consider complaints about health and social care. Since April 2015, these complaints have been considered by a single team acting on behalf of both Ombudsmen. ***(Local Government Act 1974, section 33ZA,as amended, and Health Service Commissioners Act 1993, section 18ZA)***
6. The Ombudsmen investigate complaints about *'maladministration'* and *'service failure'.* We use the word *'fault'* to refer to these. If there has been fault, the Ombudsmen consider whether it has caused injustice or hardship ***(Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1)).***
7. If it has, they may suggest a remedy. Recommendations might include asking the organisation to apologise or to pay a financial remedy, for example, for

inconvenience or worry caused. We might also recommend the organisation takes action to stop the same mistakes happening again.

8. If the Ombudsmen are satisfied with the actions or proposed actions of the bodies that are the subject of the complaint, they can complete their investigation and issue a decision statement. ***(Health Service Commissioners Act 1993, section 18ZA and Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

9. Whilst investigating this complaint I have considered information from the Council, Trust, the CCG and Mr H. I also obtained independent clinical advice from a Consultant Psychiatrist. In addition, I have considered the relevant national guidance and legislation. I sent a draft decision to Mr H and the organisations and considered all their comments before making this final decision.

What I found

Legal, local and national background

10. Section 3 (s.3) of the MHA allows for a person to be admitted to hospital for treatment if their mental disorder is of a nature and/or degree that requires treatment in hospital. In addition, it must be necessary for their health, their safety or for the protection of other people that they receive treatment in hospital

11. Under s.117 of the MHA 1983, councils and CCGs have a joint duty to provide or arrange free aftercare for people who have been detained under s.3. CCGs only commission care, they do not provide it directly.

12. Aftercare services must meet a need arising from or related to the person's mental disorder and reduce the risk of their mental condition worsening and the need for another hospital admission again for mental disorder.

13. To address someone's s.117 aftercare needs, professionals should determine:

- What was the mental disorder for which they were detained under a qualifying part of the MHA?
- What needs do they have which directly arise from or are related to that mental disorder?
- What services are required to meet those needs?
- Which of those services are required to reduce the risk of a deterioration in the person's mental disorder?
- Which of those services are required to reduce the risk of them needing admission to hospital for that mental disorder?

14. Care planning for s.117 aftercare should be done via the Care Programme Approach (CPA) framework. It should start when the person is admitted to hospital. CCGs and councils *"should take reasonable steps"* to ensure aftercare services are in place in good time for discharge

15. When a person is entitled to services under s.117, they are not entitled to Continuing Healthcare funding (CHC) for those services. Continuing Healthcare funding is to pay for a person's health and social care if they have what is called a primary health need. However, they may be entitled to CHC for additional care needs as well as s.117 aftercare for the needs arising from their mental disorder.

16. The Section 117 after-care local policy and guidance (Nottingham

17. City and Nottinghamshire county councils, Nottinghamshire Healthcare NHS Foundation Trust, Clinical Commissioning Groups 2015) states:

" the aftercare of the detained patients should be included in the general arrangements for implementing the care programme approach"

18. NICE Guidance (NG69) '*Anorexia nervosa: treatment for children and young people*' states:

"Many children and young people with anorexia find it helpful to have a talking therapy that family members or carers can take part in too. This is called family therapy."

19. Transition planning should be in line with the relevant NICE guideline (NG43) *'Transition from children's to adults' services for young people using health or social care services* '. Paragraph 1.2.1 recommends:

"…practitioners should start planning for adulthood from year 9 (age 13 or 14) at the latest. For young people entering the service close to the point of transfer, planning should start immediately."

Background

20. In 2016 Miss G was 16 and suffering from an eating disorder. She had been under the care of the Children and Adolescent Mental Health Service (CAMHS) for an eating disorder, anxiety and depression since 2012. CAMHS in Nottingham is provided by the Trust.

21. In March 2016, Miss G was detained for treatment under s.3 of the MHA because of her refusal to eat. She was admitted to an adolescent inpatient unit (the Unit). The Unit takes care of young people with mental health issues for assessment and treatment. Miss G was discharged from the section in May 2016 but remained at the Unit for treatment.

22. In July 2016 Miss G left the Unit. The Trust subsequently stated in its complaint response that this was against medical advice. The Trust said staff had told Miss G her choice was to stay there and carry on her care plan or leave against their advice.

23. Mr H complained about a lack of aftercare for his daughter following this discharge. He said the care plan was inadequate and there was only one single joint meeting involving a psychiatrist and a dietician. Mr H said the family sought a second opinion at Great Ormond Street Hospital which recognised the seriousness of Miss G's issues, but this was too late to prevent a readmission to inpatient care. He said it had a detrimental effect on her and the family.

24. The CCG in its investigation report of April 2018 admitted fault in that it and the Trust did not follow the s.117 procedure in carrying out a joint assessment. It apologised for this. The CCG said that Miss G did not benefit from the full range of options a s.117 assessment would have offered. However, it stated the actual impact on Miss G was hard to quantify. As the Trust had pointed out, she did have a care plan and support from CAMHS in place and family therapy was also offered. The Trust apologised for not providing actual s.117 aftercare but said it had put care in place and welcomed the second opinion from Great Ormond Street.

25. Unfortunately, in December 2016, Miss G was again detained under s.3 of the MHA, this time being admitted to a hospital in Scotland (the Hospital). The

Hospital provides services for children and young people with complex needs or a combination of mental health or eating disorders. The CCG said the section was removed in June 2017 as Miss G no longer met the criteria under the MHA. Miss G was discharged two days later when she decided not to come back following a period of home leave.

26. Mr H said the Trust took no action, as far back as April 2017, to start planning for his daughter's discharge. He said the self-discharge was because to return to Scotland would have caused his daughter great distress. Mr H went on to say the failure of CAMHS to offer adequate support post discharge meant his daughter did not have access to a personal health budget under s.117. He felt this would have been the best method of offering continuity of care for his daughter who was extremely distressed following her discharge.

27. Mr H said he did not feel a proper package of care was in place. There was no support for daily activities and no family therapy. There was also a lack of psychiatric support.

28. The Trust, in its contribution to the CCG's investigation report, said on her return to Nottingham, it liaised with the Hospital over Miss G's ongoing treatment and care plans. The Trust said it also liaised with Nottingham Citycare Partnership about CHC funding and was advised to follow the s.117 aftercare process. Nottingham Citycare Partnership is a community health service that offers nursing, nutrition and dietetics services in the Nottingham area.

29. A CPA meeting was held on 19 July 2017 with Miss G and her parents. One of the actions from that meeting was for Miss G's care co-ordinator to complete a s.117 application.

30. Citycare said it received a referral from a CAMHS psychiatrist on 24 July 2017 but it was incomplete and it did not receive a full referral until 8 August 2017. A meeting was held on 16 August 2017 without the family because they were on holiday but a s.117 assessment was carried out by Citycare with the family and the input of a social worker on 6 September 2017.

31. The s.117 assessment was considered on 26 September 2017 and funding agreed. The Nurse Assessor agreed a care and support plan with Miss G and a personal health budget was set up.

32. The Trust in its complaint response said it made an application for a s.117 assessment four weeks after Miss G discharged herself. It said during this time many other tasks were being carried out by community team in order to support Miss G's care. There were referrals to other inpatient providers, requests for day service assessment, requests for paediatric review and planning for her transition into adult services. It said some services were offered but declined by Miss G's family.

33. The CCG said in its investigation report the s.117 assessment eventually took place with Miss G and her family in early September 2017. The CCG accepted the usual discharge arrangements were compromised as Miss G discharged herself. However, it said there was a delay from discharge in June until early August 2017 in the s.117 referral being made by the Trust.

34. It went on to say the multi-disciplinary team offered a package of care designed to meet Miss G's support needs, some of which she declined to take up.

35. During this period Miss G turned 18 in August 2017. Mr H criticised the lack of transitional arrangements from CAMHS to adult psychiatric services which

impacted on his daughter's mental health. He said preparations should have been made many months before she turned 18.

36. In response the Trust said it had for some time been considering how to manage the transition. However, at the time Miss G was in the Hospital and it took into account the fact she could be remaining there past her 18th birthday. In June 2017 it made a referral to an Adult Eating Disorder Team. However, the team did not accept her as a patient due to her '*unsettled presentation'*.

37. The Trust went on to say in early June 2017 there was a CPA meeting attended by the CAMHS Eating Disorder team and the Adult Eating Disorder Team Lead. During the meeting the Lead explained how the team functioned and how the transition would be handled. There followed a multi-disciplinary meeting in the team about the transition.

38. The Trust rang Miss G a week later and explained how the transition would work. A meeting was then offered with the CAMHS and the Adult Eating Disorder team to introduce the Adult Team and discuss the transition. However, Miss G did not attend the meeting.

39. The Trust explained the following week it held a meeting with Miss G, her mother, her GP and members of the CAMHS to discuss the transition. Further meetings took place and CPA meetings were offered to the family in July 2017 but were declined. The CPA meeting eventually took place later in July and agreed a care plan. Further appointments were then offered to discuss the CPA and transition, but Miss G did not attend.

40. The CCG concluded in its investigation that planning had been taking place while Miss G was an inpatient and following her discharge. This included both the CAMHS and Adult Teams and a CPA was put in place. It also found that services were offered but not always taken up.

41. In its response to the Ombudsmen's enquiries, the Trust outlined the improvements it has made to the service since 2017. It has appointed a Transition Specialist Practitioner to provide assessment and ongoing treatment for patients from the age of 17.5 years. This Practitioner continues treatment into the adult eating disorder services ensuring there are no gaps in provision. An Occupational Therapist has been appointed to support young people with reintegration back to community. In addition, an Occupational Therapist Assistant has been appointed to work across CAMHS to build a young patient's independence.

42. Furthermore, local specific Commissioning for Quality and Innovation (CQUIN) framework forums and transition champions have been appointed. CQUIN supports improvements in the quality of services and the creation of new, improved patterns of care.

Analysis

Lack of s.117 aftercare in 2016

43. From the records Miss G had over 100 appointments with CAMHS during 2016 including during inpatient stays.

44. The Trust offered individual support, family therapy, psychiatric follow up, dietetics and liaison with Miss G's school and GP. This was a comprehensive care package from CAMHS. This package of treatment would also be in line with NG63 for eating disorders. Not all of these appointments were attended. In addition, the CCG and Trust apologised for the lack of further options offered under s.117.

45. Taking this into account, although the s.117 process was not strictly followed, there was no fault by any organisation as she had a comprehensive care package in place in line with NICE guidelines.

Lack of aftercare in 2017

46. From looking at the records and the information provided by the Trust and CCG, in 2017 a care package in line with the NICE guidelines was offered by the Trust. However, it proved difficult to deliver this complete package and a number of appointments were not attended. With regard to the delay in the s.117 referral, there was an excessive delay in making a s.117 referral and this was partly because the application was not properly made by the Trust.

47. However, I have not found fault with the care package that was offered while the s.117 referral was being put together. Although a personal health budget could have been offered sooner, the package already offered was suitable for Miss G's needs. At that time there was no legal requirement to offer a personal health budget as part of a s.117 aftercare plan. In addition, when a social care assessment was carried out it did not identify any social care needs for Miss G. Therefore, although there was a fault on the part of the Trust in the delay in making the s.117 referral, it did not lead to a quantifiable shortfall in the care that was offered to Miss G.

48. Regarding the personal health budget, there was a delay in this being obtained due to the faults outlined above. I recognise Mr H's frustration with this delay. However, at the time there was no legal requirement for the personal health budget and there is insufficient evidence that this had a negative effect on the provision of Miss G's care because I am satisfied there was a suitable package of care in place to meet Miss G's needs. .

The transition from CAMHS to adult care services

49. The first reference in the notes to a consideration of this transition was in May 2017, four months before Miss G's 18th birthday. At this point Miss G was still an inpatient at the Hospital and the discussion was around whether in the future she could be moved to an adult inpatient facility in Leicester or Nottingham. The discussion concluded staff should speak to Miss G to see what she wanted to do in the future with her care. Transition planning was formally started as part of a CPA meeting (5 June 2017). There were then further meetings taking place and offers to Miss G to attend an introductory meeting before her birthday.

50. Appointments were offered as part of the transition plan, but these were not attended. Transition planning was not linked sooner to a specific local service as there was a possibility that Miss G would have needed to continue in an inpatient service for treatment following her 18th birthday. There were a number of different services involved at this point, including a Great Ormond Street eating disorder consultant, a therapist from Scotland and the Leicester Eating Disorder service as well as local CAMHS.

51. However, Miss G had already received considerable CAMHS input from the age of 13 and had already had a number of hospital admissions, including under section 3 of the MHA and had not recovered. Therefore it would be expected that ongoing adult mental health input would be needed and formal transition planning, including the family, should have started sooner.

52. Taking into account the above and NICE guidelines (NG43), based on the information I have seen so far, there was fault by the Trust in not starting transition planning earlier. However, my view is this did not lead to a shortfall in

her care as she had involvement from a suitable range of professionals by the time she turned 18 in August 2017.

53. Although it did not assure Miss G in this instance, it may provide some reassurance to Mr H that the Trust, as outlined in Paragraphs 41 and 42, has improved its transition arrangements for other patients as this was one of the outcomes he wanted to see as a result of this complaint.

Final decision

54. After considering further comments from Mr H and the organisations complained about, I do not recommend further action by the Council, CCG or Trust. Based on the information I have seen, there was no fault with the Council or CCG and although there was a delay in s.117 aftercare and transition planning by the Trust, it did not lead to an obvious detriment in Miss G's care. The Trust has also apologised and made improvements to its services.

Investigator's decision on behalf of the Ombudsmen

5 August 2020

Complaint reference:
19 009 087

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr X complains the County Council affected his property when it re-surfaced a right of way he uses to access his driveway. I found no fault in the Council's actions.

The complaint

1. Mr X complains when the County Council arranged for the resurfacing of a right of way, they narrowed it and moved it closer to his property. He says this action was taken without the proper procedure to change the route of the right of way and it caused him difficulties accessing his property. He also complained an area of his own land (immediately in front of his driveway) was re-surfaced by the Council's contractor, removing a flood defence he had built.

The Ombudsman's role and powers

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

3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

4. I spoke to Mr X and considered the information he provided. I asked the Council for information and I considered its response to the complaint.

5. Mr X and the Council had an opportunity to comment on my draft decision. I considered the comments received before making a final decision.

What I found

Background

6. The entrance to Mr X's driveway is down a lane which is a designated right of way. Mr X says for years the lane has been around four metres wide. He says a watercourse/drainage channel runs down the opposite side of the lane to his home. Mr X has suffered flooding issues caused by water running down the lane and into his property.

7. Mr X says the County Council arranged for the resurfacing of the lane. When it did the work it narrowed it and moved it closer to his property. It did this without the proper procedure to change the route of the right of way. He also asked why the Council had only surfaced the lane to width of 2.7m in front of his property, when it was wider elsewhere. He felt, in effect, it had been moved nearer to his property.

8. Mr X also complained an area of his own land (immediately in front of his driveway) was re-surfaced by the Council's contractor, removing a flood defence he had built. He provided evidence his driveway entrance was slightly higher than the footpath before the resurfacing.

9. The Council stated the lane had not been diverted and the contractor had tarmacked what was already surfaced. They stated they had not moved the line of the path. The Council stated as 2.7m was the recorded width for the footpath, and that was provided, it had no grounds to carry out more works.

The designation of the Right of Way (ROW)

10. The Council stated the lane in question was made a Right of Way (ROW) in 2009. The footpath was added as part of a number of paths that were in common use by members of the public "as of right", but before 2009 were not officially designated as ROWs.

11. Although the full width of the lane, and as it may appear on Ordinance Survey maps may be around 4 metres, this full width was not all designated as a ROW in 2009. The Council explained it would only designate the actual footprint used by the public as a ROW. In this case it found the width used by the public was a maximum of 2.7m wide, so this was what the Council made a ROW.

12. When it intends to designate footpaths as a Right of Way, the Council publicises its intentions via an Order. The Council says no objections were made. Once a ROW is designated it is recorded in a definitive map and definitive statement. This describes the features and extent of ROWs. The entry for the footpath in question describes its location and goes on to state that it has a width of between 1.2m and 2.7m. It is 2.7m in the area around Mr X's property.

13. After the Council designated the lane as a ROW, the element that is a ROW became publicly maintainable. This does not mean it is publicly owned.

Resurfacing Works

14. The Council told us when it decided to re-surface the lane, it had considered the impact on drainage.

15. The Council provided details of the work it commissioned and carried out to the lane. This included the need to retain a drainage channel to one side and to clear debris to ensure it worked. The contractor's quote shows they intended to grade the surface to aid surface water drainage and to carry out this work.

16. The Council stated the contractor did not surface anything that was not already tarmacked and there were no changes to the levels outside Mr X's property. It stated care was taken to camber the lane further down the lane, to ensure water flowed down the other side of the lane (where there is a drainage channel). The stone drainage strip was provided along the other side of the lane to take water run-off and act as a soakaway.

17. The Council initially stated it had inspected the works and nothing had changed to Mr X's side of the lane other than the re-surfacing. The Council did not consider there would be an impact to water flowing along the lane as a result of the works.

18. The Council later considered evidence provided by Mr X during our investigation that indicated the level of the footpath had been raised slightly when the resurfacing was done., This made it approximately level with the edge of Mr X's driveway entrance. The Council offered to pay for work to reinstate a 'lip' along the driveway entrance as Mr X had before the works.

19. Mr X also noted that vegetation growing in and around the drainage channel opposite his drive caused a nuisance when accessing his property. The Council stated because the vegetation was not encroaching on or obstructing the public footpath this would need to be addressed with the landowner. The Council noted that Mr X was raising flooding issues separately.

Analysis

20. Although the ownership of the lane is not clear, the Council's resurfacing works were carried out as a result of its duty to maintain Rights of Way.

21. The first element of Mr X's complaint is that the Council had in effect moved the right of way towards his property without following the proper diversion process. Having reviewed the available description of the ROW from the Council's definitive map and statement, I do not consider the resurfacing works have led to a change in the route of the ROW. The description of the ROW is not so detailed as to define which part or side of the lane it is positioned. The provision of the 2.7m wide ROW along the lane meets the Council's statutory duties.

22. There is evidence the Council had regard for the need for drainage and took account of the potential for flooding when carrying out the resurfacing. It stated its contractor had only surfaced the area that was already hard surfaced.

23. The Council stated they did not increase the levels outside Mr X's property, and a camber had been built into the lane further up to direct flood water to the stone drainage channel on the other side of the lane. I am satisfied there is evidence the Council took account of the need for drainage and understood the potential flooding issue when the works were carried out. However, there was evidence the level of the path to the front of Mr X's driveway was raised slightly. The Council has agreed to pay for the reinstatement of the "lip" along the driveway that Mr X had previously in response to this. This is appropriate.

24. Although I have not found fault in the County Council's actions, it is open to Mr X to review what private rights of access he has, possibly documented in his property deeds. If Mr X's private rights of access specify that he has a right to a wider and more extensive access than the ROW the Council has maintained, it may be open to him to take civil action against the landowner or others to restore this.

25. I have not found fault in the County Council's actions concerning works to the ROW, but I have sympathy for Mr X's circumstances and the impact that flood water coming down the lane has previously had on his property. I understand Mr X is pursuing actions to address the causes of the flooding separately.

Final decision

26. I found no fault by the Council. Subject to further comments by Mr X and the Council, I intend to complete my investigation and close my file.

Investigator's decision on behalf of the Ombudsman

07 August 2020
Complaint reference:
19 021 076

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr X complains the Council will not allow him to hire a tree surgeon to scale a tree outside his property and remove overhanging branches. He says the resulting bird faeces are hazardous and falling branches are damaging his car. The Council was at fault for failing to properly consider Mr X's request. The Council has agreed to reconsider its decision.

The complaint

1. Mr X complains the Council will not allow him to hire a tree surgeon to scale a tree outside his property and remove overhanging branches. He also says he was incorrectly told the tree had a Tree Protection Order and so could not be trimmed.
2. He says this means his car and drive are exposed to large quantities of bird faeces that are hazardous for him to clear away. He says falling branches are damaging his car.

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)***
6. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. ***(Local Government Act 1974, sections 26B and 34D, as amended.***
7. Mr X first complained to the Council in 2006. He continued to speak to the Council about the tree until he complained again in January 2020. The Council responded the same month. There is no good reason to investigate further back than 12 months from the date Mr X received the response to his January 2020 complaint.

8. I have not investigated Mr X's complaint about damage to his car caused by falling branches. This would be a private legal matter between Mr X and the Council. Mr X may wish to seek legal advice about whether he has a claim against the Council.

How I considered this complaint

9. I have considered:

- all the information Mr X provided and discussed the complaint with him;
- the Council's comments about the complaint and the supporting documents it provided; and
- council policies, relevant law and guidance and our guidance on remedies.

10. Mr X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Relevant law and guidance

11. A council may own trees, for example on the highway or in public open spaces. Councils should ensure 'highway trees' are safe for highway users and users of adjacent land.

12. The Council's "*Tree Conservation and Maintenance*" policy says trees cannot be cut down, pruned or damaged without permission. It also says that the Council should act to alleviate nuisance to nearby properties. It does not refer to damage to cars or health.

13. The Council's *"Highway Network Management Plan*" says it will maintain trees within the highway where there are safety concerns.

14. The *"Well-Maintained Highways Code of Practice for Highway Maintenance Management"* recommends trees should be inspected every five years.

15. A Tree Preservation Order (TPO) makes it an offence to cut down, top, lop, uproot or willfully damage a tree without the Local Planning Authority's (LPA's) permission.

What happened

16. The Council owns a tree on a road outside Mr X's property which overhangs the drive where Mr X parks his car. The Council uses a contractor to monitor and maintain its trees, including the one outside Mr X's home.

17. Mr X contacted the Council about the tree regularly, starting in 2006.

18. In 2017 and 2018, the tree was inspected and found to be safe. As such, the Council decided not to do any maintenance on it.

19. Mr X continued to contact the Council about the tree. Mr X says the Council's contractor verbally told him he could not cut the tree as it had a TPO.

20. Mr X later confirmed the tree did not have a TPO.

21. In January 2020, Mr X complained to the Council. He wanted the Council to allow him to hire a qualified tree surgeon to scale the trunk of the tree and cut the branches.

22. The Council responded to say its position remained the same. It did not find the tree to be unsafe and so would not prune it. It said Mr X had the right to cut the overhanging branches where they crossed his boundary line, but that any work to remove the branches must be carried out from within the boundaries of Mr X's home. It would not agree to allow a surgeon to scale the tree. It said he could use a cherry picker or scaffolding.

23. Mr X says he previously tried to use a cherry picker and was not able to reach the overhanging branches. He says scaffolding would be unsafe as his drive slopes towards the road.

24. In its response to my enquiries, the Council said it did not agree to Mr X's request because it would not allow anyone to work within a tree to cut branches. This was because it would not know if the contractor had suitable insurance, qualifications and authorised methods of working. It did not provide any evidence to show it had asked Mr X to supply this information.

Findings

25. The Ombudsman cannot question a Council's decision where it has followed the correct policy and legislation and there is no fault in the decision-making process. The Council assessed the tree according to its policies and found it to be safe. It therefore did not have to take any action to cut the tree itself.

26. Mr X says he was incorrectly told he could not cut the tree due to it having a TPO. As this conversation was verbal, I cannot make a judgement on it. However, the tree belongs to the Council so no-one can cut it back without the Council's permission.

27. The Council's response to my enquiries shows it has a blanket policy of not allowing private contractors to work within the tree. It has not considered whether the contractor Mr X wants to use has appropriate qualifications, insurance and methods of working. The failure to consider whether the work could be permitted on this occasion was fault.

28. Mr X says the Council has not considered its duty of care to residents who are in contact with bird faeces because of its trees. Whether or not the Council has a duty of care to residents in respect to bird faeces is a legal matter and not for the Ombudsman.

Agreed action

29. Within one month of the date of my final decision the Council will:

- confirm it is willing to reconsider its decision not to allow Mr X to engage a qualified tree surgeon to scale the tree and remove the overhanging branches. The Council should set out the information Mr X needs to provide in a letter to him. The Council should reconsider its decision within one month of receiving the information from Mr X.

Final decision

30. 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

7 September 2020

Complaint reference:
19 012 117

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Council is at fault as it failed to carry out a review of Mrs Y care and support needs after six weeks to determine if a care package was meeting her needs. The Council's fault contributed to Mr X and Mrs Y not cancelling the care package when she no longer wanted it which she incurred costs for. The Council has agreed to waive half of Mrs Y's outstanding care charges to remedy her injustice.

The complaint

1. Mr X complains on behalf of Mrs Y. He complains the Council:
   - told him that Mrs Y's care would be free for the first six weeks.
   - should have carried out a review after the first six weeks as it had undertaken to do. Had it done so, the Council would have cancelled the care as Mrs Y did not want it.
   - delayed in cancelling the care.
2. Mr X considers that as a result the Council is wrongly charging Mrs Y for the care.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. ***(Local Government Act 1974, sections 26(1) and 26A(1), as amended)***
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

5. I have:
   - Considered the complaint and the information provided by Mr X;
   - Discussed the issues with Mr X;
   - Made enquiries of the Council and considered the information provided;

- Invited Mr X and the Council to comment on the draft decision. I considered any comments received before making a final decision.

What I found

6. Councils can make charges for care and support services they provide or arrange. Charges may only cover the cost the council incurs. ***(Care Act 2014, section 14)***

What happened

7. Mr X contacted the Council in December 2017 for support for Mrs Y as Mr Y who cared for Mrs Y was admitted to hospital.

8. Officers A and B, social workers, visited Mrs Y to carry out an assessment of her care and support needs. They considered Mrs Y was eligible for a home care package. Mr X has said the officers advised that the first six weeks of care would be free of charge. The Council has said the officers explained that home care services were not free of charge and that a financial assessment would be required to establish how much Mrs Y should pay. The Council's record of the visit does not record any discussion about charging for the care.

9. The Council wrote to Mrs Y on 31 January 2018 to confirm her home care package would start on 7 February and the name of the provider. The letter said the care would initially be provided for six weeks and during the six week period an officer would carry out a review to consider whether Mrs Y's needs had changed. The letter also said that the Council would send a form for Mrs Y to complete with details of her income, savings and outgoings. This information would be used to calculate how much Mrs Y needed to pay towards the cost of her care.

10. The care package started on 7 February 2018. Officer A contacted Mr X on 8 February 2018 to check the care had started. Officer A's record of the call notes Mrs Y is happy with the care. Officer A also notes she told Mr X that she was ending her involvement.

11. In February 2018, the Council sent documents for Mr X to complete for Mrs Y's financial assessment and a factsheet about paying towards a personal budget for care at home. The factsheet set out who was exempt from paying towards their personal budget. It explained everyone else had to have a financial assessment to see how much they could afford to contribute. Mr X returned the financial assessment documents in March.

12. The Council assessed Mrs Y as needing to pay £80.91 towards her personal budget which would increase to £87.50 in April 2018. The Council wrote to Mrs Y in April 2018 notifying her of contribution. It also sent an invoice for £566.37 for her contributions since the start of her care package.

13. The Council's records show Mr X contacted the Council on 22 April about Mrs Y's care bill. The record notes Mr X said the hospital told him that the first six weeks of Mrs Y's care would be free. Mr X contacted the Council again on 27 April. The Council's record notes Mr X said he wanted to cancel Mrs Y's care. Mr X says the officer he spoke to said it would be cancelled. Mr X says he contacted the Council again on 30 April as the carers were still calling. In response to my enquiries the Council has said it did not cancel Mrs Y's care package immediately until the request could be discussed in person with Mrs Y.

14. On 4 May, officer C, a reviewing officer, visited Mrs Y to review her care and support needs. The review noted Mr X and Mr and Mrs Y said she was no longer in need of the care. The carer records showed that Mr and Mrs Y were refusing care.

15. The records of officer C's visit note she told Mrs Y she would cancel the care package and suggested to Mr X he may want to cancel the calls with the care provider on a daily basis until the care package was closed.

16. Officer C made a request for the care package to be cancelled immediately but the care provider continued to call. Officer C contacted the care provider on 9 May to cancel the care calls. I note the Council sent a credit note to Mr X on 17 February 2020 to waive the charges between 30 April and 6 May 2018.

17. Mr X made a complaint to the Council in June 2018. He raised that the hospital and Council told him the first six weeks of care would be free and the Council had not carried out a review after six weeks. Had it done so Mrs Y would have cancelled the care. Mr X also complained the carers continued to visit after he had cancelled the care and he continued to receive invoices.

18. I understand the Council met with Mr X in October 2018 to discuss his complaint. It wrote to him in January 2019 to advise the Council would waive the charges for the first six weeks. This would leave a debt of £511.82. Mr X says he contacted the Council by telephone in late January 2019 as he was unhappy with the response but did not receive a response.

19. The Council sent a demand for £511.82 to Mrs Y in May 2019 and warned of possible court proceedings. The Council responded to Mr X's complaint in June 2019. The Council said it would not waive Mrs Y's care charges in full as it had no record of Mr X contacting the Council before May to cancel the care package.

20. In response to my enquires the Council has said it has waived the charges between 23 April and 4 May 2018.

My assessment

21. Mr X says the Council told him Mrs Y's care would be free for six weeks. The Council says officers explained Mrs Y would be charged a client contribution for the duration of her care. There is no record of the discussion in the case notes. So, I cannot know what information was provided to Mr X and Mrs Y. But the Council has waived Mrs Y's client contribution for the first six weeks so I cannot achieve any more for Mr X and Mrs Y by pursing the matter further.

22. The Council's letter of 31 January 2018 stated it would carry out a review of Mrs Y's care during the first six weeks to see if her needs had changed. There is no evidence to show such a review was carried out. This is fault.

23. Mr X considers Mrs Y would have cancelled the care had the review taken place so Mrs Y would not have incurred the care costs. Mr X and Mrs Y did not contact the Council about cancelling the care package. The Council's letter of 31 January 2018 and the factsheet sent with the financial assessment gave sufficient information for Mr X to know Mrs Y would have to contribute to her care package even if they thought the first six weeks was free. So, it is appropriate to consider that Mr X could have contacted the Council after the six weeks had passed, particularly if Mrs Y no longer wanted the care which she would be charged for. However, had the Council carried out the review when it should have done, then it is likely Mr X and Mrs Y would have been prompted to cancel the care.

24. So, I consider the Council's failure to carry out the review contributed to Mrs Y not cancelling her care package after six weeks. It is therefore appropriate and proportionate for the Council to waive half the outstanding charges in recognition of this.

25. The Council would have to carry out a review of Mrs Y's care before cancelling the care package. So, on balance, it is not at fault for not cancelling the care package immediately on Mr X's contact of 22 April. I will not investigate if there was delay in arranging the review as the Council says it waived Mrs Y's charges from 23 April to 6 May 2018. So, I cannot achieve any more for Mr X and Mrs Y by investigating the matter further.

26. The Council's complaints procedure provides it should respond to complaints within 20 working days. Mr X made his complaint in June 2018. I understand the Council met with Mr X in October 2018 but it did not respond in writing until January 2019. This is an excessive amount of time and is fault. The Council's complaints procedure is one stage so the Council should have notified Mr X of his right to make a complaint to the Ombudsman in this letter rather than considering Mr X's complaint further in June 2019. This prolonged Mr X's complaint which will have caused frustration to him. The Council should apologise to Mr X.

27. The Council has said it has reviewed its adult social care complaints procedure since Mr X's complaint which should prevent the faults experienced by Mr X from recurring.

Agreed action

28. That the Council will:

a) Send a written apology to Mr X for the frustration caused by not considering his complaint in accordance with its complaints' procedure.

b) Waive half of Mrs Y's outstanding client contributions to acknowledge its failure to carry out a review of her care and support needs after six weeks contributed to Mr X and Mrs Y not cancelling her care package. The Council should send an invoice to Mrs Y for the remaining half of the charges detailing the periods for when these charges were accrued.

c) Review its procedures to ensure the Council is implementing its policy of reviewing care and support needs after six weeks to see if the care package is meeting the service user's needs.

29. The Council should take the action at a) and b) within one month of my final decision and the action at c) within three months of my final decision.

Final decision

30. The Council is at fault as it failed to carry out a review of Mrs Y care and support needs after six weeks to determine if a care package was meeting her needs. The Council's fault contributed to Mr X and Mrs Y not cancelling the care package when she no longer wanted it. The Council has agreed to waive half of Mrs Y's outstanding care charges which is a proportionate remedy for Mrs Y's injustice. I have therefore completed my investigation.

Investigator's decision on behalf of the Ombudsman

7 September 2020

Complaint reference:
19 012 777

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Ombudsman has not found fault in the way the Council assessed Mr C's finances and decided that he had to pay a contribution towards the cost of his care package.

The complaint

1. Mrs B says her son, Mr C, who has a learning disability, cannot afford the contribution towards his care package.

The Ombudsman's role and powers

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

3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

4. I have considered the documents the Council has sent and the relevant law, guidance and policies.

What I found

Law, guidance and policies

5. The Care Act 2014, the Care and Support Statutory Guidance 2014 (updated 2017) and the Care and Support (Charging and Assessment of Resources) Regulations 2014 set out the Council's duties towards adults who require care and support and its powers to charge. The Council also has its own policies.

6. The CASS Guidance says the approach to charging should (among other things):

- ensure that people are not charged more than it is reasonably practicable for them to pay;
- be clear and transparent, so people know what they will be charged;
- promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control;

Financial assessment

7. Councils must carry out a financial assessment if they decide to charge for the care and support. This will assess the person's capital and income.

Income

8. Local authorities may take most of the benefits people receive into account as income.

9. Some benefits must be disregard as income (among others):

   - The mobility element of the Disability Living Allowance (DLA) or Personal Independence Payment (PIP).

Minimum Income Guarantee (MIG)

10. Local authorities must ensure that a person's income is not reduced below a specified level (MIG) after charges have been deducted. The amounts are set out in the regulations. However, this is only a minimum and local authorities have discretion to set a higher level if they wish.

11. The purpose of the MIG is to promote independence and social inclusion and ensure that a person has sufficient funds to meet their basic needs such as purchasing food, utility costs or insurance. This must be after any housing costs such as rent and council tax net of any benefits provided to support these costs – and after any disability related expenditure.

12. The government publishes a circular each year which sets out what the MIG will be for that year. The MIG has not changed since 2015.

Disability related expenditure (DRE)

13. Where disability benefits are taken into account, the Council must allow the person enough benefits to pay for necessary disability related expenditure to meet any needs which are not met by the Council.

14. There is no definitive list of what DRE is. The guidance gives examples but says that any reasonable additional costs related to a person's disability should be included.

Council's own policy

15. 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, it disregarded £28.30 of this as income; and
   - all people, regardless of their age, had a MIG of £189.

16. In October 2018 the Council's Adult Social Care and Public Health Committee agreed changes and said it would (among other things):

   - include the full amount of a person's disability living allowance as income from 8 April 2019.
   - reduce the MIG for people under pension age to £170.23 from 8 April 2019 with a further reduction to £151.45 from 4 November 2019.

17. These changes were designed to bring the Council's policy more into line with national guidance.

18. The Council allows DRE of £20 per week to every person who is receipt of certain disability related benefits. However, the Council may approve a higher rate of DRE if the person provides evidence of the expense.

What happened

19. Mrs B submitted an income and expenditure sheet in February 2019. This showed Mr C's income (employment support allowance and personal independence payment) and his outgoings including rent, utilities and food. Mrs B said Mr C did not have any DRE as he had a learning disability rather than a physical disability.

20. The Council assessed Mr C's finances on 8 April 2019 in line with the new policy. Based on the new MIG of £170.23, Mr C would have to pay a contribution of £25.87. However, the Council also compared Mr C's' income and expenditure and this showed that his monthly expenditure was higher than his monthly income. The Council therefore decided to waive the contribution until June 2019 as it said it would cause Mr C financial hardship. The Council reviewed Mr C's finances on 3 June 2019 and continued the waiver.

21. At the review in August 2019, the Council questioned some of Mr C's expenses. Mrs B said Mr C was heavy handed and frequently broke household appliances so she had included a figure of £100 a month for this. She also included £45 per month for healthcare to pay for Mr C's glasses as he broke them frequently. The Council also questioned Mr C's £80 satellite TV/wifi subscription, but Mrs B said that Mr C found it difficult to concentrate and so having lots of channels to flick through kept him occupied for longer. The Council said these costs were excessive and could be reduced. The MIG was meant to cover regular living expenses.

22. The Council wrote to Mr C on 14 August 2019 and said it had reviewed his finances and decided to end his waiver as he had sufficient weekly income and savings to pay the contribution. This meant he would have to pay a weekly contribution of £25.87.

23. The Council re-assessed Mr C's finances on 4 November 2019. His MIG had now reduced to £151.54 in line with the policy. This meant his contribution would be £44.65. The Council said Mr C could not afford this so granted him a waiver of £18.78 which reduced his contribution to £25.87.

24. I asked the Council whether it had considered if the £100 for broken appliances, the £45 a month for glasses and £80 for satellite tv/wifi could be DRE. The Council said it had not done so. It said it would not consider satellite tv/wifi to be DRE in this case, but could consider the other two items. The Council agreed to contact Mrs B for evidence of the expenditure and then speak to the social worker to consider whether parts of the costs could be DRE.

Analysis

25. I have not investigated whether there was any fault in the way the Council made the policy changes. That was not Mrs B's complaint and, in any event, the Ombudsman has already investigated this aspect in another complaint and has not found fault.

26. I have investigated whether there was any fault in the way the Council decided to charge a contribution and I have not found fault.

27. The Council implemented its new financial policy in two phases and it reviewed Mr C's finances at each stage. It calculated Mr C's MIG in line with the law and its own policies. The Council also carried out an affordability test at each stage and did so by comparing Mr C's income with his outgoings.

28. I accept that Mrs B disagrees with the contribution but that was a result of the change in policy and the Council applied the policy correctly.

29. Mrs B said there was no DRE as Mr C had no physical disability. The Council took this at face value and then disallowed some of the costs she was claiming (£100 monthly cost of replacing household appliances, £45 for replacing glasses and £80 for satellite tv/wifi) as they seemed unusually high.

30. Of course, the test for DRE was not whether Mr C had a physical or mental disability as Mrs B thought, but rather whether the costs were linked to the disability and met Mr C's needs.

31. In my view, it would have been helpful for the financial assessor to explore these costs a bit further during the assessment. However, I would not say this was fault, but a point of good practice.

32. Also, I note that the Council has agreed to consider whether some of the outgoings can be considered as DRE which is an appropriate offer and I therefore propose to close the case.

Final decision

33. I have completed my investigation and have not found fault by the Council.

Investigator's decision on behalf of the Ombudsman

9 September 2020

Complaint reference:
20 002 528

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Ombudsman cannot investigate this complaint about the complainant's child being placed in the care of the father and a complaint that the Council has ignored reports that the child is at risk. This is because the matters are subject to legal proceedings and because there is insufficient evidence of fault by the Council.

The complaint

1. The complainant, whom I refer to as Ms X, disagrees with her child being placed in the care of the father. She also says the Council has ignored her reports of bruising while the child has been in the father's care.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start an investigation if we believe it is unlikely we would find fault. ***(Local Government Act 1974, section 24A(6), as amended)***

3. We cannot investigate a complaint about the start of court action or what happened in court. ***(Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended)***

How I considered this complaint

4. I read the complaint and the Council's responses. I saw an email the Council sent to Ms X about a recent court order. I considered comments Ms X made in reply to a draft of this decision.

What I found

What happened

5. The court ordered that Ms X's child should live with the father. Ms X disagrees with this decision. She says the reports produced by the Council, for the court, have favoured the father.

6. Ms X says she has seen bruises on her child whilst she has been living with her father. Ms X says she has sent 120 reports of bruising to the Council. Ms X says the Council has ignored her concerns.

7. The Council says it took action after receiving the reports of bruising. It visited the father and the child and saw no evidence of bruising other than the normal bruising any young child is likely to experience. The Council liaised with the nursery, health visitor and contact supervisors and nobody had any concerns about the bruising or the child's well-being. The Council notified the police of Ms X's reports and informed the judge.

8. In June the court ordered the Council to send it all the contact logs from October 2019. The Council must also submit to the court any concerns the Council has in relation to Ms X or the father. Ms X told me she is currently involved in court action.

Assessment

9. I cannot start an investigation because the matters have been, and continue to be, subject to legal proceedings. The law says the Ombudsman cannot investigate any matter that has formed part of legal proceedings. The court decided the child must live with the father, the court has been made aware of Ms X's reports of bruising and the court has asked for information about events since October 2019. As the court has been, and remains involved, I cannot start an investigation. Ms X will need to raise any concerns she has with the court.

10. I also will not start an investigation because there is insufficient evidence of fault by the Council. In response to Ms X's reports about the bruising it visited the child and the father and obtained evidence from the people involved with the child's care. It also notified the police and the court. The Council decided it did not need to take any action because it was satisfied the child was not at risk. The fact the Council decided it did not need to take additional action does not mean it ignored Ms X's reports.

Final decision

11. I cannot start an investigation because the matters are subject to legal proceedings and because there is insufficient evidence of fault by the Council.

Investigator's decision on behalf of the Ombudsman