APPENDIX B

Local Government & Social Care OMBUDSMAN

Report by the Local Government and Social Care Ombudsman

Investigation into a complaint against Nottinghamshire County Council (reference number: 18 015 558)

DATE 6 November 2019

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- apologise
- pay a financial remedy
- improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr Y	The complainant
Mr X	The complainant's father and representative
Mrs X	The complainant's mother

Report summary

Adult care services

Mr X complains the Council reduced his adult son, Mr Y's, personal budget without full assessment and consideration of his needs. Mr X believes decisions taken to reduce Mr Y's personal budget were financially motivated. Consequently, Mr Y had to top-up his budget to enable him to continue receiving support from a Care Provider.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

To remedy the injustice caused, we recommend the Council should within four weeks:

- provide Mr Y and Mr & Mrs X with an apology from the director of adult services for the failures set out in this report;
- review Mr Y's assessment and produce a care and support plan which reflects his needs over a seven-day period and explain in detail how these needs will be met, in consultation with Mr Y and Mr & Mrs X;
- make a symbolic payment of £1,000 to Mr Y to acknowledge his stress, worry and loss of respite service as a result of the Council's failure to assess his needs and provide adequate support;
- reimburse Mr & Mrs X all monies they have paid to top-up Mr Y's care;
- complete a new financial assessment and consider all relevant Disability Related Expenditure (DRE);
- make a symbolic payment of £1,000 to Mrs X to acknowledge the Council's failure to provide allocated respite funds;
- review Mrs X's carer's assessment and produce a support plan setting out how her needs will be met.

Within three months the Council should:

- consider if other service users may have been affected by the Council's upper limits on hourly rates and take any necessary action to address this;
- amend its procedure to ensure the Council does not set arbitrary limits of hourly rates; and
- take steps to actively publicise its current literature and address our concerns (see paragraph 75) about the previous literature it has issued.

The complaint

1. We will refer to the complainant as Mr Y, and his parents as Mr & Mrs X.

2. Mr Y has autism which means he needs support. He complains the Council has reduced his personal budget without full assessment and consideration of his needs.

Legal and administrative background

3. We investigate complaints about 'maladministration' and 'service failure'. In this report we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. ***(Local Government Act 1974, sections 26(1) and 26A(1), as amended)***

Social care

4. The Care Act 2014 introduced a requirement that local authorities should promote 'wellbeing' and signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs'. The concept of meeting needs recognises that everyone's needs are different and personal to them. Local authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into. ***(Care and Support Statutory Guidance, Ch1)***

5. A council must carry out an assessment of any adult who seems to need care and support. It must also involve the individual and where appropriate their carer or any other person they might want involved. ***(Care Act 2014, section 9).*** Having identified eligible needs through a needs assessment, the council has a duty to meet those needs. ***(Care Act 2014, section 18)***

6. If a council decides a person is eligible for care, it must prepare a care and support plan. This must set out the needs identified in the assessment. It must say whether and to what extent, the needs meet the eligibility criteria. It must specify the needs the council intends to meet and how it intends to meet them. ***(Care Act 2014, ss 24 and 25)***

7. The care and support plan must set out a personal budget which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. ***(Care Act 2014, s 26)***

8. Where the council is meeting some needs, but not others, the care and support plan should clearly set out which needs it will meet and which ones it will not. It should explain this decision.

9. A person with eligible care needs can have a council arrange their care or, if they wish, they can arrange their own care using a direct payment. ***(Care Act 2014, s 31)***

Carers

10. The Care Act puts carers on an equal footing with those who have care needs. Councils have a duty to promote the wellbeing of carers and to prevent burn out and crisis. Wellbeing is defined in Section 1 of the Care Act 2014.

11. A council must consider whether to carry out a carer's assessment if it appears the carer has need for support. It must assess the carer's ability and willingness to continue in the caring role. It must also consider the results the carer wishes to

achieve in daily life and whether support could contribute to achieving those results. ***(Care Act 2014, s10)***

12. The Act says the local authority can meet the carer's needs by providing a service directly. In these cases, the carer must still receive a support plan which covers their needs and how they will be met. ***(Care Act 2014, s 25)***

13. The Council can also provide a carer's personal budget, which must be sufficient to enable the carer to continue to fulfil their caring role. The Council should consider the carer's wishes for their day-to-day life. The Council should try to agree the personal budget and its use during the planning process. ***(Care and Support Statutory Guidance 2014)***

How we considered this complaint

14. We reviewed Mr X's correspondence with the Council, Mr Y's care and support plan and associated documents and the Council's case notes.

15. We gave Mr and Mrs X and the Council a confidential draft of this report and invited their comments.

16. We have now produced this final report after considering the comments we received from all parties.

Background

17. Mr Y has autism. He lives at home with his parents who provide day to day support. For approximately 12 years he has received 13 hours weekly support from a private provider of day services and outreach for adults on the autistic spectrum or with learning disabilities. The Council funded the full hourly rate of £22 via a direct payment. Mr X says the support has been vital to Mr Y's wellbeing.

18. The Council's '*Snap Overview*' of 2010 records the reasons Mr Y needed support from a specialist agency. The assessor recorded Mr Y needed *"Asperger's specific agency with the expertise to support [Mr Y] …".* Mr & Mrs X had identified such an agency. The assessor recorded the Council did not have a contract with this agency and support could only be purchased via a direct payment. Mr Y transferred to direct payments. He was assessed as needing 13 hours support a week. The Council recorded the hourly cost to be £22 per hour and that the direct payment would cover the full cost.

19. The Council's '*Review of Community Care Assessment'* of September 2014 records that Mr Y was too anxious to meet with the assessor and all the information in the assessment was obtained from Mr & Mrs X. The assessor recorded all of Mr Y's support needs were met by *'unpaid care'* (Mr & Mrs X) and that *"he never left the house without being supported by someone".* Mr Y was receiving 13 hours support per week from the Care Provider and he was very focused on this support. The assessor recorded *"this is extremely important as without the continuity of familiar workers it is very unlikely that he would continue to engage with services".* The assessor recorded the hourly rate charged by the Care Provider was above that of the Council's usual rate, and that Mr Y should continue to receive the support for one year until another provider which could provide the same level of support could be found.

20. The assessor also noted Mrs X was suffering significant mental health problems due to the strain of her caring role.

21. The Council's commissioning panel met on 8 January 2015. It decided that "*Continuity of support is important for [Mr Y] and agreement from panel has been given for funding to continue for 12 months at their hourly rate of £22.00".*

What happened next

22. In 2017, Mr X contacted the Council for help with benefit application forms. Mr Y's benefit was changing from Disability Living Allowance to Personal Independence Payments (PIP). The Council provided the support requested but realised it had not completed a review of Mr Y's needs since 2015. The Council arranged to undertake a review.

23. A social worker visited Mr Y and Mr & Mrs X on 3 November 2017. Mr X says Mr Y was apprehensive and nervous about the review. He asked the social worker if he would lose services from the Care Provider. The social worker said she was not there to change anything, and Mr Y would not lose any service from the Care Provider. Mr Y was reassured by this. Mr X says the social worker made notes during the meeting but did not complete any *"official forms".*

24. Mr X says a couple of weeks later the social worker contacted them to seek permission to speak to the Care Provider.

25. The social worker completed the review paperwork. It says that, *"[Mr Y] struggles with changes and this can often affect his OCD* [obsessive compulsive disorder] *and anxieties.... [Mr Y] appears to want to progress within his life but due to his diagnosis's can find this extremely challenging. [Mr Y's] life is occupied by routines and structure and changes can cause his anxieties to heighten".* She recorded that most of Mr Y's needs in the community were met with support from the Care Provider. He *"attends a day service with [Care Provider] two days a week with 6.5 hours support for each day. [Mr Y] is developing his skills in cooking and socialising. These days provide respite to parents and allow them to pursue own goals and activities".*

26. The social worker recorded that the Council had failed to inform Mr Y and Mr & Mrs X of the Council's panel decision in 2015, that funding for the Care Provider at £22 per hour had been agreed for one year, "…*with the intention of planning a transition period over to another service to bring [Mr Y's] support hours back within the service rates….* [Mr Y] *has formed relationships with [Care Provider] and would potentially struggle to accept the change in services".*

27. The records show a discussion between the social worker and her manager about the costs of Mr Y's support. The manager said Mr Y could continue to receive support from the Care Provider, but he would have to contribute the difference between the Council's set rate and the hourly rate set by the Care Provider.

28. The social worker contacted the Care Provider on 27 November 2017 to discuss a reduction in the hourly rate. It replied on the 4 December 2017 agreeing to a reduced hourly rate of £18 per hour. This was not followed up with a formal written agreement.

29. The social worker arranged to visit the family again on 5 December 2017. Mr X says Mr Y was anxious. At the meeting, the social worker informed Mr Y the Council would only fund £15.12 per hour of the Care Provider's costs, but it would seek to renegotiate the hourly rate from £22 per hour to £18 per hour, and Mr Y would have to fund the difference between £15.12 and £18 per hour. Mr X says he reminded the social worker she had told Mr Y that nothing would change. Mr Y was upset and anxious and Mr X says this impacted on his wellbeing.

30. Mr X complained to the Council on 11 December 2017 saying Mr Y struggled with change and did not want a change of provider. He said the social worker had misled Mr Y at the review meeting by saying no changes to his support would be made.

31. The Council responded to Mr X's complaint in an undated letter. It apologised that Mr Y did not receive a copy of an assessment completed in 2015. It explained that personal budgets are generated from information gathered on needs assessments and the Council had to try to stay within the set budget parameters. In Mr Y's case, his personal budget was £100 per week "…*more than the actual cost of the package".* It added that Mr Y could continue to receive the same service, but he would need to top-up the shortfall between the Council's set rate and that of the Care Provider.

32. Mr Y's state benefits were not enough to cover the shortfall. Paying the shortfall left him with no money, so Mr & Mrs X contributed towards the cost. Mr X says they did so because they had little choice if Mr Y was to retain a service that was vital to his wellbeing.

33. Mr X met with a manager from social services on 24 January 2018. Following the meeting the manager wrote to Mr X to confirm Mr Y would be allocated a different social worker, a new support plan would be completed and a carers assessment of Mrs X would also be completed. Transition to a different Care Provider would take place over a one-year period, introducing new staff on a gradual basis. After one year the new Care Provider would take over completely. In the third year, Mr Y's budget may reduce further but *"this is dependent on what budget is generated and an increase in [Mr Y's] independent living skills".* Mr Y would be referred to psychology/psychiatry.

34. The social worker visited Mr & Mrs X again on 6 April 2018 to complete a care and support plan. Mr Y did not want to be present at the meeting. Mr & Mrs X said Mr Y did not agree to a change in Care Provider. They expressed their concern at the proposal saying his needs were met by the Care Provider and he had been settled for many years. They believed a move would be detrimental to him, so they wanted to retain his current service and agreed to cover the shortfall. The social worker told Mr & Mrs X *"that changes to packages are required due to the reduction in funding from central government*, and recorded *"Discussion ensued about the potential of reducing the level of service provided in the future should [Mr Y] become more independent and this being a local authority initiative for all people receiving a service with a change to use of core providers to enable equality in services for all."*

35. The care and support plan records, *"[Mr Y] is not aware that there is a potential in the future he may have to manage on less hours weekly support".* In response to our enquiries the Council said this was to manage their expectations in the future *"and if this should happen, as a result of reviews, this would not be a surprise to the family".*

36. The Council allocated Mr Y an indicative personal budget of £238 per week. Mr Y would receive 13 hours support per week, at a cost of £18 per hour, a total of £234. The Council agreed to pay £15 per hour, a total of £196.50 per week. It said Mr Y would need to pay the shortfall of £37.54.

37. On 29 June 2018 Mr Y received a letter from the Council's direct payments team to say his direct payment had been decreased with effect from 23 April 2018, to the new amount of £196.56 per week, which was £89.44 per week less than he

previously received. The Council said that because the decrease had been backdated there had been an overpayment of £1162.72 for the period 23 April 2018 to 23 July 2018, which would be recouped from the next two direct payments at £786.24 per month. Mr X says this left Mr Y with no direct payments to pay for support from the Care Provider in July & August 2018.

38. Mr X sent an email to the Council's direct payments team on 30 June 2018 to complain. He received a reply on 2 July 2018 saying the social worker had instructed it to make the changes to Mr Y's direct payments.

39. Mr X sent an email to the Council on 30 June 2018 to query the changes and followed it up with a more detailed complaint on 6 July 2018. He reiterated the points raised in his earlier complaint and said Mr Y would be without any direct payments for two months and would not be able to pay the Care Provider at all. He said the Council had not shown any regard for Mr Y's wellbeing. He also said Mr Y was still paying the Care Provider £22 per hour as the reduction had not been formalised. He added that Mrs X had not received a copy of her carer's assessment, despite him chasing the Council on two previous occasions.

40. The Care Provider continued to charge Mr Y £22 per hour. Mr X contacted it on 2 July 2018. It told Mr X he had agreed with the Council to reduce the hourly rate to £18 per hour, but he had not received formal notification from the Council so continued to charge £22 per hour.

41. Mr X received a response from the Council on 22 August 2018. It said the Council contacted Mr X eight times between March and July 2018 to support its view that it had been supporting and communicating properly with him. Mr X says this correspondence was instigated by him chasing the Council for updates. The Council letter also said that:

'It seems to me there has been some confusion about decreases in [Mr Y's] direct payment which may have been avoided if this had of been confirmed to you in writing. I am sorry that this did not happen and for any distress caused to you and [Mr Y]. In view of this oversight, I have agreed to waiver the backdated decrease between 23 April 2018 and 23 June 2018...which amounts to £1162. The Council reiterated its position on the hourly rate it would pay to a provider: [Mr Y] *needs to pay is a top up amount because the County Council will only pay £15.61 per hour to a provider... Because [Mr Y] is using a provider who charges above the core rate, the difference per hour needs to be made up to the correct amount. This applies to any person who chooses to use a different provider whose charges are above other agencies and whose charges are not in line with the County Council agreed costs (core rate").*

42. The Council added that it had commissioned support from the Care Provider at £18 per hour, and it would ask officers from social services to confirm the arrangement with the Care Provider and notify the Council's finance team "*of my decision in respect of the recoup of charges. [Mr Y's] account will be adjusted to reflect this and I would ask for your patience whilst the financial team make the appropriate arrangements to make the adjustment which may take a few weeks to arrange".*

43. On 28 September 2018, the Council met with an employee from the Care Provider to discuss Mr Y's service and the hourly rate. The Council provided an unsigned copy of the Minutes of the meeting. The notes show the Care Provider said it did not believe the service was appropriate for Mr Y long term. All other service users had learning disabilities and did not have the ability to increase

independent skills and because of this Mr Y's skills had decreased. The Care Provider informed the Council the service had continued to charge Mr Y £22 per hour. After discussion, it agreed to charge the agreed rate of £18 per hour and refund Mr Y the extra money he had paid over 14 weeks (£728). The Council agreed it would pay half, "*as a last resort",* if Mr & Mrs X refused to pay petrol expenses to the Care Provider. Mr & Mrs X say they were not aware of this.

44. We asked for the Care Provider's comments. It told us that due to the Council's funding cuts some service users have lost some or all funding. In relation to Mr Y, it said "*Overall it seems to be working, as [Mr Y] is happy, but understandably the family, on a point of principle are (like many others) very unhappy that they now must contribute, out of the benefits received, when they did not before".* Contrary to the notes of its meeting with the Council in September 2018, there is no suggestion it believed the service is not suitable for Mr Y.

45. The Council wrote to Mr X on 3 October 2018 to say Mr Y would continue to receive 13 hours support per week from the Care Provider. It said it had renegotiated the hourly rate from £22 per hour to £18 per hour, and *"NNC core provider hourly rate is £15.61. Therefore, as previously discussed in other meetings, you would need to pay the difference in the hourly cost of this support".* The letter also says Mr Y would have to *"pay for mileage used when you are transported to activities… a contribution of 45p for every mile you are transported".* If Mr Y declined 'the offer' then the Council would agree a one-year transition to enable him to source an alternative Care Provider.

46. On 1 November 2018 the Council wrote to Mr Y to say following a consultation on charging for care services, it changed the way it calculated how much people paid for services. This meant that Mr Y's direct payment would be reduced to £178.13 from 12 November 2018.

47. The Council wrote to Mr & Mrs X again on 17 December 2018 to say it had not given service users sufficient notice of the changes before implementation. To put matters right it postponed the changes until April 2019, "*and only after proper assessments have been carried out individually… the changes will not happen at once and will be done between April and November 2019".* The Council apologised for any distress caused.

48. The Council said, from 12 November 2018 Mr Y's direct payment would be £202.93 per week and he would not be required to contribute towards his care.

49. On 25 February 2019 the Council wrote to Mr Y again to ask he 'check' a financial assessment form completed on 12 November 2018 and inform the Council of any changes. Mr Y needed to make contributions towards his care from 8 April 2019. The Council said it had "*a standard amount of £20.00 per week, for Disability Related Expenses".* It considered Mr Y's disability related costs and needed clarification from its legal department. Any allowed expenditure would be backdated to 12 November 2018.

50. The Council provided us with a copy of its '*Social Care changing leaflet'* This explains the changes the Council was making to *"implement the care act and balance the books…".* It explains citizens:

- *will receive social care if there is no other way of supporting you*
- *will be provided with social care support in the most cost effective way. This might mean that the Council will not wholly fund your preferred service…You will be expected to do as much as possible for yourself and to*

seek help and support from your family and friends before approaching the Council.

51. Following the issue of our draft report the Council says the *Social Care changing* literature provided to us was out of date and was no longer in use. It provided a copy of its current literature *'Supporting Adults'.* This literature is Care Act compliant. The Council did not say when the change was implemented.

Current situation

52. Mr Y's direct payment has been reduced from £1,144 per month to £786.24. In October 2018 the Care Provider agreed to reduce the hourly rate from £22 to £18 per hour. Mr & Mrs X say they '*had'* to agree to pay the difference between the Council's core hourly rate of £15.61 and the £18 per hour charged by the Care Provider. After this was agreed Mr & Mrs X say they were then told Mr Y had to pay mileage costs incurred by the Care Provider at 45p per mile from October 2018 which works out on average at £22 per week.

53. Since June 2018 the shortfall has been around £400 per month. Mr Y's state benefit (PIP) amounts to £342.40 per month, consequently he has a deficit, so Mr & Mrs X cover the shortfall, which Mr X says can vary because the direct payment has varied since June 2018. Mr X does not understand why.

54. Mr X says he attempted to contact the Council, but it has not engaged with him since he complained to us.

55. Mr & Mrs X say that in the same week they received our draft report they received a letter from the Council notifying them of an increase in Mr Y's contributions towards his care. They contacted the Council to say they disagree with the proposed increase and reiterated the disability related expenditure Mr Y incurs.

Carers Assessment

56. In 2015 the Council recorded Mrs X was experiencing stress because of her caring role and was prescribed anti-depressants. In April 2018 the Council completed a carers assessment which again recorded she was experiencing stress because of her caring role.

57. The assessment concluded Mrs X had eligible needs as a carer and that she *"is entitled to £150 to use for a carers break and also £1600 a year for respite for [Mr Y]".*

58. Mrs X did not receive a copy of the assessment, so Mr X contacted the social worker on 19 June 2018 and 25 June 2018. The social worker said the assessment had not been entered on the system due to other work taking priority and she would inform him when it had. To date Mrs X has not received a copy of the assessment or the allocated funds.

59. In July 2018 Mr X was diagnosed with a serious, lifelong illness. Mrs X provides the care and support he needs.

Analysis

60. It is not our role to decide if a person has social care needs, or if they are entitled to receive services from the Council. Our role is to establish if the Council assessed a person's needs properly and acted in accordance with the law.

61. In this case, the Council failed to do so. There are a number of failings by the Council in this complaint.

62. Prior to 2017 the Council had not reviewed Mr Ys care for three years. This is fault.

63. Everyone must have a personal budget regardless of how their care and support is commissioned. Mr Y purchased services via a direct payment from the Council.

64. In setting the amount of a direct payment (or the personal budget from which it is derived) the Council must ensure it is enough to buy services which will meet the person's assessed eligible needs.

65. The Care and support statutory guidance says, *"In determining how to meet needs, the local authority may also take into reasonable consideration its own finances and budgetary position, and must comply with its related public law duties… The local authority may reasonably consider how to balance that requirement with the duty to meet the eligible needs of an individual in determining how an individual's needs should be met (but not whether those needs are met). However, the local authority should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes – doing so would not deliver an approach that is person-centred or compatible with public law principles".*

66. In Mr Y's case, the indicative budget set by the Council was sufficient, but it did not allocate this amount to Mr Y. It reduced the amount because the cost of Mr Y's service was above its set rates. This is fault and not in accordance with the Care Act or Statutory Guidance.

67. Councils must ensure people have enough money to cover their day-to-day living costs. This is known as the minimum income guarantee. If a person's weekly income is equal to or less than the minimum income guarantee, then they should not be charged. The current level is based on the means tested benefit plus a buffer of 25%. Mr Y had to top-up his personal budget from his state benefits, which were not enough to cover the shortfall. This left him with less than the minimum income guarantee and caused him financial hardship.

68. Even after Mr Y made these payments there was still a shortfall in what his care was costing him. Mr & Mrs X had little choice but to cover the cost of this shortfall. They should not have had to do so.

69. Mr Y had not expressed a preference for a more expensive service, it was a service he had received for many years, and the Council's own records acknowledge he would not have been able to cope with a sudden change of provider. The Council should have ensured Mr Y's budget was sufficient to cover the cost of the service he received.

70. The Council correctly points out, the Statutory Guidance allows it to consider the financial cost when deciding how much to pay to meet a person's eligible needs. Cost can be a relevant factor in deciding between suitable alternative options for meeting needs. However, that does not mean choosing the cheapest option. The Council can consider best value, but it cannot make decisions based only on financial considerations as it appears to have done in this case.

71. The Council says it wanted to transfer Mr Y to a cheaper service. However, it had not identified a suitable alternative. It is not acceptable for the Council to reduce support based on a supposed cheaper care provider that does not at present exist. It is not known whether any such care provider would meet Mr Y's needs, and even if it did, the Council identified that because of his disability, a change of care provider would need to be done gradually over a twelve-month period. The Council is aware that for Mr Y continuity is crucial because he is distressed by a

change of routine. The Council's approach appears to have been financially motivated and did not have sufficient regard to Mr Y's specific needs.

72. The Council added to Mr Y's distress by telling him his budget may reduce further in the future. This demonstrates the Council's focus on budgets and not Mr Y's wellbeing. The Council could not know what Mr Y's future needs would be. His needs would determine the budget, so it is not possible to say now whether Mr Y's budget would increase or decrease in the future.

73. The Council concluded Mr Y was eligible for respite care. Although the assessment is complete and a budget allocated, Mr Y has not received the funds. This is fault by the Council. Mr Y has missed services he is entitled to. This has also impacted on Mrs X.

74. Mrs X's caring role was and is having a negative impact on her health and wellbeing. She is taking anti-depressants as a result. The records show the Council has been aware of this since 2014. This was highlighted again during the review in 2017 and in the carers assessment completed in 2018, following which the Council allocated her a carers budget. She has not received it and because of the Council's failure Mrs X has missed out on services she was entitled to and which may have provided relief from her caring role.

75. We also have concerns about some of the content of the Council's social care support literature that it provided to us during our investigation. The Council has a duty to assess any person who appears to need care and support. It cannot negate its duty as it appears to have done by suggesting citizens seek help from family and friends ***before*** approaching the Council. Such a statement may deter citizens from approaching the Council for support to which they may be entitled. The literature also said, "*you will receive support if there is no other way of supporting you"*. This statement is misleading and contrary to the law. The Council has a duty to meet assessed eligible need. It cannot rely on carers/relatives providing unpaid care. It must determine the willingness and ability of any relatives/carers to provide such care. Such a statement may deter citizens from approaching the Council. The Council says this literature is out of date and no longer in use. However, copies of it may still be in circulation and its contents are so contrary to the provisions of the Care Act that citizens may be put off from approaching the Council for support.

Recommendations

76. Our guidance on remedies says a remedy needs to reflect all the circumstances including:

- the severity of the distress;
- the length of time involved;
- the number of people affected (for example, members of the complainant's family as well as the complainant); and
- whether the person affected is vulnerable and affected by distress more severely than most people.

77. To remedy the injustice caused, the Council should within four weeks of the date of this report:

- provide Mr Y, and Mr & Mrs X with an apology from a director of adult services for the failures set out above;

- review Mr Y's assessment and produce a care and support plan which reflects his needs over a seven-day period and explain in detail, how these needs will be met, in consultation with Mr Y and Mr & Mrs X;
- make a symbolic payment of £1,000 to Mr Y to acknowledge his stress and worry and loss of respite service as a result of the Council's failure to assess his needs and provide adequate support;
- reimburse Mr & Mrs X all monies they have paid to top-up Mr Y's care;
- complete a new financial assessment and consider all relevant DRE;
- make a symbolic payment of £1,000 to Mrs X to acknowledge the Council's failure to provide allocated respite funds;
- review Mrs X's carer's assessment and produce a support plan setting out how her needs will be met.

Within three months the Council should:

- consider if other service users may have been affected by arbitrary upper limits on hourly rates, and take any necessary action to address this;
- amend its procedure to ensure the Council does not set arbitrary limits of hourly rates; and
- take steps to actively publicise its current literature and address our concerns (see paragraph 75) about the previous literature it has issued.

78. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

Decision

79. We have found evidence of fault causing injustice and we have recommended a remedy for this.

10 December 2019

Complaint reference:
19 006 744

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr B complains there was fault in how an independent education admission appeal reached its decision on his child's appeal. We uphold the complaint, finding an appeal panel did not provide satisfactory reasons for its decision. This causes uncertainty as the outcome of the appeal might otherwise have been different. The Council has agreed to arrange a fresh appeal.

The complaint

1. I have called the complainant 'Mr B'. He complains there was fault in the decision of an independent education admission appeal. The panel upheld an earlier decision taken by the Council not to give a place for his child 'C' to attend a nearby primary school ('School X'). Mr C says there was fault because:
   - the Council representative at the appeal used evidence not shared with parents before the hearing;
   - the Council presented false information to the panel;
   - the Council representative took an unnecessary adversarial approach at the appeal;
   - the Panel did not properly scrutinise the case put forward by the Council; especially in considering the case that admitting extra pupils to the School would cause prejudice to the education of others;
   - the Panel did not properly take account of his submissions; this included a statement provided from C's then Headteacher and information from School X's Headteacher;
   - the Panel took an irrelevant line of questioning at appeal suggesting bias in its decision;
   - the Panel's letter did not provide enough reasoning.
2. Mr B says this resulted in C's case not receiving a fair hearing at appeal. So, Mr B considers the Panel reached an unsound decision on appeal and but for this C would have received a place at School X. Mr B says he feels let down by the appeal procedure and the experience has caused stress and anxiety for him and his family, including C.

The Ombudsman's role and powers

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

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

How I considered this complaint

5. Before issuing this decision statement I considered:

- Mr B's written complaint to the Ombudsman and supporting information he provided. This included detailed submissions made in response to an earlier draft decision when we initially considered his complaint.
- Information provided by the Council in reply to our enquiries. These included details of the application made for C to join School X and the Council's refusal of a place. It included Mr B's submissions appealing the Council's decision and the written case the Council made to the appeal. It also included the Panel Clerk's notes of the appeal hearing and the discussions of the Panel on the merits of the appeal as well as its decision letter.
- Relevant law and guidance as referred to below.
- Comments provided by Mr B and the Council in response to two draft decision statements setting out my thinking about this complaint.

What I found

Relevant law and policy

6. Where parents apply for their child to change schools, a school admission authority must usually comply with their preference. But it can make exception where to do so "*would prejudice the provision of efficient education or the efficient use of resources*". **(School Standards and Framework Act 1998, section 86).**

7. So, when an admission authority receives such an application it should provide a place at the preferred school if there is a vacancy. If there is no vacancy at the school applied for the admission authority should write to the parent refusing the application and telling them of the right of appeal. It can place a child on the school waiting list if there is no vacancy.

8. If a parent appeals a decision not to provide a place, then any appeal must go to an independent appeal panel. They must follow law and statutory guidance which sets out how an appeal will be heard **(School Admissions Code 2014).**

9. The admission authority must provide to the panel clerk *"all relevant documents needed to conduct the hearing in a fair and transparent manner"*. This includes any explanation for why the authority considers admitting an extra child will cause prejudice. The clerk must then copy the admission authority's case to the appellant *"in reasonable time"* for the hearing.

10. The panel must consider whether:

- The school admission arrangements comply with the law.
- The admission authority properly applied the admission arrangements to the case.
- Whether admitting another child would prejudice the education of others.

11. The panel must uphold an appeal if it finds the child would have gained a place at the school but for a flaw in the admission arrangements or their application to the appellant's case. It must also uphold an appeal if it finds admitting more children would not cause prejudice and it can allow all appeals. If material new evidence comes to light during the questioning of the presenting officer, the clerk must ensure the panel considers what bearing that evidence may have on all appeals.

12. In considering whether admitting an extra child would cause prejudice the panel must take account of the school's published admission number. But the admission authority must still show the admission will cause prejudice over and above that number. The panel *"must not reassess the capacity of the school"*. However, it may take account of various matters in deciding this question. These can include considering what effect an extra admission would have on both the current and future academic years. Also, taking account of the school organisation and class sizes.

13. If the panel finds there would be prejudice it must then consider the appellant's individual arguments. If the panel decides the appellant's case outweighs the prejudice to the school, it must uphold the appeal.

14. The panel must communicate its decision, *"including reasons for that decision"*, in writing.

Key facts

15. Mr B applied for C to join the Year 3 class at School X from September 2019. C would be transferring from a combined nursery and infant school. School X is a nearby primary school and Mr B's address lies within its catchment area. It is a voluntary controlled faith-based school, where the Council acts as admission authority.

16. The Council advertised that parents transferring from infant to junior schools for September 2019 admission should apply by January 2019. However, it did not receive C's application until April 2019. Mr B had earlier applied unsuccessfully for C to transfer to a different primary school ('School Y').

17. Mr B expressed a preference for C to join School X because:

- it is local;
- it is a faith-based school with a Christian ethos; Mr C considered C would benefit from a supportive atmosphere;
- C would also benefit from the small class sizes; C suffers anxiety in large buildings;
- it has a good academic reputation; C has an aptitude for maths the school could cater for;
- it has good physical education facilities and opportunities;
- C would have friends attending the school.

18. Mr B provided a letter of support from C's Headteacher at their infant school. This confirmed C suffered anxiety in large buildings. It compared School X

unfavourably with C's allocated school. The Headteacher said *"I strongly consider the only suitable school for [C] is [School X]".*

19. School X has a net capacity of 175 pupils and a published admission number for each year group of 25 pupils. When the Council received C's application, the September 2019 Year 3 group contained 25 pupils. The Council therefore refused C's application. Mr B appealed. The grounds of his appeal being as summarised in paragraph 17 above. The Year 3 group comprised pupils transferring from Year 2 of the school. So, had Mr B applied earlier he would have received the same decision.

20. The Council's written case to the appeal panel, copied to Mr B, said the school had 174 pupils on the school roll. Its September 2019 Reception and Year 1 classes would have fewer than 25 pupils. But its Years 2, 4, 5 and 6 classes had between 26 and 28 pupils. The Council said classrooms *"varied in size but three are only of sufficient size for classes of approximately 20 pupils each"*. It also said the hall at the school could not hold all pupils on the school roll. It said the school had restricted dining space with some children eating lunch in the classroom. The school staggered lunch and break times to minimise crowding in communal spaces. It provided details of the limited number of pupils on the school roll who had special educational needs or for whom English is a second language.

21. C's appeal was one of three heard on the same day for Year 3 admissions. The Panel chose to consider the appeal in two parts. The first, a grouped hearing, considered if the Council had shown that admitting an extra pupil would cause prejudice. The second, an individual hearing, considered Mr B's arguments that C's appeal should succeed, even if this would cause prejudice to the school.

22. The Clerk's notes of the appeal show that during the hearing the presenting officer for the Council clarified the School now had 173 pupils on roll for September 2019 admission. The officer also clarified pupil numbers in each year group, with years 2, 4, 5 and 6 exceeding the published admission number. They also said that three classrooms could only accommodate 17, 20 and 23 pupils respectively. The School currently used those to teach years 1, 2 and 4 respectively. The officer said this meant, *"one Key Stage 2 classroom (i.e. serving years 3 to 6) can only accommodate 23 children and so at some point is an overcrowded classroom"*. The officer also said the school hall was small. The minutes say the School "*split lunchtimes to minimise overcrowding"*. Mr B says in providing this information the officer had documents not shared in advance with appellants.

23. The minutes show both appellants and members of the Panel questioned the Officer. Those questions included finding out the age of School X, built originally in the nineteenth century. Mr B considered the answer misleading as the school has a more modern extension and classrooms in its roof-space. The questioning also established Year 3 would occupy a classroom designed for 30 pupils. I noted one parent commented *"the school told me every child has an assembly every morning"* without any response recorded from the Officer.

24. Another statement from a parent was recorded as follows: *"I recently noted school told to leave at least five spaces for this term".* Mr B says this was a reference to a conversation with the School Headteacher. Mr B says in his own conversation with the Headteacher they have indicated the School can accommodate more pupils in Year 3. The response to the statement made at the appeal from the Council representative was to advise the *"school is not the admission authority. PAN of 25 because of limitations of whole building. According to authorities'*

practices – school cannot admit more". In answer also to another question the Clerk recorded the Council representative saying admitting another pupil would cause "*significant prejudice in terms of capacity to school as a whole".*

25. The Panel considered the Council had applied its admission policies correctly to C's case. It also considered the Council had shown that admitting an extra child would cause prejudice. The Clerk's notes of the Panel's discussion recorded one member *"being unsure [the school] can take more based on classroom sizes"*. A second said they considered some classrooms could take more pupils. But *"Year 4 has more than it can accommodate and hall cannot accommodate all the children"*. They also said *"overall footprint of the school not able to take more children"*. The third member based their view *"looking at the whole school [..] Year 3 could cope with more but Year 4 could not*. *Based on whole capacity of the school".*

26. The Panel therefore went on to hear individual appeals. Mr B presented his case in support of his written appeal submission. The Council Officer and the Panel asked Mr B questions about why he applied late for C to join School X and why he had previously applied for School Y.

27. The Panel decided Mr B's case was not strong enough to outweigh the prejudice caused to the school by admitting another pupil. The Clerk's notes say that members all agreed that Mr B had not shown School X was the only school capable of meeting C's needs. One member also highlighted Mr B applying late and not consulting or following Council guidance on when to apply.

28. The Clerk's decision letter to Mr B summarised his case to the appeal. It said the Panel considered his case *"not sufficient to over-ride the prejudice which they had accepted would result from admission of further pupils to the school"*. The letter did not explain the Panel's reasons for finding such prejudice met.

29. The Panel decided to uphold one of the three appeals after hearing individual cases.

My findings

30. I considered first if there was any fault in the Council's decision not to allocate a place for C at School X when Mr B applied for this in April 2019. I found no reason to find such fault. I am satisfied the Year 3 group had 25 pupils in it already and this is the school's published admission number. So, the Council could refuse C's application. It follows that I cannot criticise the Appeal Panel for taking this view also. I am also satisfied the Appeal Panel had no reason to take issue with the school admission policies.

31. So, I have focused attention on the consideration given by the Panel to the next stages of the appeal, beginning with the question of prejudice. I note here the Council presenting officer gave numbers to the Panel on classroom sizes and numbers of pupils, different from what appears in the written case presented. The officer had up to date information. They did not share this with appellants in advance.

32. However, I do not find this undermined the fairness of the appeal. An admission authority's submission to an appeal must be circulated a week before the hearing, with the statement prepared earlier. Small movements in pupil numbers can take place in the intervening period. We would criticise an admission authority that did not make a panel aware of such changes. I do not consider notice of the minor difference in pupil numbers needed circulation in advance. It did not amount to

significant new information, or the Council advancing a new line of argument, for which appellants or Panel members should be prepared.

33. Similarly, I also consider the Council was not introducing significant new information when it clarified classroom sizes. Its written statement said the school had three classrooms that could each accommodate "*approximately*" 20 pupils. The Officer clarified at appeal the classrooms could accommodate 17, 20 and 23 pupils respectively. I consider the appellants suffered no disadvantage by the officer clarifying the exact numbers at the hearing.

34. I have gone on next to consider if the presenting officer gave the Panel any false information. I can understand why Mr B thought the answer to the question about the age of the school building was slightly misleading. However, I do not consider I could say it was factually inaccurate and there is no evidence panel members put weight on this.

35. But I consider Mr B has a stronger case when he draws attention to the statement the hall could not accommodate all pupils at once. This statement appears in both the written case and the Clerk's minutes. Yet the minutes also note a parent advised the Panel that pupils took assemblies as one group; something Mr B later said the School Headteacher confirmed to him.

36. Reading the Council's submission and the Panel minutes as whole I find some of the discussion around the school hall focused on its capacity at lunchtime. The statement appears that the School could not accommodate all pupils at one lunch sitting. I consider the Panel could reasonably consider the impact on the use of the school hall of admitting further pupils when deciding the question of prejudice. It could do so with reference to both assemblies and lunch-times. But it should have clearly established the facts about assemblies. As one member went on to cite this as a factor in their decision on the question of prejudice, the failure to do this was a fault.

37. On its own, I do not consider this fault enough to undermine the Panel's decision. However, I consider there is fault also when I consider the other reasons recorded by the Clerk for the Panel's decision on prejudice.

38. The decision hinged on the overall impact of extra pupil numbers on future academic years. The Panel was not obliged to accept Mr B's view the Council had not established prejudice. I consider the Council did advance an argument for prejudice. The Panel heard evidence showing that while Year 3 would not be overcrowded in September 2019 by admitting another pupil, either it, or another class would face overcrowding the following year. Because one class with more than 23 pupils would have to use a classroom designed for that number. This was a relevant factor the Panel could take account of and give weight to.

39. I find the Panel asked questions about the Council's case, so there was some scrutiny. But I do not find the scrutiny was enough. Because I consider that as part of its decision on prejudice the Panel had to also take account of the following factors:

- That the School was below its overall net capacity number. This had to be relevant if considering the impact of extra pupils on shared facilities such as the school hall, corridors and so on. At least two of the three panel members gave weight to the overall impact on the School as well as Year 4 in their decision. In which case overall pupil numbers would be a relevant factor.
- That the School Headteacher had reportedly indicated they felt the School could accommodate more pupils without difficulty. I consider it reasonable for

the Council to point out it is the admission authority. But the view of the School Headteacher would still be relevant. As would the clearly documented information that all three-year groups above Year 3 contained over the published admission number. The Panel should have scrutinized more closely therefore the specific impact of these extra pupils on the smaller classroom used to teach Year 4 pupils. It could have adjourned if necessary, to take a statement from the Headteacher to clarify their remarks.

40. I do not find evidence in the Clerk's minutes or the decision letter sent to Mr B the Panel considered these points. That was a fault.

41. The injustice which flows from the above is that I cannot be certain the outcome of the appeal would have been the same but for the fault. We consider uncertainty a form of distress. So, the appropriate remedy here is to seek a second appeal.

42. As I find fault in this stage of the appeal I do not need to also consider in detail how the Panel approached the individual hearing for Mr B.

43. But I have also considered the Panel's letter to Mr B. I agree with Mr B this was inadequate. It gave no reasons for why the Panel had agreed with the Council that admitting extra pupils to School X would cause prejudice. So, this was another fault. In commenting on my initial draft decision, the Council has accepted this and said that it will review appeal letter in future to improve the information they contain and explanation given.

Agreed action

44. To remedy the injustice identified at paragraph 40 the Council has agreed that within 20 working days of a decision on this complaint it will arrange for Mr B to have a fresh appeal. This will be heard by a different panel and different appeal clerk.

45. The Council will also contact the other unsuccessful appellant and offer them a fresh appeal.

Final decision

46. For reasons explained above I uphold this complaint, finding fault in how an independent education admission appeal panel reached its decision. The Council has agreed to remedy the complaint by arranging a fresh appeal. I consider this provides for a fair outcome. So, I can complete my investigation satisfied with its actions.

Investigator's decision on behalf of the Ombudsman

20 December 2019

Complaint reference:
19 006 727

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

Local Government & Social Care OMBUDSMAN

Parliamentary and Health Service Ombudsman

The Ombudsmen's final decision

Summary: The Ombudsmen found no fault by the Council, Trust or CCG with regards to the care and support they provided to a woman with mental health problems. The Ombudsmen did find fault with a risk assessment the Trust completed. However, we are satisfied this did not have a significant impact on the care the Trust provided.

The complaint

1. The complainant, who I will call Mr X, is complaining about the care and treatment provided to his ex-wife, Mrs Y, by Nottinghamshire County Council (the Council), Bassetlaw Clinical Commissioning Group (the CCG) and Nottinghamshire Healthcare NHS Foundation Trust (the Trust).
2. Mr X complains that professionals involved in Mrs Y's care failed to act when her condition deteriorated in early 2018. Mr X also complains that following an incident in February 2018, the Trust and Council imposed unfair sanctions on Mrs Y. Mr X says this means she is unable to access the care and support she needs.

The Ombudsmen's role and powers

3. The Ombudsmen investigate complaints about 'maladministration' and 'service failure'. We use the word 'fault' to refer to these. If there has been fault, the Ombudsmen consider whether it has caused injustice or hardship ***(Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1), as amended)***.
4. 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

5. In making this final decision, I considered information provided by Mr X and discussed the complaint with him. I also considered comments and documentation provided by the Trust and Council. Furthermore, I invited comments on my draft decision from Mr X and the organisations he is complaining about and took account of what they said.

What I found

Relevant legislation and guidance

Mental Health Act 1983

6. Under the Mental Health Act 1983 (the MHA), a person with a mental disorder who is considered to be putting their safety, or that of someone else, at risk, they can be detained in hospital against their wishes for treatment.

7. A person who has been detained for treatment under the MHA can be discharged back into the community under a Community Treatment Order (CTO). A CTO is intended to help patients to maintain stable mental health outside hospital and promote recovery.

8. A CTO includes conditions with which the patient is required to comply. These should ensure the patient receives treatment for the mental disorder. The conditions should also reduce the risk of harm to the patient and other people resulting from the mental disorder.

9. Failure to comply with the conditions attached to the CTO can result in the recall of the patient to hospital. The Mental Health Act Code of Practice that accompanies the MHA emphasises that this a decision for the responsible clinician.

10. Patients under a CTO are entitled to free aftercare services under Section 117 (s117) of the MHA. The statutory duty for providing, or arranging for the provision of, s117 aftercare services rests jointly with the local authority and local clinical commissioning group.

11. Mrs Y is on a CTO and so is entitled to s117 aftercare services. I have included the CCG within my investigation due to its statutory duty in this regard. However, I have also included the Trust as this is the service provider from which the CCG commissions mental health services.

Local policies

12. The Trust produces a policy entitled *Preventing, minimising and managing aggressive and violent behaviour (2017)*. This sets out guidance for staff on how to deal with violent or aggressive behaviour exhibited by patients or service users.

13. Section 1.3 of the policy provides a definition of violence at work. This includes "[a]*ny incident in which a person working in the Healthcare sector is verbally abused, threatened or assaulted by a patient or member of the public in circumstances relating to his or her employment.*"

14. Section 6.1 of the policy says that "[r]*isk assessments are a crucial component in preventing and minimising aggressive and violent behaviour.*" Section 6.5 explains that risk assessments should be subject to "*a regular timely review which must not exceed 12 months.*"

15. Section 11.6 of the policy sets out that any response by staff to violent or aggressive behaviour should be "*a proportionate, legal, acceptable, necessary and reasonable response to the circumstances and risk posed by the service user at that time.*"

Key facts

16. Mrs Y has diagnoses of Delusional Disorder, Mixed Personality Disorder, depression and anxiety. In 2010, following a period of detention under the MHA, Mrs Y was placed on a CTO and discharged home.

17. At the time of the events complained about, Mrs Y was living at home with Mr X.

18. The terms of Mrs Y's CTO required her to attend hospital every fortnight for a depot injection of antipsychotic medication.

19. Mrs Y was under the care of a Local Mental Health Team (LMHT – part of the Trust). As part of the support provided by the LMHT, Mrs Y received regular visits from her care coordinator, a community psychiatric nurse (CPN).

20. In addition, the Council funded six hours per week of support worker visits for Mrs Y.

21. In February 2018, the CPN and a support worker visited Mrs Y at home. The CPN and support worker said that, during the visit, Mrs Y approached them with a kitchen knife. They left the property immediately and reported the incident to the police. However, no charges were brought against Mrs Y.

22. The CPN reported the incident to the Council. At that point, the Council and Trust suspended home visits to Mrs Y pending further assessment of the situation.

23. In March 2018, a multidisciplinary team meeting agreed that health professionals would no longer visit Mrs Y at home. Instead, the meeting agreed Mrs Y would meet with a CPN at her regular depot injection appointments or at her GP surgery.

24. The Council also decided to withdraw Mrs Y's social care support package.

Analysis

Deterioration

25. Mr X complained that the professionals involved in Mrs Y's care failed to take action when her condition deteriorated in early 2018, despite her repeatedly requesting assistance. Mr X said Mrs Y's care plan contained crisis contingency measures that professionals failed to abide by. Mr X said this included the option of recalling Mrs Y to hospital for treatment to prevent further deterioration.

26. The Trust said Mrs Y was suffering from increased levels of anxiety and distress as a result of her ongoing divorce from Mr X. The Trust also acknowledged her reactions to this were exacerbated by her personality disorder diagnosis. However, the Trust said Mrs Y was not exhibiting any new symptoms that indicated a deterioration in her acute mental health. On this basis, the Trust said clinicians did not consider other treatment options (such as medication or recall to hospital) to be appropriate.

27. Mrs Y attended hospital for her depot injection on 1 December 2017. The administering nurse noted that she "[a]*ppeared physically and mentally well*" at that time.

28. Mrs Y made several calls to her CPN over the following week. She reported feeling anxious about living alone in a new property. At times, the CPN noted that Mrs Y was upset. However, he also noted that "[Mrs Y] *expressed no thoughts of harm towards herself or others.*"

29. The CPN visited Mrs Y at home on 8 December 2017. He noted Mrs Y "*presented as settled in her mood and mental health state. She was calmly spoken and smiling throughout the entire visit.*"

30. The care records suggest Mrs Y remained relatively stable over the following weeks. However, after a series of agitated calls from Mrs Y, her CPN visited her at home on 27 December 2017. Mrs Y again expressed her anxiety about the

prospect of living alone. She also said she may take an overdose of her medication. As a result, the CPN agreed to leave Mrs Y with only limited medication and visit her the following day.

31. At the follow-up visit, the CPN felt Mrs Y's presentation was much improved and that she was feeling better. At a further visit on 2 January 2018, the CPN noted Mrs Y "*showed no deterioration in her mental health throughout the visit, nor expressed any concerns regarding her mental or physical health.*"

32. A psychiatrist reviewed Mrs Y on 4 January 2018. He found her to be stable with "*no evidence of agitation*" and "[n]*o psychosis*".

33. Over the subsequent weeks, the records show Mrs Y continued to express anxiety about the prospect of moving to another property and living alone. Nevertheless, the CPN also noted Mrs Y appeared more positive and was planning for the future.

34. On 17 January 2018, Mrs Y met with a psychologist, psychiatrist and social worker to discuss whether her CTO should be extended. The clinicians noted Mrs Y was going through a very stressful period. They found Mrs Y's delusional thoughts would be exacerbated if she stopped taking her antipsychotic medication and that this would cause her additional distress. It was agreed Mrs Y's CTO would be extended for a year to ensure compliance with her medication regime.

35. Mrs Y made several calls to the LMHT at the end of January and beginning of February 2018. She was noted to be upset and tearful. However, at two subsequent home visits on 5 and 6 February 2018, Mrs Y's CPN and support worker noted she was "*smiling and in good spirits*" and "*appeared bright in mood*".

36. On 14 February 2018, Mrs Y made a further call to her CPN. He noted she was very upset and felt unable to live alone. He also noted Mrs Y stated that she may harm herself. The CPN agreed to visit her later that day. He found Mrs Y distressed and noted that she "*stated that she wanted to be in hospital due to going through a divorce.*"

37. A further visit from a CPN on 15 February 2018 found she was still distressed. The CPN noted Mrs Y "*does not appear to be psychotic, no delusional content to her speech or thinking…No obvious evidence of acute mental illness.*" The CPN recorded his view that "[t]*he ongoing issue relating to her divorce and the final settlement appears to be the well agreed driving force to her current level of emotional upset and distress.*" Nevertheless, as Mrs Y was threatening to take all of her medications, the CPN removed them.

38. The following day, Mrs Y's CPN visited her at home. He noted she was feeling better and appeared calmer. The CPN left Mrs Y with enough medication for a week.

39. The CPN and support worker visited Mrs Y again on 27 February 2018. This was when the incident with the knife occurred. I have commented on this in further detail under the 'Trust sanctions' section of this decision statement.

40. I have reviewed the clinical notes for the entirety of this period. These are detailed and appear to show members of the LMHT supported Mrs Y through a series of regular home visits and telephone calls.

41. It is apparent from the records that Mrs Y was very anxious during this period, though her presentation was variable. At times, she was noted to be distressed and at other times calmer and more settled. There is not, in my view, evidence to suggest a sustained deterioration in Mrs Y's presentation.

42. Mrs Y's conversations with members of the LMHT suggest the primary underlying cause for her distress was her ongoing divorce from Mr X. Her reactions to this situation appear in turn to have been exacerbated by traits associated with her personality disorder.

43. Nevertheless, I note clinicians from the LMHT reviewed Mrs Y twice during this period and did not identify any evidence of acute mental illness.

44. Mrs Y's crisis contingency plan set out that she should be recalled from her CTO if "*she is non-concordant with her medication and/or risks can not be met in the community*".

45. The clinical evidence shows Mrs Y was largely concordant with her medication, albeit she would made clear she would prefer not to take it. Although Mrs Y did sometimes fail to attend for her depot injection, these appointments were generally rescheduled promptly.

46. The records also show members of the LMHT also took appropriate action to safeguard Mrs Y when they believed her to be at risk. This included removing excess medication from the property until her condition had stabilised.

47. On this basis, I share the Trust's view that there were no persuasive grounds for recalling Mrs Y from her CTO during this period.

48. In my view, the evidence suggests the Trust provided appropriate care and support to Mrs Y between December 2017 and February 2018. I found no fault by the Trust in this regard.

Trust sanctions

49. Mr X complained that, following the incident in February 2018, the Trust imposed unfair sanctions on Mrs Y. He said this meant she was unable to access the care and support she required. Mr X said these sanctions were based on an inaccurate risk assessment completed by Mrs Y's CPN. Mr X also said the CPN had a conflict of interest as he had been involved in the incident in February 2018.

50. The Trust said the multidisciplinary team decided to withdraw Mrs Y's home visits at a meeting on 27 March 2018. The Trust said this decision was informed by a risk assessment prepared by Mrs Y's CPN but that he had not made the decision in isolation. The Trust said the risk assessment represented the CPN's clinical judgement and contained relevant information. However, the Trust acknowledged it could review the risk assessment to put some of the historical information it contained into context.

51. The clinical records show Mrs Y's CPN and a support worker visited her at home on 27 February 2018. During this visit, the CPN said Mrs Y entered the kitchen before returning with a kitchen knife. He noted Mrs Y "*held this in a grip which made the knife point directly towards where both* [the support worker and CPN] *was sitting*." The CPN went on to note that Mrs Y "*made a deliberate movement towards* [the CPN and support worker]." At that point, they left the property. The CPN said he warned Mrs Y that he would be informing the police.

52. The CPN and support worker subsequently called the police and officers attended to arrest Mrs Y on suspicion of affray. Mrs Y told officers she had not intended to harm the CPN and support worker and was only attempting to demonstrate how distressed she was. Mrs Y was not charged and returned home.

53. On 5 March 2018, the Trust decided all face-to-face contact between Mrs Y and her CPN would now need to take place at her regular depot injection

appointments. The Trust also agreed to convene a multidisciplinary team meeting to discuss the situation further.

54. The Trust convened the meeting on 27 March 2018. The meeting discussed previous incidents in which Mrs Y had acted aggressively towards professionals. The meeting concluded that Mrs Y continued to pose a risk to staff and confirmed that home visits would not recommence. However, the meeting heard Mrs Y would still be able to access her CPN at depot injection or GP appointments and by telephone.

55. The CPN completed a risk assessment the following day.

56. The Trust's *Preventing, minimising and managing aggressive and violent behaviour* document (the policy) defines violence at work. This includes "[a]*ny incident in which a person working in the Healthcare sector is verbally abused, threatened or assaulted by a patient or member of the public in circumstances relating to his or her employment.*"

57. The policy makes clear the response of staff to such behaviour should be "*a proportionate, legal, acceptable, necessary and reasonable response to the circumstances and risk posed by the service user at that time.*"

58. I appreciate Mrs Y's recollections of the visit on 27 February 2018 differ from those of the CPN and support worker. Mrs Y told police that she had not pointed the knife at the professionals and had simply been using it to demonstrate her distress.

59. Nevertheless, it is clear from the CPN's contemporaneous notes that both members of staff felt threatened by Mrs Y's behaviour. In my view, they could not reasonably have been expected to anticipate Mrs Y's motives or intentions. It was appropriate for them to leave the premises in order to remove or reduce any risk posed by Mrs Y's behaviour, therefore.

60. Section 5.6 of the policy states that "[w]*hen a risk of potential violence is identified it is considered essential by the Health and Safety Executive and good practice for staff to communicate all risk concerns where appropriate to all relevant parties.*" This can include the police.

61. As I have explained above, the professionals supporting Mrs Y felt she was not acutely mentally unwell at the time of this incident. There was no basis on which to recall her from her CTO, therefore. However, Mrs Y was still armed when Trust staff left her property. In the circumstances, I the CPN's decision to contact the police was in keeping with the Trust's policy. In my view, this represented the best way of reducing the risks Mrs Y's behaviour posed to herself and others.

62. Taking everything into account, I found no fault by the Trust with regards to the actions of its staff on 27 February 2018.

63. In his representations to the Ombudsmen, Mr X also challenged the CPN's risk assessment. He said the assessment was inaccurate and contained misleading information.

64. I note Mr X's concerns. The evidence I have seen suggests the information contained in the risk assessment was taken from Mrs Y's clinical records. This included reference to specific historical incidents and behaviours. I am unable to comment on whether these events were accurately recorded in the clinical records. However, there is evidence to suggest Mrs Y had behaved aggressively towards both health and social care staff in the past.

65. In my view, the risk assessment the CPN completed was lacking in detail. The CPN documented various risk factors in his assessment. However, he provided little context for the incidents and behaviours described. I would also have expected to see more detailed consideration given to how these factors contributed to the total risk posed by Mrs Y's behaviour. I found no evidence of this consideration. This is fault by the Trust.

66. Nevertheless, I am not persuaded this had a significant impact on the decision to remove Mrs Y's home visits. This decision was made by the multidisciplinary team at the meeting on 27 March 2018. The records provided by the Trust and Council suggest the meeting discussed the matter in detail and that all members of the team agreed it would not be safe for staff to visit Mrs Y at home. This was ultimately a matter of professional judgement for the officers involved.

67. I appreciate Mr X and Mrs Y found the restrictions placed on Mrs Y's contact with the LMHT frustrating. However, the clinical records contain a clear care plan detailing how Mrs Y would access clinical support. This included regular meetings with her CPN (albeit not at home) and medication reviews. I found no evidence to suggest Mrs Y was left without support. I found no fault by the Trust, Council or CCG with regards to ongoing provision of care for Mrs Y.

Withdrawal of social care support

68. Mr X complained that the Council withdrew six hours of care per week from Mrs Y on the basis of the Trust's flawed risk assessment and did not undertake its own risk assessment.

69. The Council said that, following the incident on 27 February 2018, professionals concluded it would not be safe for support workers to visit Mrs Y at home. The Council said it explained this to Mrs Y.

70. Prior to this incident, Mrs Y received care visits each week amounting to six hours in total. These were primarily to prompt her to complete activities of daily living (such as preparing meals and maintaining personal care).

71. The case records show Mrs Y's CPN told the Council about the incident on the day it occurred. The Council notified the care provider and visits were suspended with immediate effect.

72. A social worker discussed the case with the care provider. He established that Mrs Y's behaviour could be unpredictable and that she was sometimes aggressive towards the attending care workers. In addition, the care provider advised him that many care visits were unsuccessful as Mrs Y would not admit the visiting care workers.

73. The multidisciplinary team meeting on 27 March 2018 (which the social worker attended) discussed the matter further. The professionals present agreed that, based on the information available to them, it would not be safe for health or social care staff to visit Mrs Y at home.

74. The social worker wrote to Mrs Y to explain this on 3 April 2018. He wrote that "[h]*aving reviewed the current Care and Support Plan, which describes the tasks* [care provider] *staff have been supporting you with, I noted that the bulk of the work takes place in your home. Regrettably, the incident in question and your history indicate there is a significant risk of harm to staff seeking to support you at your property, so we have no alternative but to withdraw the social care support.*" The social worker also made clear that the situation could be reviewed at a later date if there was sufficient evidence that staff would no longer be at risk.

75. The evidence shows the Council did work with the Trust assess the risk posed to staff by Mrs Y's behaviour. However, I do not agree that the Council accepted the Trust's views uncritically. In my view, the case records demonstrate that the Council made appropriate enquiries with the care provider and formulated its own risk assessment in collaboration with health colleagues. I found no fault by the Council I this regard.

76. I understand the Council recently reviewed the situation and has now reinstated some social care support for Mrs Y.

Final decision

77. I found no fault by the Council, Trust or CCG with regards to the care and support they provided to Mrs Y during this period.

78. I did find fault with the Trust's risk assessment of 28 March 2018. However, I do not consider this had a significant impact on Mrs Y's care.

79. I have now completed my investigation on this basis.

Investigator's decision on behalf of the Ombudsmen

Local Government & Social Care OMBUDSMAN

7 January 2020

Complaint reference:
19 000 339

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: Mrs B complained the Council unreasonably sought repayment of direct payment monies which she had used for her care and refused a meeting to discuss her concerns. The Council only undertook one annual review and did not raise any concerns about Mrs B's spending between 2012 and 2016. That meant Mrs B had no opportunity to amend the way she managed her direct payments account. An apology to Mrs B and a recalculation of the amount to be recovered is satisfactory remedy for the injustice caused.

The complaint

1. The complainant, whom I shall refer to as Mrs B, complained the Council:
   - unreasonably sought repayment of direct payments when she has used it to pay her husband to provide care; and
   - refused to meet with her to discuss her concerns.

The Ombudsman's role and powers

2. 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)***

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. ***(Local Government Act 1974, sections 26(1) and 26A(1), as amended)***

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

How I considered this complaint

5. As part of the investigation, I have:

- considered the complaint and Mrs B's comments;
- made enquiries of the Council and considered the comments and documents the Council provided;
- considered Mrs B's comments on my draft decision; and
- considered the Council's comments on my draft decision.

What I found

Chronology of the main events

6. Mrs B began receiving a direct payment for her care in May 2012. Most of that payment is for Mrs B to employ a personal assistant.
7. On 22 April 2013 the Council wrote to Mrs B to tell her about its annual audit of her direct payments account. The Council asked Mrs B to provide bank statements and receipts for any cash payments. The Council considered the bank statements Mrs B provided and wrote to her on 12 July to tell her it had completed the audit. The Council did not raise any concerns about Mrs B's spending.
8. On 27 May 2015 the Council wrote to Mrs B to tell her about an audit of direct payments. The Council asked for original bank statements, timesheets, wage slips, invoices, receipts, tax and national insurance contributions, employers and public liability insurance policy and any other paperwork for the period 20 June 2011-30 April 2015. I do not have any evidence of the Council receiving that documentation or of it completing the audit in 2015.
9. The next entry in the Council's documentation is a report on 30 June 2016, raising concerns about some of the expenditure on Mrs B's bank statements and changes made to internet printouts of bank statements. The officer completing the review raised concerns about misuse and fraudulent statements.
10. On 1 July 2016 the Council wrote to Mrs B to tell her it had selected her for a random audit. The Council told Mrs B the audit would cover 12 July 2011-30 April 2015. The Council asked Mrs B for various documents to support her spending for the period. The Council asked for the information by 22 July.
11. The Council completed its audit by the end of August 2016. The Council decided Mrs B had misused part of the funds in her account and had not provided wage slips for part of the period her husband was providing overnight care to her.
12. A Council social worker met with Mrs B on 19 October. During that meeting Mrs B admitted she had not managed the direct payments account well.
13. On 4 November the Council spoke to Mrs B and confirmed her husband would provide 25 hours per week care. The Council said the other PA's would provide 14 hours per week and five hours per week, making 44 hours. From 8 November the Council transferred Mrs B's direct payment to Penderels Trust for management.
14. On 12 November the Council issued an invoice to Mrs B for repayment of £53,145.25.
15. Mrs B disputed the invoice on 18 November. Mrs B asked for a meeting with the officer that had agreed recovery on 19 December. Mrs B chased the Council for a response to her request for a meeting on 6 January 2017. On 20 January the Council told Mrs B it did not consider a meeting necessary.

Care and support statutory guidance

16. The care and support statutory guidance (CSSG) says following a 6-month review, the local authority must then review the making of the direct payment no later than every 12 months.

17. The CSSG says the outcome of the review should be written down, and a copy given to all parties. Where there are issues that require resolving, the resolution method should be agreed with all parties involved, as far as is reasonably practicable. Where appropriate, local authorities should advise people of their rights to access the local authority complaints procedure.

18. The CSSG also notes that direct payments are designed to be used 'flexibly and innovatively and there should be no unreasonable restriction placed on the use of the payment, as long as it is being used to meet eligible care and support needs.'

The Council's direct payments policy and staff guidance

19. The Council's direct payments policy says the Council will consider allowing direct payments recipients to pay close family members living in the same household to provide support on a case-by-case basis.

20. The Council's direct payments policy says it will carry out financial audits of service user accounts and can recover money if the direct payment is misused or where it is not known how the money has been used.

21. The Council's direct payments staff guidance says following an initial review the Council must review the direct payment no later than every 12 months.

22. The Council's direct payment staff guidance says suspected misuse of direct payments money will be alerted to the relevant district or reviewing team and may require further investigation. The guidance says if the Council is satisfied the direct payment has been intentionally misused it should make a decision as to whether, and how, to recover the misspent money.

23. The Council's direct payment staff guidance says where an alert is raised regarding potential misuse of a direct payment contact should be made with the service user to undertake an exploratory conversation to decide whether any misuse has taken place and, if so, whether there was deliberate intent.

24. The Council's direct payment staff guidance goes on to say the Council needs to ensure it can evidence it has provided the service user with all the relevant information to ensure they understood their responsibilities under the direct payment agreement and what the direct payment could and could not be spent on. That includes locating a support plan which clearly identifies what the direct payment could or could not be used on.

25. The Council's direct payment staff guidance says for non-deliberate misuse the team manager must decide whether the misused amount of direct payment monies should be claimed back by the Council.

Analysis

26. Mrs B says the Council should not have sought repayment of £53,145.25 in direct payments when she has used that amount to pay her husband to provide care. Mrs B points to the fact the NHS has now taken over her care package and it is considerably greater than that which the Council funded. Mrs B therefore says it was unreasonable for the Council to seek to recover money which she used to provide for her care. In contrast the Council says Mrs B did not provide evidence to support the amount she said she had paid her husband to provide care. The Council also says Mrs B spent money from her direct payments account on items

not covered by her support plan. I am exercising the Ombudsman's discretion to investigate the complaint even though it concerns events which happened more than 12 months ago. That is because I am satisfied Mrs B was not aware of the Council's concerns until 2016 and has been in regular correspondence with the Council about the matter since then.

27. Having considered the documentary evidence it is clear there are two issues here. The first issue is the lack of wage slips for the care Mrs B's husband provided between 2012 and 2016. The second is spending on items the Council does not consider meets Mrs B's care needs. I am concerned it took the Council until 2016 to identify those issues and to explain its concerns to Mrs B. As I said in paragraphs 16 and 21 the care and support statutory guidance and the Council's own policy makes clear it should carry out an annual review of direct payments. In this case I have found no evidence to suggest the Council carried out an annual review in 2014. Nor do I have any evidence to show the Council completed the annual review it began in 2015. The Council did complete a review in 2013. There is no evidence the Council raised any concerns with Mrs B in 2013 or at any point again until 2016. Failure to carry out annual reviews is fault. Failure to explain the Council's concerns following the annual review in 2013 is also fault. Without any annual reviews or communication with Mrs B about concerns between 2012 and 2016 I cannot see how she could have known she was not managing her direct payments account properly. I therefore do not consider the Council gave Mrs B an opportunity to either amend her spending or to correct the situation by keeping proper records of her spending.

28. I am also concerned about how the Council decided to recover the direct payments from Mrs B. As I say in paragraphs 22 and 25, the Council's direct payments guidance makes clear the decision on whether to recover misspent direct payments is not automatic. Instead, in each case the Council has to consider whether the funds were misspent intentionally. The Council then has to decide whether it is right to recover the money. In this case I have seen no evidence the Council had a proper discussion with Mrs B about its findings. There is no evidence the Council gave Mrs B an opportunity to provide any extra evidence or to provide information to allow the Council to decide whether to recover the direct payment. Nor is there any evidence the Council gave any consideration to the circumstances in which Mrs B spent the money. There is no evidence the Council considered the impact of it not communicating any concerns to Mrs B about her spending between 2012 and 2016 before deciding to recover the money. I am particularly concerned about the Council's decision to recover all the money paid to Mrs B's husband as her overnight PA where Mrs B has not provided wage slips when the Council accepts Mrs B's husband has provided 25 hours per week care throughout the period. Failure to consider properly whether to recover all of the £53,145.25 or to take into account the care the Council accepts Mrs B's husband provided is fault.

29. The Council has provided a copy of the various direct payments agreement signed by Mrs B. Those direct payments agreements make clear Mrs B must keep proper documentary records which includes wage slips. Mrs B did not do that for all the money paid to her husband as her PA. However, on the other hand the Council has accepted Mrs B's husband provides 25 hours per week care. The point of the rules about direct payments is so the Council can ensure the amount spent is legitimately spent on the service user's care needs. In this case the Council has not questioned whether Mrs B's husband provided 25 hours per week overnight care support to Mrs B. The Council has also accepted it can pay Mrs

B's husband as her carer for that period. I therefore do not consider it would be right for the Council to seek to recover the entire amount paid to Mrs B's husband between 2012 and 2016 for which there are no wage slips. I recommended the Council recover only amounts which Mrs B paid to her husband over and above the agreed 25 hours per week. I therefore recommended the Council recalculate the amount overpaid for the period 2012-2016 to reflect the care the Council accepts Mrs B's husband has provided. The Council has agreed to that.

30. There then remains the £21,768.26 the Council considers Mrs B has misused. I have considered Mrs B's support plan and the bank statements she has provided. Based on those documents I understand why the Council has concerns about Mrs B spending money on items not included in her support plan. However, I cannot ignore the fact some of those items were included on the bank statements Mrs B provided in 2013. As I said earlier, the Council did not raise any concerns about her spending with Mrs B following the 2013 review. So, I do not consider Mrs B would have understood what she was spending money on was not suitable. As the Council also did not complete reviews in 2014 and 2015 Mrs B had no way of knowing the Council considered some of her spending unacceptable. If the Council had acted as it should have done and communicated its concerns to Mrs B in 2013, or completed reviews in 2014 and 2015 and then shared its concerns with Mrs B, she would have had an opportunity to amend the way in which she spent her direct payment. She could then have avoided some or all the recovery she now faces. In those circumstances I recommended the Council also write off the £21,768.26 it considers Mrs B misused between 2012 and 2016. The Council has agreed to that.

31. Mrs B says the Council refused to meet with her to discuss her concerns about how it had calculated the amount she needed to repay. I have already explained earlier in this statement where I consider the Council at fault for how it dealt with Mrs B's direct payments account and in how it sought to recover some of the money paid. I consider if the Council had arranged a proper meeting with Mrs B to go through the expenditure it was concerned about that may have prevented Mrs B having to go to time and trouble to pursue her complaint. In addition to the remedy recommended in paragraphs 29 and 30 I also recommended the Council apologise to Mrs B both for the failures in how it dealt with her direct payments account and for failing to consider meeting with her to explain its concerns in more detail. The Council has agreed to that.

Agreed action

32. Within one month of my decision the Council should:

- amend its calculation of the amount to be repaid to reflect the Council's acceptance that Mrs B's husband provides 25 hours care per week which can be funded. Following that the Council should write to Mrs B to confirm the remaining amount to be recovered;
- write to Mrs B to confirm it is no longer intending to pursue recovery of the £21,768.26 it considers she has misused the account for; and
- apologise to Mrs B for the faults identified in this statement.

Final decision

33. I have completed my investigation and uphold the complaint.

Investigator's decision on behalf of the Ombudsman

9 January 2020

Complaint reference:
19 013 235

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 give the complainant a Blue Badge. This is because there is insufficient evidence of fault by the Council.

The complaint

1. The complainant, whom I refer to as Mr X, says he is entitled to a Blue Badge because he has 10 points with the Personal Independence Payment (PIP).

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)***

How I considered this complaint

3. I read the complaint and the Council's responses. I considered Mr X's application, the Council's assessment and the medical evidence provided by Mr X. I also considered the government guidance, Mr X's PIP award and comments he made in reply to a draft of this decision.

What I found

Blue badge

4. People qualify for a badge if they are unable to walk, experience very considerable difficulty when walking (including psychological distress) or are at serious risk when walking or pose a serious risk to other people.

5. People who have been awarded 10 PIP points with descriptor E (cannot undertake a journey because it would cause overwhelming psychological distress) automatically qualify for a badge. There are other descriptors which have 10 PIP points which do not passport the person to a badge. The Department for Work and Pensions (DWP) decides if a person is eligible for PIP and what descriptors to award. The DWP if not part of the Council.

What happened

6. Mr X applied for a Blue Badge. He explained he has a significant hearing loss, mental health problems and an irritable bladder which can mean he needs prompt access to a toilet. Mr X receives 10 PIP points under descriptor D (cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid). Mr X gave the Council proof of his PIP award and supporting medical evidence.

7. The Council decided Mr X does not automatically qualify for a badge because he receives PIP descriptor D.

8. The Council then considered if Mr X qualifies under the discretionary rules. The Council accepted that Mr X may struggle to plan a journey and that he can have problems due to panic attacks. It recognised he can feel overwhelmed at times and may feel fearful in open spaces. It was also aware of the problems Mr X had reported about needing easy access to toilets. The Council accepted Mr X has some difficulties when walking but decided he does not qualify for a badge. It decided he does not experience considerable difficulty when walking and was neither at risk nor posed a risk to other people.

9. Mr X disagrees with the Council's decision because he has 10 PIP points. He says it is a legal requirement for the Council to give him a badge. He says the Council gave different reasons for refusing the badge.

Assessment

10. I will not start an investigation because there is insufficient evidence of fault by the Council.

11. The rules say a person automatically qualifies for a badge if they receive PIP descriptor E. Mr X receives 10 PIP points but under descriptor D not E. The Council's decision that Mr X does not automatically qualify for a badge is consistent with the rules and there is no suggestion of fault.

12. The Council considered if Mr X qualifies under the discretionary rules. It considered issues such as risk, awareness, anxiety, ability to cope and control. It accepted Mr X has some health difficulties and some problems when walking. But, it did not accept these difficulties are severe enough to qualify for a badge. In addition, the rules do not say someone is entitled to a badge purely because they have many health issues. The Ombudsman does not act as an appeal body and I have not seen any fault in the way the Council reached its decision.

13. Mr X says the Council gave different reasons as to why he is not entitled to a badge, particularly in relation to the PIP points. I appreciate this may have been frustrating but I can confirm that it is correct that Mr X's PIP does not entitlement him to a badge.

Final decision

14. I will not start an investigation because there is insufficient evidence of fault by the Council.

Investigator's decision on behalf of the Ombudsman

17 January 2020

Complaint reference:
18 011 349

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr D complains about the Council's review of his care and support plan. And about the amount it is asking him to pay. The Ombudsman has found some fault with how the Council sought to seek agreement with Mr D about the review. And in how it has sought to get information about Mr D's disability related expenditure.

The complaint

1. The complainant, whom I shall describe as Mr D, complains about the Council's review of his:

- financial contribution, as it is charging him more than he can afford;
- care needs. Mr D says he asked for increased hours, due to worsening health. The social worker accepted some increased needs. But she reduced other eligible needs, leading to unchanged eligible hours.

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. As part of the investigation, I have:

- considered the complaint and the documents provided by Mr D;
- considered our earlier decision;
- made enquiries of the Council and considered its responses;
- spoken to Mr D;
- sent my draft decision to Mr D and the Council and considered their responses.

What I found

Legal and administrative background

The Care Act

5. The 2014 Care Act introduced a single framework for assessment and support planning. Sections 9 and 10 of the Care Act 2014 require local authorities to carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the results they want to achieve. The Act says the assessment should also seek to promote independence and reduce dependency.

6. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. ***(Care Act 2014, sections 27(4) and (5))***

7. The *Care and Support Statutory Guidance* ('the Guidance') has a checklist of broad elements to cover in a review. It advises assessors to communicate this checklist, before the review process begins:

- have the person's circumstances and/or care and support or support needs changed?
- what is working in the plan, what is not working, and what might need to change?
- have the outcomes identified in the plan been achieved or not?
- does the person have new outcomes they want to meet?
- could improvements be made to achieve better outcomes?
- is the person's personal budget enabling them to meet their needs and the outcomes identified in their plan?
- is the current method of managing it still the best one for what they want to achieve, for example, should direct payments be considered?
- is the personal budget still meeting the sufficiency test?
- are there any changes in the person's informal and community support networks which might impact negatively or positively on the plan?
- have there been any changes to the person's needs or circumstances which might mean they are at risk of abuse or neglect?
- is the person, carer, independent advocate satisfied with the plan?

Personal Budgets

8. Everyone whose needs the local authority meets must receive a personal budget, as part of the care and support plan. The personal budget gives the person clear information about the money allocated to meet the needs identified in the assessment and recorded in the plan. The detail of how the person will use their personal budget will be in the care and support plan. The personal budget must always be an amount enough to meet the person's care and support needs.

9. There are three main ways in which a personal budget can be administered:

- As a managed account held by the local authority with support provided in line with the person's wishes;

- As a managed account held by a third party (often called an individual service fund or ISF) with support provided in line with the person's wishes;
- As a direct payment.

Charging for non-residential services

10. 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)***

11. There are certain items of spending that can be deducted from a person's income, before the council decides whether a person can afford to contribute to social care costs. This is called Disability Related Expenditure, or DRE. Councils must take DRE into account when assessing a person's finances. The financial assessment should set out exactly what the Council considers to be DRE.

12. The Guidance has a non-exhaustive list of costs (for specialist items needed to meet a person's disability needs), that should be counted as DRE. These include:

- specialist washing powders or laundry;
- special dietary needs due to illness or disability;
- special clothing or footwear (or extra wear and tear);
- extra bedding;
- extra heating costs;
- internet access, for example for blind and partially sighted people;
- any care that social services does not meet;
- buying and maintaining disability-related equipment;
- reasonable costs of basic garden maintenance, if necessitated by the individual's disability;
- any transport costs above that met by the mobility part of disability benefits.

13. Other costs may also be accepted. Councils should not be inflexible and should always consider individual circumstances. Council should consider everything a person has to buy or pay for because of their disability. The Guidance allows councils to use a standard rate DRE allowance, although this should not work as a blanket allowance, when a service user has DRE above the standard figure.

14. The Council uses a standard DRE allowance of £20 a week.

Background

15. Mr D has a visual impairment, since an accident at work in 2003. He had a nervous breakdown then. He still suffers from some mental health problems, including social anxiety. He also has a skin condition that flares up when he is stressed.

16. In 2015 Mr D's welfare benefits changed. This led him to him having to pay more towards the Council arranged care he receives. The Council agreed to waive those costs from February 2015, to allow Mr D time to improve his budgeting skills. This included looking at how he could reduce some costs related to his disabilities.

17. The Council ended its waiver of the costs from April 2017. From then Mr D has been liable for a contribution towards his care costs. An October 2018 Ombudsman decision found no fault with the Council's decision to end the waiver.

We did, however, find fault with a delay in reviewing Mr D's care and support needs. We asked it to carry out a review.

18. The Council pays Mr D a direct payment and he arranges his own care and support, including employing a personal assistant.

Changes to the Council's charging policy

19. The Council has decided to change its charging policy for adult social care. A key change is it has started to take into account some welfare benefits that it had previously disregarded. This means some service users have to make a bigger contribution towards the costs of their care. The new policy still meets the minimum criteria set out in the national Guidance.

20. After feedback from citizens, the Council decided to implement the changes in two stages; in April and November 2019.

The current complaint

The care and support plan review

21. In August 2018 a social worker (Officer 1) contacted Mr D to arrange a visit, so she could carry out a review of his care and support plan. In response, Mr D advised her:

- He was worried about a questionnaire he had received asking about his financial contribution.
- His GP had increased his dose of anti-depressants, as he felt close to suicide.
- He felt he needed extra visits – teatime and lunchtime, because his skin condition had worsened. But he was worried the Council would cut his hours.

22. On 18 September Officer 1 visited Mr D to carry out the review. She reminded him the Council had offered to refer him to an agency for advocacy support. She also offered Mr D the support of a visual impairment enablement officer to promote his independence; for example around managing nutrition.

23. The new care and support plan:

a) Said Mr D had eligible needs. The support he was getting was meeting those needs.

b) Noted Mr D's previous package of care. This included:

- 1 hour in the morning = 7 hours a week;
- 45 minutes in the evening = 5.25 hours a week;
- 4 hours a week for "domestic and laundry";
- 6 hours for "community support and shopping";
- 3.5 hours a week for "keeping safe".

Total hours per week of 25.75.

c) Outlined the new recommended package of care:

- 1.25 hours in the morning = 8.75 a week;
- 1 hour in the evening = 7 hours a week;
- 2 hours a week for "domestic and laundry";
- 1 hour a week for help with bulk food preparation with his personal assistant;
- 6 hours for "community support and shopping".

Total hours per week of 25.75.

d) Had a next review date of January 2019 to "look at whether independence can be promoted".

24. On 28 September, Officer 1 contacted Mr D to discuss the outcome of the review. She advised him again the Council's view was it should refer him to its Visual Impairment Team, for support with being independent and making meals at home. Mr D advised this upset him. It would not work for him because of his anxiety in meeting new people. Mr D also advised he was upset about the revision in his package of care.

25. I note Officer 1's records of the September review and later telephone call were not entered onto the Council's case notes until 30 October. It seems this might have been because she was unexpectedly off work due to ill-health.

26. On 30 October 2018 Officer 1 sent Mr D a copy of the new assessment and support plan. She asked for any comments, but noted she believed it was correct, as she had typed it up when she was with him.

27. Mr D told us Officer 1 told him, when she met him, that she would recommend increased support and more hours with his personal assistant. But she then came back to him to say her manager had refused.

28. The Council has no record of trying to carry out the scheduled January 2019 review. It says this was because, at that time, officers were in frequent contact with Mr D about his care needs and financial assessment.

The financial assessment

29. Mr D's view is he cannot afford to pay his care costs. So he has not been paying all his assessed contribution, since the end of the Council's waiver in 2017. This has led to increasing arrears on his account. Mr D's concerns about the assessed contribution have been compounded by the Council's policy decision to change the way it charges for care.

30. At the end of October 2018, a manager (Officer 2) contacted Mr D, offering him a review of his financial contribution and a new financial assessment. Mr D did not respond to Officer 2, so he followed this up in November. Mr D did not respond.

31. Because Mr D's arrears were building up, Officer 2 decided to change the way the Council paid Mr D, so the liability for the debt transferred to the Council. Its records show it did this to ensure Mr D could continue to pay his care costs.

32. The change in Mr D's liability meant he was building up a debt with the Council, as he was still not meeting his full assessed payment. The Council passed Mr D's account to its Debt Recovery Team. That Team invoiced Mr D.

33. The Council completed its most recent financial assessment of Mr D's contribution in November 2018, with a start date of January 2019. This noted:

- it had not completed a financial review the previous year.
- The Council was allowing Mr D its standard £20 allowance for disability related expenditure.
- Mr D's assessed contribution was £39.75 per week.

34. In March 2019 Officer 2 asked a different senior officer (Officer 3) to work with Mr D about his concerns about his personal contribution. Officer 3 emailed Mr D at the end of the month, introducing herself. She told him the Debt Recovery

Team would be sending him an income and expenditure sheet for him to fill in. She suggested some organisations that could help him to complete this.

35. In April Mr D's assessed contribution increased to £62.77 a month, due to annual changes to benefits and the change in the Council's policy. The Council wrote to Mr D about this. He contacted it advising he could not afford the increase. It sent him an income and expenditure sheet to complete.

36. The Council says Mr D did not return a completed income and expenditure form. So it used information from the Department of Work and Pensions for working out his income.

37. In June Officer 3 tried to contact Mr D to arrange a visit. In mid-July Officer 3 did meet with Mr D. She updated the Group Manager (Officer 4) after this visit:

- Mr D was concerned his DRE was far greater than £20 a week (ie the Council's standard allowance).
- Mr D had made considerable steps to improve his wellbeing. But he was still fragile and emotionally up and down, with episodes of poor mental health.
- Mr D had provided an expenditure sheet.
- Mr D said he could not afford an internet connection. Officer 3's view was he was at risk of social isolation and an internet connection and more choice of TV would be beneficial. But Mr D would not risk this expense.
- Mr D only had a basic pay as you go mobile telephone.
- The debt impacted on Mr D's mental health and physical health. He was also worried about maintenance of the home he owned.
- Mr D managed his skin condition through diet and reducing stress. Officer 3 was satisfied Mr D's claim to need to eat low salt, fresh, clean food was justified.
- One of Mr D's medicines was no longer on prescription.
- A podiatry service Mr D used had been cut.
- Mr D needed to use taxis, especially for hospital visits.
- Mr D needed special washing powder.
- Mr D had agreed to increase his weekly contribution and make a payment towards the arrears.
- Officer 3 suggested a plan to wipe out the accrued debt and agree a further waiver of part of Mr D's contributions. These were due to increase due to a change in the Council's charging policy.

38. Officer 4's decision was not to agree a further waiver of Mr D's contributions.

39. In a follow up email to Officer 4, Officer 3 noted it appeared Mr D's *"…expenses which relate to his circumstances and disability outweigh his income…and definitely are significantly over the DLA* [disability living allowance] *he receives".*

My investigation

40. In response to my enquires, the Council said its view was Mr D had not engaged with opportunities it had offered for him to review his budgeting and receive debt advice. It said:

> *"It is recognised that Mr [D] has limited income, and is benefit dependant, but the Policy has been applied by [Officer 4] to ensure fairness and consistency*

for all service users who are also expected to contribute toward their care and support. [Officer 4] therefore is not in agreement to apply a further waiver for Mr [D].”

- It noted Mr D had not provided a complete record of his income and expenditure. Without this, it had not been able to carry out a full assessment of his disability related expenses.
- The hours were rearranged at the care plan review *“to meet his need in line with the Adult social care strategy and the strengths-based approach”.* The review found that Mr D wanted more support in the morning. It noted: *“Many service users want more hours, but this does not always promote their independence. [Mr D] is active and goes out without the support of a PA. He goes independently to his support groups, so his inclusion needs in the community are quite rightly met by himself.”*
- The personal budget had not changed, and the support plan addressed Mr D’s needs adequately.
- *“[Mr D] showed the worker an increased level of anxiety at the prospect of having less hours of care and his focus was on this and therefore it was difficult for him to accept the positive support offered to him, to support him to live a better life.”*
- *“[Mr D] would need to provide evidence of his I&E* [income and expenditure]*, so we can demonstrate if he can meet this* [an internet connection to address Mr D’s risk of social isolation] *outcome his self before it could be considered as a DP. [Officer 3] has reminded [Mr D] and his support worker to fill in the I&E form.”*
- Officer 3 had asked Mr D to send her details of every item of DRE he had, so she could re-present his case. Mr D had not sent this information. The Council sent me records of a meeting in September (and follow up email to Mr D) about this issue.

41. In response to my draft decision both the Council and Mr D advised they had carried out a review of Mr D’s care needs. Mr D advised this had taken three lengthy meetings and involved an advocate.

42. The Council also:

- accepted it could have recorded in the relevant section, for its September 2018 review, areas where Mr D and it disagreed about his care needs.
- explained more about the reallocation of hours in September (some of which it says, were before, not being used for an eligible need). And repeated its view there was no evidence of an increased need.
- Noted numerous emails and telephone conversations during the review process.
- Advised it was still working with Mr D to assess his DRE. It would continue with this.

Was there fault by the Council?

The care and support plan review

43. In its last review of Mr D’s care and support needs, the Council changed Mr D’s eligible care needs. Its view is that its documentation about this is acceptable, because Mr D’s personal budget was unchanged. And the support plan addressed Mr D’s needs. The Guidance says the key aim of an adult’s care and

support is to meet their needs. So I would have expected to see an explanation about the assessor's reasoning for removing some support and increasing others; linking this to Mr D's needs.

44. The Council's response to my enquiries and draft decision does provide some reasons. But I would have expected to see those reasons in the running record. Having considered the Council's response to my draft decision, my view remains that the lack of a contemporaneous record is fault.

45. The Council says it has sought to offer Mr D support to help him to regain some independence. That is a key aim of the Care Act. So for the Council to seek to promote that aim with Mr D is not something the Ombudsman would normally criticise.

46. The Council was in contact with Mr D about the review and offered him support. He was clearly anxious about the outcome. And he declined the offers of support in engaging in the process. But the expectation is the assessor should seek to share with the service user what the review would cover before it began. I can see no record of the Council having done that here. Or, alternatively, a note about why that was not appropriate in this instance.

47. And the Care Act and its Guidance advises assessors they should seek, where possible, to agree the plan with service users. Here Officer 1 noted she completed the review with Mr D. But his recorded communications, both before and after the review, note he was concerned that his needs had increased. My view is the Council's records do not provide sufficient record of trying to reach agreement with Mr D. My view remains, at the least, there was a misunderstanding about what Officer 1 would be recommending after her meeting with Mr D. My view is the inadequate record was fault.

The financial assessment

48. The Council is entitled to expect Mr D to meet his assessed financial contribution. And we have no role in criticising the policy decision the Council has made about its charges, as its new policy still falls within what the Care Act and Guidance allow. So the Ombudsman cannot fault the Council's starting point assessment of what Mr D's charges for his care and support should be.

49. We have also not criticised the Council's decision to end the waiver. And I see no reason to question the Council's decision to not agree to a new waiver.

50. But the assessment of Mr D's DRE is an outstanding issue. I can see Officer 3's view, from meeting Mr D, was his DRE was more than the Council's standard allowance and above the DLA he receives (the care part of which is £58.70 per week). Officer 3 visited Mr D most recently in September, to explain to him he needed to provide details of all his DRE. But the Council says Mr D has not provided that information. The Council is entitled to seek evidence to support claims from Mr D that his DRE is above its standard allowance.

51. But, from the records I have seen, my view is the Council does not seem to have given the issue the attention it needs until Officer 3's visit. The Council says it was earlier hampered in assessing Mr D's DRE because he did not return an income and expenditure form. I find that explanation lacking for the following reasons:

- The income and expenditure forms it sent earlier were from its Debt Recovery Team. I can see nothing in the Council's records to suggest it advised Mr D it wanted him to complete the form so it could consider his DRE. The records suggest receiving the forms had worried Mr D.
- The Council's own records note Mr D's vulnerability.

- The Council has been aware since the end of its waiver that Mr D says he does not have enough income to meet his assessed contribution. Part of the explanation of this may be that the Council is not allowing enough DRE.

52. I am not saying the Council should have allowed more DRE. That is a decision for it to make, while following the Statutory Guidance. But the fact it did not earlier turn its mind to this question is fault.

Recommended action

53. In my draft decision my provisional recommendation was that, within a month of my decision, the Council contacts Mr D to offer him a further review of his care and support plan. And that review should seek to agree with Mr D what his support needs are. If the assessor could reach agreement, they needed to set this out in the records.

54. While my investigation has been ongoing the Council has carried out a review. It is not the place of this investigation to look at the recommendations of this review. But the record of one of the meetings the Council has sent me satisfy me that it sought to engage more with Mr D to discuss his concerns. So my view is it has met that recommendation.

55. I also recommended that the Council accept any information Mr D sends it in support of his request for DRE. If it agrees to allow increased DRE, I recommend it backdate this increased amount to January 2019 (except for any expenditure that began after that date).

56. The Council says it continues to work with Mr D to meet this recommendation. I ask it to report back to me within the next two months of the further actions it has taken to work with Mr D to consider his DRE.

Final decision

57. I uphold the complaint. The Council has taken some action and agreed to take other. So I have completed my investigation.

Parts of the complaint that I did not investigate

58. I have not investigated the Council's change to its charging policy. The old policy was more generous than the minimum scheme set out in the Guidance. The new policy more closely follows the Guidance's minimum provisions. As the policy is still within what the law allows, there is no role for the Ombudsman to consider the changes.

Investigator's decision on behalf of the Ombudsman

20 January 2020

Complaint reference:
19 003 401

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr X complained about the way the Council completed his and his wife's financial assessments. Mr X said this meant they paid too much towards the costs of their care. The Council was not at fault in the way it calculated Mr and Mrs X's financial contributions to their care costs.

The complaint

1. Mr X complained the Council:

a) incorrectly calculated the financial contribution he must make towards his home care;

b) has either failed to carry out, or delayed in carrying out, financial assessments since 2017;

c) took joint benefits into account claimed by his wife without carrying out a financial assessment with her; and

d) does not take working people's income into account when calculating financial contributions to care.

What I have investigated

2. I have investigated complaints a) to c) in paragraph 1. I have explained why I will not look at complaint d) at the end of this decision statement.

The Ombudsman's role and powers

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

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

How I considered this complaint

5. I considered Mr X's view of his complaint and considered the information he provided. I also spoke to Mrs X.

6. I spoke to the Council and made enquiries and considered the information it provided.

7. I considered the Care Act 2014, the Care and Support Statutory Guidance 2014 (the Guidance) and the Care and Support (Charging and Assessment of Resources) Regulations.

8. I wrote to Mr X and the Council with my draft decision and took the comments they made into account before I made my final decision.

What I found

Legal background

9. The Care Act 2014 is the overarching legislation which sets out what councils can charge people who have an assessed need for care.

10. The Care and Support Statutory Guidance sets out in detail how councils must apply the requirements of the Care Act.

11. Councils have discretion to choose whether or not to charge for care which people receive at home. Where a council decides to charge it must do so in line with the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the Care and Support Statutory Guidance.

12. The overarching tenet of the Guidance is that councils should take reasonable steps to ensure that any charge is affordable for the person concerned. The council determines this by carrying out a financial assessment of what a person can afford to pay.

13. Councils can take most benefits into account in a financial assessment, including employment and support allowance (ESA), attendance allowance and the care component of disability living allowance (DLA). The law says some benefits and other income must not be taken into account. This includes income earned from employment and the mobility component of DLA.

14. Councils may exercise discretion to disregard some sources of income even if the law says they are allowed to take them into account when calculating a person's contribution to their care.

15. Councils must ensure that a person's income is not reduced below a specified level after charges have been deducted. This is called the minimum income guarantee (MIG). The amounts are set out in the Care and Support (Charging and Assessment of Resources) Regulations. However, this is only a minimum and councils have discretion to set a higher level if they wish.

16. Annex C of the Guidance states *"Only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support. Where this person receives income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income."*

Council's policy on charging for care

17. The Council's policy on calculating the contribution to a person's care included the following:

- if a person received disability living allowance (around £85 a week), it disregarded £28.30 of this as income; and
- all people, regardless of their age, had a MIG of £189.

18. In July 2018 the Council's Adult Social Care and Public Health Committee recommended proposals to change the Council's policy so that it would:

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

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

20. The Council held an eight week public consultation on the proposals.

21. It sent letters about the consultation to all people who received adult social care from the Council. The Council also set up an online survey on its website and shared the link with relevant local groups and placed copies of the consultation in its libraries.

22. The consultation finished at the end of September 2018. 1,425 people responded. The majority of people who responded were not in favour of the changes.

23. On 8 October, the Adult Social Care and Public Health Committee considered the results of the consultation. It recommended the Council's Policy Committee approve its recommendation that the Council introduce the new proposals.

24. Later in October 2018, the Adult Social Care and Public Health Committee brought its report and recommendation to the Council's Policy Committee.

25. The report included details of the proposals, the reasons for introducing them, the consultation and its results, comments made by consultees, the number of people affected and the increased contributions some would have to pay.

26. The Policy Committee recommended the proposals were adopted by the Council.

27. In February 2019, the Policy Committee considered the matter further and gave its approval to implement the changes in two stages:

    - from April 2019, a partial decrease in the MIG would be introduced so that people between the ages of 18 and pensionable age would have a MIG of £170.23; and
    - from November 2019, people between 18 and pensionable age would have a MIG of £151.45.

Background

28. Mr X has a number of disabilities which means he needs home care. He receives single person's ESA and the mobility and care components of DLA.

29. On 26 July 2016, Mr X emailed the Council and advised his partner, Mrs X, had moved in. Mr X said he did not want to complete a new financial assessment form and so the Council checked the DWP's benefits system. This recorded Mr X was receiving single person's ESA a week and Mrs X was receiving couple's ESA. When the Council calculated Mr X's and Mrs X's finances it allocated the single ESA to Mr X and the total amount of the couple's ESA to Mrs X. This meant the income for both of them fell below the MIG and they did not have to contribute to the costs of their care.

30. In April 2017, the Council apportioned Mr and Mrs X's ESA on a 50:50 split of the total ESA amount. Again, their incomes fell below the MIG and so they did not have to contribute towards the costs of their care.

31. In April 2018, the Council's policy on how it treated couples for financial assessments changed. This said *"Only income and capital held in the service user's name and half of any income or capital held in joint names will be taken into account".*

32. The Council says it notified all couples of the change but missed Mr X because he was not recorded on it system as part of a couple. Therefore, the Council continued to assign the total household ESA to Mr and Mrs X on a 50:50 split.

33. The Council contacted Mr X in November 2018 after noticing it had not recorded him and Mrs X as a couple. Mr X responded on 5 November 2018 stating he was still receiving single person's ESA. The Council carried out a check with the DWP which showed Mrs X also had a couple's claim in place for both herself and Mr X. The Council apportioned the couple's joint benefit on a 50:50 split in line with its policy and the regulations.

34. In April 2019, the Council carried out new financial assessments for Mr and Mrs X. By this stage, some of the Council's new policy changes had been brought in. These meant it had reduced the MIG to £170.23.

35. Once the Council had taken into account all of Mr X's benefits and his disability related expenditure, his income was £49 above the MIG. This meant Mr X had to contribute £49 to the costs of his care. This was the first time the Council had assessed Mr X as able to contribute towards the cost of his care.

36. Mrs X's income minus her disability related expenditure fell below the MIG. This meant Mrs X did not have to contribute to the costs of her care.

37. Mr X was unhappy the Council had begun to charge him for the costs of his care and he complained to the Council and subsequently the Ombudsman.

My findings

38. The Council followed the correct procedures when it made changes to its policy on charging for care. The consultation was not a binding referendum and the Council had no duty to act in line with the majority who opposed the changes. The relevant Council committee submitted a report which contained appropriate information to the Policy Committee for its consideration and subsequent approval. This was in line with the Council's Constitution and the proposals are in line with the national Regulations. There was no fault in the Council's actions.

39. The statutory guidance states "*Only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support. Where this person receives income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income."*

40. This means that the Council should have allocated Mr X's single person's ESA to him alone and split the couple's ESA 50:50. However, prior to April 2019, the Council divided Mr and Mrs X's total ESA equally between them. This meant the income for each of them fell below the MIG and neither had to contribute towards the costs of their care. Mr and Mrs X, therefore, benefitted from the way the Council split the total ESA between them.

41. From April 2019, the Council allocated the ESA received by Mr and Mrs X in line with the statutory guidance; namely, it allocated to Mr X the single ESA awarded in his name and 50% of the joint ESA award. It allocated to Mrs X 50% of the joint ESA the couple was awarded only. This meant that although Mrs X's income remained below the MIG, Mr X's went above the threshold and he had to

contribute to the costs of his care. However, the Council acted in line with the statutory guidance and its own policy and was not at fault.

Final decision

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

Parts of the complaint that I did not investigate

43. I have not investigated complaint d) in paragraph 1. This is because the law states that councils must not take work related earnings into account when calculating the amount a person can afford to contribute to their care. The Ombudsman does not have the authority to either change or interpret the law or statutory guidance. Only government and the courts can do this.

Investigator's decision on behalf of the Ombudsman