

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

Summary: Mr and Mrs G complain the Council has not satisfactorily remedied a complaint we investigated in 2018 which concerned its responsibilities to Mrs G as a special guardian for her grandson. We have upheld this complaint also, finding fault by the Council in its assessment of a special guardianship allowance paid to Mrs G. We consider this has caused Mrs G further injustice as distress. The Council has agreed action to remedy this injustice including undertaking a further reassessment of the allowance it pays to Mrs G.

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## **The complaint**

1. The complainants, whom I have called 'Mr and Mrs G' complain the Council has not satisfactorily remedied an earlier complaint they made to the Ombudsman. Their complaints concern the support offered to Mrs G as a special guardian for her disabled grandson 'Child X'. They complain the Council:
  - Has not liaised enough with another local authority area ('Council 2') where Child X lives with Mrs G.
  - That Mrs G does not receive enough financial support paid as a special guardianship allowance. In particular, the Council wrongly takes account of Disability Living Allowance paid to Child X when calculating its payment.
2. Mr and Mrs G say delay in resolving these matters has caused distress, further to that identified by our earlier investigation. They also say that Mrs G currently faces financial hardship because the special guardianship payments she currently receives are inadequate to help meet Child X's needs.

## **The Ombudsman's role and powers**

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

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## How I considered this complaint

5. Before issuing this decision statement I considered:
  - Mr and Mrs G's complaint in writing to this office and further information provided in telephone conversations and emails.
  - Information provided by the Council in response to written enquiries. This included listening to a recording of a meeting held with Mr and Mrs G in May 2018.
  - An earlier decision taken by us which considered a previous complaint made by Mr and Mrs G and relevant to this complaint also.
  - Relevant law and guidance as referred to in the text below.
  - Comments made by Mr and Mrs G and the Council in response to a draft decision statement where I set out my thinking about this complaint.

## What I found

### Background & Key Facts

#### General Background

6. Mrs G is Child X's parental grandmother. She lives outside the Council's area. Mr and Mrs G keep separate houses, with Mr G living around 200 miles from Mrs G. Mrs G works one evening a week and at weekends.
7. Child X has a diagnosis of autism, a learning disability, mental health issues, attention deficit hyperactivity disorder (ADHD) and an attachment disorder. These contribute to Child X displaying behavioural issues with episodes of self-harming, smearing, violent outbursts of temper towards people and property and so on. Because of his mental illness, Child X receives disability living allowance, a non-means tested benefit, at the highest rate for support with his care and at a low rate for support with his mobility needs.

#### Summary of our earlier investigation

8. Mr and Mrs G first complained to us in 2017. Child X had lived with Mrs G since July 2015. In November 2016, Mrs G had become Child X's special guardian. They complained the Council:
  - Did not recognise that Child X entered Mrs G's care as a looked after child given concerns the Council had for his welfare.
  - That as a result Mrs G did not receive enough financial support for Child X between July 2015 and November 2016; at which point she became his Special Guardian.
  - That further, because the Council did not consider Child X a looked after child, it had also provided inadequate support for Mrs G after November 2016, under the Special Guardianship Regulations.
9. In March 2018, I issued a decision upholding the complaint on all three points. I found the facts supported the view Child X entered Mrs G's care as a looked after child. Because the Council had not recognised this, I found it had not paid the correct amount of financial support to Mrs G between July 2015 and November 2016. I also found this led to it not providing enough support for Mrs G after November 2016. The Council wrongly took the view it did not have a continuing duty to provide support services to Mrs G because she lived in another local

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authority area. But this did not apply because Child X had been a looked after child before entering Mrs G's care.

10. Part of the support local authorities can provide special guardians includes financial support. I found fault in how the Council assessed the financial allowance paid to Mrs G after she became Child X's special guardian. I found the Council had not considered loan repayments made by Mrs G when she had taken out loans to furnish her home for Child X's arrival. It had also not considered if Mrs G had child care costs when calculating her allowance (an assessment for special guardianship allowance can disregard child care costs in some circumstances).
11. I found further fault in extra payments made by the Council to Mrs G to support contact between Child X and his birth parents. I considered the sum paid by the Council did not take account of the difficulties Child X had travelling on public transport, something Mrs G had consistently explained to the Council.
12. The Council accepted these findings and agreed to undertake a series of measures to remedy the complaint. It gave an unreserved apology to Mr and Mrs G and made a payment to them recognising the distress and time and trouble caused by its faults. It also paid for the shortfall in financial support received by Mrs G between July 2015 and November 2016.
13. It further agreed:
  - To contact 'Council 2' (Mrs G's local authority area) within 20 working days to discuss Child X and Mrs G's needs moving forward. It would find out what support Council 2 provided and/or what assessments were ongoing. It agreed to take over paying for any care needs Council 2 paid for and/or agree with that authority how the two authorities would assess Mrs G's support needs moving forward. The Council agreed to provide whatever support Mrs G needed in line with Special Guardianship Regulations until November 2019.
  - To complete a reassessment of the financial support paid to Mrs G. The Council agreed to meet with Mr and Mrs G to gather information reasonably required to complete that reassessment. This reassessment would consider Mrs G's loan repayments and any childcare costs. It would also consider Child X's contacts with his birth parents. The Council would then review payments made to support contact from April 2016 (excluding a three-month period before 20 January 2017 when a Court agreement covered payments). It would "*consider the situation moving forward*" and whether it still considered it necessary for Mrs G provide two contact visits a month as well as the funding provided for those visits.
14. The matters in paragraph 13 are the subject of this investigation, because there is no dispute the other parts of the remedy completed satisfactorily.

### **Events since March 2018**

15. In March 2018, the Council paid Mrs G around £55 a week in special guardianship allowance and an extra £44 a month as a contribution to enable visits between Child X and his birth parents.
16. In April 2018, the Council contacted Council 2, which confirmed its children services already knew about Child X and he had a dedicated social worker. In May 2018, Council 2 told it the social worker's assessment of Child X remained ongoing.

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17. The meeting agreed as part of the remedy to the earlier complaint took place in May 2018. Mrs G's local Ward Councillor arranged this (he has helped Mr and Mrs G in pursuing their complaint). Representatives from Council 2 also attended. At the meeting, the Council explained that it would pay for any services provided by Council 2. But that it could not pay for services until they were in place. Council 2 confirmed it was not providing social care services to Child X, but its assessment of his needs continued.
  18. At the meeting Mrs G said that from July 2015, when Child X first entered Mrs G's care, she agreed that she would keep up weekly contact with his birth parents. From when she became special guardian in November 2016 this became twice monthly. Mrs G said she could only do this by using taxis. This involved a round trip of around 130 miles, costing around £130 (rising to £140 from 2018).
  19. Mrs G said Child X stopped having regular contact with his mother around April 2017 and with his father in October 2017. Between October 2017 and May 2018 his father had travelled to Mrs G's home on around four occasions to see Child X. But he would only do so if Mrs G gave him 'petrol money' of £40 for each round-trip.
  20. At the meeting in May 2018 Mrs G also said Child X had contact with an adult sibling and another younger sibling over weekends. They would travel from the Council's area to look after Child X overnight while Mrs G went to work. Mrs G paid for taxis to enable them to do this. Mrs G also said that she also paid the parent of one of Child X's friends £20 to look after him while she was at work. This would usually be during the one evening a week that she worked.
  21. After the meeting in May 2018 Mrs G provided the Council with more details about her income. In June 2018, the Council wrote to Mr G with an update on its position about funding contact. It then revised that position in July 2018 in response to further representations from Mr G. It agreed payments of £4420 to cover the journeys taken by Mrs G to its area between April and November 2016 (34 weeks at a round-trip cost of £130). It paid just under £950 for the period November 2016 to October 2017. This represented 11 round-trips costing £130 minus money already paid to Mrs G at £43.80 a month.
  22. The Council said it would continue to pay Mrs G £43.80 a month. This would enable Mrs G pay the expenses asked for by Child X's father, if he continued visiting once a month. The Council has said Mrs G can decide in the future about what contact Child X should have with his parents.
  23. Also by July 2018 the Council also completed its reassessment of Mrs G's special guardian allowance. It took account of information she provided after the meeting in May including wage slips. It decided it could now only pay Mrs G between £30 and £40 a week in special guardianship allowance. The amount lowered over time as it took account of Mrs G's loan payments for furniture which gradually dropped out of the calculation. The Council said this meant it had paid Mrs G more allowance than it should, although it would not seek recovery of any overpayment. It also agreed not to lower any allowance payments while this investigation completed.
  24. During this investigation Mr G told me Child X's father had stopped visits to him (September 2018), although there was some sporadic contact in early 2019. Child X continues to have contact with two of his siblings. Currently, the Council has stopped all payments to Ms G to promote contact as Child X no longer has contact with his parents. It initially said any childcare costs incurred by Mrs G did not relate specifically to Child X's disability and therefore implied it would not take

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account of these in its assessment. Although the Council has re-considered this position further to the draft decision I sent it in February 2019.

25. During this investigation, the Council also said it intended issuing a new special guardianship plan setting out its support for Child X and Mrs G. However, it had deferred that until Council 2 completed its assessments of Child X and clarified what social care support it had assessed him as needing.
26. It says that in July 2018 one of its social workers visited Mrs G at home with the Child X's social worker from Council 2. It understood her happy with services provided by Council 2 then.
27. The Council has provided a copy of a needs assessment completed by Council 2 that month. This identified that Child X had unmet needs to support him with education. The action points envisaged Child X's school address these. It also recorded Mrs G being physically and emotionally exhausted caring for Child X and that it would identify support for her. The plan suggested Mrs G may want to resume contact between Child X and his parents but only if the Council paid for taxi fares.
28. In October 2018, the Council produced its own children and families' assessment for Child X. This detailed Child X's diagnoses of mental health illness and resulting behaviours. It described him receiving weekly psychotherapy from his local Child Mental Health Services (CAMHS) located in Council 2's area. It described his being out of education (see below). The Council said it had discussed Child X's case with his social worker in Council 2's area and said, "*the current child in need plan in [Council 2's area] is meeting all [Child X's] unmet needs and it is financial support that [Mrs G] needs. We discussed respite and [Council 2 social worker] stated it is her intention to look into this but identifying the right support may be an issue [...] they will also be looking at a personal assistant and direct payments*".
29. The assessment recorded Mrs G paying over £20 a day to take Child X to school and a further £20 a week taking him to medical appointments (these journeys by taxi). She also paid £140 a week for a taxi for Child X's adult sibling and his brother to visit and look after Child X while she went to work. Mrs G also said her wages had recently dropped and she had run up debts since looking after Child X.
30. The Council considered it could close its own involvement in Child X's case through the assessment procedure. It says this is because Council 2 would pick up any unmet needs as part of its continuing work with Child X. It said the only support Mrs G needed from the Council at that time was financial. After it took this decision the Council sent a standard letter to Mrs G saying it had 'closed the case'.
31. Council 2 has responsibility for Child X's education. He has an Education, Health and Social Care Plan (EHCP) detailing what extra help he needs to access education. He began secondary school in September 2018 but his placement soon ran into difficulties with the School identifying it struggling to meet Child X's needs. He is therefore currently out of school and receiving home tuition while his EHCP is under review. Before his school placement ended Council 2 agreed to fund Child X's education transport. The current EHCP for Child X does not identify him having any social care needs.

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### Relevant law and Council policy

32. To come to a view on this complaint I have first considered the Special Guardianship Regulations 2005 and associated guidance.
33. I note first **Regulation 3**. This says the Council must provide special guardianship support services. It defines these as:
- financial support;
  - services to enable groups of special guardians or children to meet;
  - assistance to support contact between the child and their parents or relatives;
  - therapeutic services for the child;
  - help for the continuance of the relationship between the child and special guardian; to include training for the special guardian to meet any special needs of the child and respite care;
  - counselling, advice and information.
34. Guidance accompanying Regulation 3 says that local authorities can consider giving a person help in cash where it considers it appropriate. It gives as examples *“giving a special guardian cash to pay a babysitter so they can have a break for an evening or money for petrol when a contact visit has been arranged”*.
35. **Regulation 4** allows the Council to arrange for another body to provide guardianship support services. This includes through another local authority.
36. **Regulation 5** says that where a child was previously a looked after child the authority ‘where the child was last looked after’ remains responsible for providing services for three years after the making of the special guardianship order.
37. **Regulation 6** covers financial support. The Council can pay this in circumstances including where:
- It is necessary to ensure the special guardian can look after the child;
  - Where the child *“needs special care which requires a greater expenditure of resources than would otherwise be the case because of illness, disability, emotional or behavioural difficulties or the consequences of past abuse or neglect”*.
38. Guidance accompanying the second bullet above says: *“payment of financial support is intended where the child’s condition is serious and long-term. For example where a child needs a special diet or items such as shoes, clothing and bedding need to be replaced at a higher rate than would normally be the case with a child of similar age who was unaffected by the particular condition”*.
39. **Regulation 10** allows the Council to place conditions on paying financial support, including requiring special guardians tell it of relevant changes in circumstances. For example, if the special guardian has any changes in their financial circumstances.
40. **Regulation 13** requires the Council to ensure that payments made to special guardians do not *“duplicate any other payment available to the special guardian”*. The guidance says that before paying any allowance the Council must therefore consider:
- The special guardian’s financial resources including any tax credit or benefit available because the child lives with them.

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- The amount required by the special guardian in respect of their reasonable outgoings and commitments.
  - The financial needs that relate to the child (for example, because of special diet or need for replacement bedding) and the resources of the child (for example a trust fund).
41. Any payments must also take account of any comparable fostering allowance. This includes taking account of any enhancement payable for a particular child.
42. Guidance accompanying this Regulation also says the Council must disregard *“any special care [...] which requires a greater expenditure of resources than would otherwise be the case because of illness, disability, emotional or behavioural difficulties or the consequences of past abuse or neglect in relation to a child who has been previously looked after by the authority”*.
43. **Regulation 14** requires local authorities to draw up a plan setting out what services it will provide and covering matters such as objectives for the child; how it will evaluate those and how it will monitor/review the plan.
44. **Regulation 18** provides for the Council to review any financial support it pays periodically.
45. The Council’s policy says it takes account of these Regulations. When it comes to financial support the Council uses a means test model published in 2006 by the Government. This adds up family income and then considers certain expenses, disregarding some of that expense before arriving at a final figure for support.
46. Guidance accompanying the means test says the Council should record benefits received by all members of the household, although it does not specifically refer to Disability Living Allowance (DLA). The Council also produces its own guidance for officers but this too provides no advice on how it should treat DLA income received by children.
47. The model allows the Council to disregard costs for childcare. Accompanying guidance says it should allow for *“reasonable”* childcare costs taking account of family circumstances and local costs for childcare. It says assessment should take account of any childcare element paid as part of a tax credit award.
48. In comments in reply to my enquiries the Council says it can consider making *“exceptional payments”* to cover extra costs associated with disability.

### **My findings**

49. It is now 12 months since I issued my decision on Mr and Mrs G’s first complaint. The remedy to that complaint held out the hope that within three months Mrs G would have greater certainty about what support the Council would provide her and Child X moving forward. I recognise therefore Mr and Mrs G’s frustration there remains no such certainty. The Council has not completed a plan saying what support it will offer. While Mr and Mrs G remain especially unhappy with the extent of the Council’s financial support.
50. I accept the Council faces challenges in drawing up such a plan. The Council must have support for special guardians that can respond to change. Clearly both Mrs G and Child X have had changes in circumstance since Child X first went to live with Mrs G. His needs have become greater. While Mrs G’s employment patterns have changed and reduced in response to the greater demands this places on her. I find this contributes to some of the uncertainty about what support the Council can offer.



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51. Taking account of this I am not minded to find fault in the Council's position on any non-financial support it might offer to Mrs G and consequently its contacts with Council 2. I consider immediately after issuing my decision last year the Council could have reacted sooner to contact Council 2. I also think the letter it sent Mrs G in October 2018 caused unnecessary confusion as it did not properly explain why the Council had 'closed' Child X's case.
52. But I consider these matters while frustrating, have not disadvantaged Mrs G. Clearly by May 2018 the Council knew Council 2 was assessing Child X's needs and that remained ongoing. It confirmed it would meet the cost of any social care services Council 2 went on to provide. It considered this approach consistent with Regulation 4 and its responsibilities under Regulation 5 and I agree. Its position on this has not changed.
53. In May 2018 Council 2 had not offered any direct services to Child X and that remains the position. Its Children's Services have supported Mrs G with Child X's education needs and accessing suitable support from CAMHS. But none of this support falls under those 'support services' defined in Regulation 3. Council 2 has not arranged any direct services to help Child X or Mrs G in meeting Child X's social care needs, such as respite care, which might come under Regulation 3.
54. There is nothing in the papers I have read to suggest that Mr or Mrs G have any complaint with Council 2's Children's Services. I consider it implicit in the papers that Council 2 takes a patient approach with Child X given his complex needs. Council 2 may yet step in and provide more direct social care services but until it does there is little the Council can do other than keep a watching brief.
55. This also has implications for the plan setting out services for Mrs G. I understand why the Council had not produced a plan while waiting for clarity about what social care services Child X needs. I consider at this stage it has probably waited long enough. But though I find the delay unfortunate, for the reasons set out above I do not consider the Council at fault in its handling of these matters since March 2018.
56. This leaves me therefore to consider the financial support the Council gives to Mrs G. Here I consider the Council remains at fault.
57. I consider the fault stems in part from the Council's decision to use the standard assessment model when deciding what payment it will make to special guardians. There is no inherent fault in using this model but it remains subservient to the Regulations.
58. Regulations 6 and 13 clearly set out an expectation the support offered to special guardians of disabled children must take account of their extra needs compared to children without such disabilities. There can be no dispute that Child X has such extra needs. He would not receive DLA if this was not the case.
59. Yet the standard assessment model gives the Council no guidance on how to take such account in practice. It implies, but does not say, the Council should include DLA in its calculation. But it does not allow for any extra allowance when calculating allowable expenses. I find there is an assumption that in the means test a disabled child's allowance may start from a higher base. This is because of the linkage between special guardianship allowances and fostering allowances, with many authorities paying a higher fostering allowance to foster carers looking after disabled children. But the Council does not have such extra allowances in this case, instead paying its foster carers on their skills and qualifications, rather



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than linking payments to the needs of the child. So, this assumption of a higher base does not apply here.

60. In which case I consider the Council should have considered some other way to take account of Child X's extra needs. I have noted some authorities discount DLA received by children when calculating special guardianship allowance. Others assume a disregard of 50%. As there is no clear caselaw or guidance in this area I do not think I can be prescriptive and say exactly how the Council should treat this income. But I consider simply adding DLA into the assessment calculation and not taking account of the child's extra expenses implicit in its award, runs contrary to the expectations in Regulation 6 and 13. This must result in a finding of fault.
61. I also consider the Council must consider the impact of the public-sector equality duty. The Equality Act 2010 requires local authorities not to discriminate in delivering services on grounds including disability. I consider the Council's current model of assessing payments may inherently disadvantage disabled children. Because it treats their DLA like any other income, meaning the support offered a special guardian with a disabled child is the same as that given to one with the same income, but without disability.
62. I note that during this investigation the Council indicated a willingness to reconsider its approach to these payments and I welcome that.
63. I accept that currently I have not seen a significant quantity of evidence for what extra expenses Mrs G incurs because of Child X's disabilities. I consider his need for travel by taxi as opposed to public transport demonstrated. Although some of that spending may reduce now Council 2 accepts the need to pay for his school transport. But I have not seen evidence that points towards Mrs G having higher costs arising from Child X's care, such as clothing or bedding costs higher than an average child of his age. Yet I do not find the Council has explored this in any detail. This is something that arises from the use of the standardised model which does not encourage such enquiries.
64. In addition, even using the standardised model I do not consider the Council has provided a coherent response for why it has not allowed childcare expenses for Mrs G. The guidance accompanying Regulation 3 makes clear a local authority can consider making allowance to help a special guardian's childcare costs; so long as this does not duplicate an existing child tax credit award. The comment made that Child X's childcare costs were not caused by his disability appeared true, but also irrelevant in this context. I am therefore grateful the Council has signalled a re-think here also.
65. Consideration of this matter could also run alongside a reconsideration of the potential need to fund continuing contact between Child X and his family. I consider there is no fault in how the Council has resolved the matter of expenses on contact incurred by Mrs G before May 2018. I also accept the Council cannot agree to fund contact which is not happening. But Mrs G made clear in May 2018 that Child X still saw some of his siblings. While they provide childcare for Mrs G, the Council should also consider the potential benefit to Child X of preserving some contact with his birth family, if not his parents.
66. Clearly the position on contact also remains fluid and I need to consider this also. This is therefore reflected in the agreed action to remedy this complaint.
67. In summary, therefore I remain concerned the allowance Mrs G receives is insufficient. Because it does not properly take account of Child X's disability,

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Mrs G's childcare costs and contact arrangements. Further drift on all these matters is not good for any of the parties involved. The Council's faults have caused more distress to Mr and Mrs G because there remains a lack of certainty about what financial support Mrs G should receive. This is their injustice. Although I also consider some uncertainty remains inherent. Because of Child X's needs and the variations around contact the Council cannot simply set its financial support in stone. I note here the impact of Regulations 10 and 18 which require the Council to ask for information in support of its financial assessment and review that assessment periodically.

### **Agreed action**

68. To remedy the injustice identified at paragraph 67 the Council has agreed that within 20 working days of a decision on this complaint, it will:
- a) Provide a further apology to Mr and Mrs G recognising the findings of this investigation.
  - b) Make a further payment of £300 to Mr and Mrs G in recognition of their distress.
69. In addition, the Council has committed to completing a draft of its plan setting out the support, including financial support it will give to Mrs G, within 20 working days of receiving any further information it needs from Mrs G (see also notes at paragraphs 72 & 73). It has now requested further information from Mrs G in connection with this. It has also agreed its assessment will consider my findings at paragraphs 58 to 66 above (see also note at paragraph 74).
70. The Council will also backdate any financial support agreed on at 69 above as appropriate to 20 January 2017 (see also note at paragraph 75).
71. The Council has also agreed to complete its review of its current policy towards assessment of special guardianship allowance for children with disabilities. The Council will aim to produce a working draft of its new policy within two months of this decision statement. This will further inform its decision at 69 above (see also note at paragraph 76).

### **Explanatory notes in support of agreed action**

72. Mrs G's support plan will take account of any social care services provided by Council 2 that fall within the scope of special guardian support services. The Council should not delay the plan further if Council 2's assessment of Child X's needs remains incomplete. It can instead amend the plan later to take account of Council 2's actions. The priority must be to finalise the financial support.
73. The plan should set out how changes to financial support can be made. Where needs fluctuate (for example around contact) the Council may want to indicate a maximum ceiling cost of trips it is willing to fund each month and give Mrs G a float to that value. It could then top that up subject to Mrs G providing receipts when she incurs expenses, providing her with contact details to enable this. The Council should make clear it accepts the necessity for Child X to use taxis if travelling to its area but may consider if it reasonable for an adult sibling to also use this method of transport.
74. The Council is not restricted to only asking for information about Child X's disability needs, childcare costs and contact. It can ask for any information reasonably required to complete its assessment. But it should also bear in mind

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what records it is reasonable and proportionate to expect Mrs G to have retained, especially if seeking confirmation of costs incurred in 2017 or 2018.

- 75. The agreed action does not require the Council to backdate every calculation to January 2017. It can take account of when changes in circumstance occur. In its financial reassessment the Council should consider if its special guardianship payments, which are based on fostering allowances, should also include allowance for birthday and festive allowances (paid to foster carers).
- 76. As part of its review of policy the Council has agreed it will identify any other children similarly affected to Child X; i.e. those to whom it pays special guardianship allowance where the child is disabled. It should commit to reviewing their payments also, in line with its new policy once this is agreed.

## **Final decision**

- 77. For the reasons set out above I have upheld this complaint, finding fault by the Council causing injustice to the complainants. The Council has agreed action that I consider will remedy the injustice. I can therefore complete my investigation satisfied with its actions.
- 78. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

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

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

Summary: The Ombudsman will not investigate Mr X's complaint about the Council's handling of a highway matter. It is unlikely we would find fault by the Council causing Mr X significant injustice.

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## **The complaint**

1. The complainant, Mr X, complains about the Council's handling of a highway matter. He is concerned the Council has not provided proper answers to his questions and feels victimised by the Council's approach in his case.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
  - it is unlikely we would find fault, or
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify our involvement, or
  - it is unlikely we could add to any previous investigation by the Council, or
  - it is unlikely further investigation will lead to a different outcome.

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

## **How I considered this complaint**

3. I reviewed the information provided by Mr X including his complaint and the Council's responses. I shared my draft decision with Mr X and considered his comments.

## **What I found**

4. The Council wrote to Mr X in 2019 requiring him to remove an obstruction from the highway and stop driving over a raised kerb and grass verge to access his driveway. It explained that if he wanted easier access to his driveway he may apply for a vehicle crossing or instruct his own contractor to carry out the work.

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5. Mr X questions the Council's actions as he says it has not dealt with similar obstructions in the same way. He believes it could be an excuse to raise money as the Council has now informed him he would have to pay not only for the vehicle crossing but also to remove a lighting column located outside his home. He is unhappy a council officer terminated his phone call and that another officer did not make a record of their conversation with his wife. He assumes the Council would prefer him to park on the road and believes it should accept liability for any damage it may suffer while parked there. He complained to the Council but was not satisfied with its response.
  6. The Ombudsman will not investigate this complaint. The Council has a duty under the Highways Act 1980 to keep the public free of obstructions. There is no question in this case that Mr X placed objects on the public highway and the Council decided it should take action to remove them. This is a decision it is entitled to take and whether it has done the same in other cases does not affect Mr X. The Council's warning letter set out the possibility of further action in the event he did not comply, but it did not come to this. Mr X removed the objects and that is the end of the matter.
  7. The Council has also explained to Mr X that the law does not allow motorists to cross the footway without a properly constructed vehicle crossing; it explained his options and Mr X is exploring the costs involved to construct a new crossing. The extension of the existing vehicle crossing will involve the removal/repositioning of an existing streetlight and this is a cost that the Council will not cover. Mr X must therefore factor it in when deciding how to proceed. It is unlikely we would find fault in the Council's insistence that he must either stop driving over the footway or pay for a properly constructed crossing and we could not say it should accept liability for any damage that may occur to his vehicle as a result of parking on the road.
  8. Mr X is unhappy with the Council's handling of the case but while I note he had some concerns over security and the accusation that he had raised his voice while speaking to a council officer, we would not investigate this issue or the Council's handling of his complaint about it in isolation. This is because it has not caused Mr X significant injustice and it would not be a good use of our resources to investigate it.

### **Final decision**

9. The Ombudsman will not investigate this complaint. This is because it is unlikely we would find fault by the Council causing Mr X significant injustice.

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

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

Summary: Miss X and Mr X complain about the Council's support provision for Miss X. The Council was not at fault in the way it assessed Miss X's social care needs or its decision not to increase her support hours. The Council was also not at fault when it decided not to continue to fund accommodation for support workers for Miss X's holidays.

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## **The complaint**

1. Miss X and her father Mr X complain that the Council has:
  - Reneged on an agreement to pay for carer accommodation when Miss X goes on holiday.
  - not increased Miss X's care hours despite advice from medical professionals to do so.
  - delayed at each stage of the process.

## **What I have investigated**

2. I have investigated the complaint as outlined above. Miss X and Mr X have since made a further complaint to the Ombudsman about the provision of the agreed respite care. This complaint was made after I started my investigation and so has not been considered as part of it. This is currently being considered by the Ombudsman separately.

## **The Ombudsman's role and powers**

We normally expect someone to refer the matter to the Information Commissioner if they have a complaint about data protection. However, we may decide to investigate if we think there are good reasons. (*Local Government Act 1974, section 24A(6), as amended*)

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

## **How I considered this complaint**

4. I considered the information provided by Miss X and Mr X and discussed their complaint with them. I have also considered the Council response to my enquiries and the documents it provided.

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## What I found

5. There is a significant amount of correspondence relating to this complaint. I have not included details of all of the actions or correspondence, but have included those that provide relevant background information or details relevant to my decision making.
6. I have outlined the complaints process and then addressed each of the complaints made to the Ombudsman.

### Complaints process

7. Mr X made a complaint regarding Miss X in January 2017. This complaint was that:
  - the Social Worker did not enclose a copy of Miss X's care and support plan from 2016 as she said she would.
  - The care package for Miss X was not increased despite letters from Miss X's consultant neurologist indicating that the hours of support should be increased.
  - The Council removed funding for carer's accommodation whilst Miss X is on holiday.
  - That a Direct Payment was paid without agreement or explanation.
8. The Council said it would respond to Mr X by 8 February 2017. It sent its response on 10 February 2017. This said that:
  - The Council did not send the support plan as it said it would. However, this had now been done.
  - The Council said Miss X's care package had not been reduced and remains the same. Miss X continues to receive 18 hours of 1:1 support per week and 432 hours respite. The Council explained that the hours of support had not been increased because Miss X's assessment package had not been increased because her assessment specified that her indicative budget was set at £75.03 per week. However, she was in receipt of £266.04 per week. The Council also said that although Miss X's consultant had written to the Council to ask if Miss X's hours could be increased to 22 hours, he did not say that this was essential to meet her needs but recommended that the hours should not be reduced. The Council said that it considered his opinion and in line with this it did not reduce the level of support.
  - Regarding the provision of funding for accommodation for support staff whilst Miss X is on holiday the Council said "Considering you are already in receipt of a support package that is above your indicative budget and a bespoke respite plan which meets your needs in line with your assessment, it is felt funding accommodation for carers to accompany you at the same hotel is not essential." It confirmed that the £1000 one off payment that was previously made for accommodation would no longer be provided.
  - To explain why the Council had intentions to reduce Miss X's care plan in the future, the Council said that the objective of a Care and Support Package is to meet people's needs and achieve specific outcomes, for example, find activities and also to provide help to teach individual's new skills so that they can become more independent in the future rather than relying on social care support in the long term. It also said that Miss X has many independent skills, including cooking, shopping, travelling independently, managing finances, staying alone when Mr X goes away and attending to personal care.



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- The Council said that the Direct Payment made to Miss X was commissioned in error. The Council apologised for any confusion or inconvenience this caused.
9. The Council records that following this, Miss X contacted the Complaints Team by telephone because she was unhappy with the complaint response. Miss X reiterated that she felt her care package should be increased that the £1000 accommodation payment for support staff that had been withdrawn was not enough. The complaints officer suggested that a meeting should take place when Miss X returned from holiday.
  10. A Complaints Officer contacted Miss X to discuss next steps. The Council records it confirmed Miss X's outstanding issues were:
    - Cheque for £7000 for a Direct Payment that was paid to her in error.
    - Additional 4 hours need to be added to the care package which would increase it to 22 hours per week.
    - £1000 one off annual payment which was to cover the cost of Miss X taking her carers on holiday has been stopped.
  11. The Complaints Officer also spoke to Mr X. The Council records that Mr X said the response they had received to the complaint was unsatisfactory. Mr X said that Miss X had only seen a social worker once every twelve months yet the social worker was now saying Miss X could improve to the point her care hours could be reduced. Mr X said that is never going to happen. Mr X said he did not feel the department had given Miss X's consultant's letter of support proper consideration.
  12. Following this, there was a large amount of contact between the Council and Mr X and Miss X regarding how to progress with the concerns raised. The Council says it offered Miss X a meeting on 31 March 2017 with the Group Manager and Team Manager. It says Miss X refused this as she was unavailable and said that this would not be effective as the Group Manager and Team Manager had already been involved in the case. Miss X says the Council did not offer any such meeting so she could not have refused. The Group Manager escalated the issue to the Service Director who confirmed that the Corporate Director was also aware and that the Group Manager should meet with Mr X and Miss X.
  13. The Group Manager suggested that a new assessment of Miss X's care needs is completed before a meeting takes place. The Council records that it provided Miss X and Mr X with an update by email.
  14. Mr X complains about the delay in organising a meeting and requests to meet with the Corporate Director or Service Director. The complaint was then again referred back to the Service Director. The Service Director agreed to meet with Mr X and Miss X alongside the Group Manager. A meeting was proposed for 18 May 2018.
  15. Following this the Service Director requested that the meeting be put on hold until a new needs assessment was completed, however Miss X and Mr X refused a further assessment. The Council then suggested a further written response which was also refused by Mr X and Miss X.
  16. A meeting was eventually proposed again for 18 May. Miss X and Mr X were unable to attend on this date. A meeting was ultimately arranged for 31 May 2017. I have reviewed the Council's record of this meeting. The Council appears to have outlined its position and has recorded Miss X and Mr X's views.

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17. The Service Director sent a letter to Mr X and Miss X confirming the outcomes that were agreed during the meeting. These were that the Service Director agreed to:
- Send a copy of the most recent assessment and care plan to Miss X.
  - Clarify the amount the Council would fund for respite care.
  - Ask the Social Worker to arrange for someone to visit Miss X from the services that she has suggested to look firstly at Miss X accessing some social activities.
  - Ask the Social Worker to set out what support the Support Workers will provide as well as the arrangements regarding their mileage and meals.
  - The Social Worker to return the cheque sent in error to Adult care Financial Services on Miss X's behalf.
18. Following a further series of correspondence, Mr X contacted the Ombudsman to complain that the Council:
- Had not increased Miss X's care hours despite advice from medical professionals to do so.
  - Reneged on an agreement to pay for carer accommodation costs during Miss X's holidays once a year.
  - delayed at each stage of the process.

## **Findings**

### **Care Package**

#### **2016**

19. My investigation has reviewed the care needs assessments conducted by the Council in December 2016 and July 2017 and the associated care and support plans and reviews. The Council decided, following both assessments, not to increase Miss X's care provision from 18 hours to 22 hours, despite her request and letters from her consultant.
20. Council's must follow government legislation, guidelines and regulations to establish who is eligible for social care and support.
21. Council's use a care and support assessment to decide whether a person is eligible for support from it. The eligibility threshold is based on identifying how a person's needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing. To have needs which are eligible for support, the following three criteria must apply:
- The needs must arise from or be related to a physical or mental impairment or illness.
  - Because of the needs, the adult must be unable to achieve two or more of the following:
    - a. Managing and maintaining nutrition;
    - b. Maintaining personal hygiene;
    - c. Managing toilet needs;
    - d. Being appropriately clothed;
    - e. Being able to make use of the adult's home safely;
    - f. Maintaining a habitable home environment;
    - g. Developing and maintaining family or other personal relationships;

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- h. Accessing and engaging in work, training, education or volunteering;
  - i. Making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
  - j. Carrying out any caring responsibilities the adult has for a child.
- Because of not achieving these outcomes, there is likely to be, a significant impact on the adult's well-being.
22. Where local authorities have determined that a person has any eligible needs, they must meet these needs.
23. In December 2016 the Council recorded that Miss X had eligible care needs as it considered she could not meet the following outcomes;
- Maintaining a habitable home environment,
  - Developing and maintaining family or other personal relationships and
  - Making use of necessary facilities or services in the local community including public transport and recreational facilities or services.
24. Following an assessment, the Council uses a Resource Allocation System to calculate an Indicative Personal Budget amount based on the answers provided by the individual in the assessment. The indicative budget is intended as a guide and the amount of support a person receives will be determined during support planning process. Miss X's indicative personal budget was £75.03 per week. The Council's support package put in place following this review was £234 per week one to one care and £137.76 per week in respite care. The respite cost is what the annual respite package costs per week. This would therefore cost approximately £7163 per year.
25. Miss X and Mr X complained that the Council did not increase the support hours provided to Miss X. It is not my role to determine what support I think Miss X should have had. I must consider whether the Council conducted the assessment properly and considered the eligible needs when deciding what support is necessary to meet the identified needs. Following the complaint made to the Council about the outcome of this assessment, the Council offered to complete another assessment if Miss X and Mr X thought the previous assessment was not accurate, however Mr X and Miss X refused this. From the evidence, it appears the Council considered all of the relevant information and did not consider irrelevant information when considering what support Miss X required. Because I have not found fault in the way the Council conducted the assessment or made its decision, I cannot question the outcome.

## **2017**

26. In July 2017 the Council conducted its annual review of Miss X's assessment. This identified no eligible care needs. Because of this Miss X was not automatically eligible for support from the Council. However, the Council made a decision to apply discretion to enable Miss X to continue with the same level of support.
27. The Council did consider whether the Council conducted the assessment properly. From the evidence, it appears the Council considered all of the relevant information and did not consider irrelevant information when determining whether Miss X had eligible care needs. The information recorded on the 2016 and 2017 assessments shows that different information was provided and different answers to the questions make a decision to provide support, using its discretion. The Council recorded that it was felt that there could be a significant impact on Miss

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X's health and wellbeing if she was not provided with support to socialise and access the community. The Council's system determined an indicative budget of £31.10. However, the Council made a decision that Miss X could retain the level of support she already received. The cost of the weekly package was £279.18. Miss X was also given a respite package of £7400.32 per year.

28. It is not my role to determine whether Miss X has eligible care needs, but instead to consider whether the Council conducted its assessment properly. Again, my role is to Miss X and Mr X complained that the care package did not increase despite the letters sent by Miss X's consultant neurologist they also complain that the Council used the Resource Allocation System amount to explain why it would not increase Miss X's support.
29. When determining Miss X's care package, the Council has shown that it had regard to the letters from Miss X's consultant. It discussed these with Miss X and Mr X and replied to Miss X's consultant directly. The Council also explained that it obtained information from support workers when it conducted the 2017 assessment. I would expect the Council to consider information from health professionals alongside other information gathered in the assessment process.
30. I have reviewed Miss X's assessment and am satisfied that there was no fault in the way the Council decided how to meet Miss X's social care needs, because the assessment properly considered information provided by Miss X, Mr X and Miss X's neurologist and the Council carried out the assessment in line with the Care and Support Statutory Guidance.
31. I understand that Miss X and Mr X disagree with the Council's decision that Miss X did not require an increase in her support hours, however, I cannot challenge this decision because it appears the Council followed the correct procedure in making it.

### **Resource Allocation System**

32. The Council, on several occasions has referred to Miss X's indicative budget, calculated through its Resource Allocation System, being lower than the provision she receives. It appears to suggest that this is the reason for why Miss X's support should not be increased. While this may be a factor the Council would consider when determine a person's care plan to meet their needs, it is not, on its own, a valid reason to reduce or not increase a person's support.
33. In spite of the Council's explanation, there is no evidence to suggest the Council has relied solely on the indicative budget from the Resource Allocation System when determining Miss X's support plan. I am satisfied, that in both 2016 and 2017, it properly considered Miss X's needs when determining the support it provided. It is important to note that when considering the support package following the 2017 assessment, the Council was providing this, using its discretion. Miss X was not automatically entitled to support as it was considered that she has no eligible care needs Because I have found no fault in the way it reached its decision, I cannot question the decision itself.
34. While it was unhelpful for the Council to continue to use the Resource Allocation System to explain its decision not to increase Miss X's support hours, without properly reiterating that the Council considers the current package meets Miss X's needs, I do not consider this amounts to fault.

### **Reduction in respite provision**

35. It is important to recognise that the number of days of respite provision to Miss X and Mr X remains the same as the previous years that I am considering. There

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was a previous reduction in overnight respite care, however this does not form part of my investigation.

36. During the time period I am considering, Mr X chose not to have a carer's assessment. I therefore do not consider the Council to be at fault in not conducting one. The Council has, in any case, recognised that Miss X and Mr X need respite from each other and given that it has used its discretion to meet this need, it should do so. The respite package in place included two weeks where Miss X would be away from home. In such circumstances, it seems the Council would ordinarily arrange for a residential placement to take place. However, my understanding is that Miss X did not want to go to a residential placement for this respite period but instead wanted to go on holiday outside of the Council area.
37. Previously the Council agreed that it would arrange for a support worker to accompany Miss X to go on holiday outside of the County area to provide respite to both her and Mr X. The support worker would stay in the same room as Miss X overnight. The care provider then made a decision that its support workers would now require a separate room. Because of this the Council, during 2014 and 2015 provided an additional payment of £1000 per year to Miss X to pay for the accommodation of support workers when she went on holiday. This was agreed by the Council for 2014 and 2015. I have found nothing to suggest that this was agreed or intended to be an ongoing provision. By contrast the Council has provided me with an extract from the panel meeting where the decision was made to commission two £1000 payments. This said "Two one off direct payments of £1000. One backdated to 1.4.2014 and the second to be paid on 1.4.2015. This will enable costs to reflect current support plan and allow time for work to be carried out with family in reducing costs."
38. In 2016, the Council decided that it would no longer pay the one off £1000 payment. It has explained that this was because in February 2016 the Council introduced a Short Breaks for Service Users and their Carers policy. This policy states that the personal budget cannot be used for accommodation or food costs which remain the responsibility of the service user. The Council has explained that as a result of this policy, the £1000.00 was no longer available to Miss X which, the Council says, she was verbally informed of at the review of her care and support assessment during a home visit in April 2016. Mr X says that, at this time, the Council was told that this was unacceptable. In 2016 due to issues with providing Miss X and Mr X with a copy of Miss X's support plan the Council again paid £1000 as a one-off payment, however this was made in July 2016 and not in April 2016 as Miss X and Mr X expected. Mr X has explained that this meant his daughter had to borrow money from him to pay for her holiday. From the information I have, it seems there was no reason for Miss X and Mr X to expect that the payment would be made as it had not been agreed for that instance and was by all accounts discretionary.
39. I do not consider that the Council was at fault when it paid £1000 one off payment in July 2016, instead of April as Miss X and Mr X had expected. This is because Miss X and Mr X had been informed verbally that the payment would not be made, there is no indication this was promised previously and the payment was a discretionary decision, made at that time.
40. Miss X's assessment in 2017 does not identify any eligible care needs. As explained above, the Council has used its discretion to provide support to Miss X. The Council has identified the need to provide respite to Miss X and Mr X. Given that it has identified such needs, I would expect the Council to meet these needs. It is important to recognise that the needs the Council has agreed to meet are not

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that Miss X must go on holiday out of County. The Council has explained that the respite needs it has identified could be met through a residential placement, which Miss X is unwilling to consider. The Council has therefore agreed to fund support, generally, at an equivalent value as to what a residential placement would cost.

41. The Council has calculated a budget to meet the respite needs of Miss X and Mr X. It has used the cost of two weeks temporary residential care to calculate this budget. It has considered the wishes of Miss X, who does not want to go into a temporary residential placement and has agreed that she can use the available funding for support workers to support her whilst she goes on holiday. It is important to recognise that the needs identified by the Council do not include the need for an out of County holiday and so I would not expect the Council to fund this, over and above what it has agreed to pay for respite care. The Council is entitled to seek value for money, providing it is meeting the needs it has identified. Because of this, I do not consider the Council was at fault when it decided not to pay for accommodation for support workers during the time when Miss X took out of County holidays. This is because the Council has evidenced how it can meet the needs it has identified. The Council is entitled to meet a person's needs in the most cost-effective way. It also has a policy for out of County holidays which makes clear that personal budgets cannot be used to pay for support workers accommodation.

### **Delay**

42. As above, due to the significant amount of correspondence relating to this complaint, I have not included a timeline of all of the correspondence.
43. It is evident that there has been some delay throughout the process in providing Miss X and Mr X with a response to correspondence, at some points, for several weeks. It also seems that the Council caused delay and confusion when organising a meeting between Miss X, Mr X and the Service Director.
44. The Council has provided several reasons for specific delays. These include priority safeguarding work, personal circumstances and annual leave. It has also explained that communication with Miss X can be difficult due to her sleeping pattern and the lack of voicemail service on Miss X and Mr X's telephone. It has also said that correspondence has been sent to both the adult social care and complaints departments in the Council. I can see from the documents the Council has provided that it was attempting to find a resolution to the issues when arranging the meeting between Miss X, Mr X and the Service Director.
45. I acknowledge that there was some delay on the Council's part, throughout the process. However, I consider that the Council has provided rational reasons for the delay and has evidenced that, where possible, it was attempting to resolve the issues despite the delay. It would have been better if the Council had kept Miss X and Mr X informed of the delays, however, in the circumstances, I do not think this amounts to fault.
46. I do not consider the Council was at fault in the way it conducted Miss X's care needs assessments in December 2016 and July 2017 and the way it decided the outcomes of the associated care and support plans.

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## **Final decision**

- 47. The Council was not at fault in the way it assessed Miss X's social care needs or its decision not to increase her support hours. I also do not consider the Council was at fault when it decided not to continue to fund accommodation for support workers for Miss X's holidays.
- 48. Subject to further comments by Miss X, Mr X and the Council, I intend to complete my investigation.

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



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

Summary: The Ombudsman will not investigate Mr F's complaint that the Council has refused to provide a residential placement as part of his son's educational provision. Mr F has a right of appeal to a Tribunal against this decision and this is the only way of securing the outcome he seeks.

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## **The complaint**

1. The complainant, whom I shall call Mr F, complains that the Council will not pay for his son to have a residential placement at the school he already attends.

## **The Ombudsman's role and powers**

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
4. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
5. A child with special educational needs may have an Education, Health and Care (EHC) plan. This sets out the child's needs and what arrangements should be made to meet them. The EHC plan is set out in sections. We cannot direct changes to the sections about education, or name a different school. Only SEND can do this.

## **How I considered this complaint**

6. I have considered information provided by both Mr F and the Council. Mr F has had an opportunity to comment on my draft decision.

## **What I found**

7. Mr F's son, S, attends a school for children with autism. Mr F says that the opportunity has come up for S to have weekly overnight stays in the residential part of the school. He says that the school believes that this will benefit S's education significantly. He would like the Council to fund this as part of S's educational provision.

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8. The Council says that it does not consider that overnight stays are an educational need for S. It has now sent Mr F a final ECH Plan which does not specify a residential placement at the school. It suggests that Mr F could use funding he currently receives for respite care for S towards the cost of overnight stays if he wishes. It has advised Mr F that he has the right to appeal to SEND if he disagrees with the provision specified in the Plan. Ms F has indicated that he wants to do this.

### **Assessment**

9. Mr F has a right of appeal against the Council's decision not to include residential stays as part of the education provision set out in S's ECH Plan. This means that his complaint is outside the Ombudsman's jurisdiction.
10. I have considered whether we should make an exception and investigate notwithstanding the right of appeal. I consider that we should not because the Ombudsman, unlike the Tribunal, could not direct the Council to include the residential provision in the Plan. It is therefore reasonable to expect him to appeal as this is the only way to achieve the outcome he seeks.

### **Final decision**

11. I have decided that the Ombudsman should not investigate this complaint. This is because Mr F has a right of appeal and it is reasonable to expect him to use it.

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

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

Summary: Mr and Mrs B complain about the Council's actions when they approached it to adopt a child. Mr and Mrs B say this caused them significant distress and financial loss. The Council has accepted fault and offered a remedy. Mr and Mrs B are unhappy with the remedy. The Ombudsman finds fault with the Council. The Council agrees to reimburse Mr and Mrs B's costs, make a payment for avoidable distress and review its fostering and adoption policy.

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## **The complaint**

1. Mr and Mrs B complain about the Council's actions when they approached it to adopt a child, C. The Council has accepted fault and offered a remedy. Mr and Mrs B are unhappy with the remedy.

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

## **How I considered this complaint**

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

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## What I found

### What happened

6. This chronology includes key events in this case and does not cover everything that happened.
7. In June 2018, Mrs B emailed the Council. Mrs B said her and her husband would like to be considered as adopters for C. Mr and Mrs B are relatives of C. C was living in foster care.
8. In July 2018, Council records say C's social worker completed a viability assessment for Mr and Mrs B. However, the copy provided by the Council is dated September 2018. There are no records of this meeting.
9. In August 2018, C's social worker and a fostering social worker met with Mrs and Mr B to discuss the care of C and to start a family and friends fostering assessment. Mr and Mrs B said they would like to adopt C. The social workers advised Mr and Mrs B to foster to adopt so C could live with them sooner. Mr and Mrs B agreed. However, a foster to adopt assessment was not undertaken. The Council continued with the family and friends fostering assessment.
10. Mrs B says the social workers told them C could be placed with them that month. The social workers told Mr and Mrs B about documents and equipment they would need and adaptations they would have to make to their home. The fostering social worker's view of this meeting was that C's social worker suggested that pending a legal planning meeting and the result of the fostering assessment, a plan would be made to transition of C into their care.
11. Following this meeting, the fostering social worker emailed Mr and Mrs B and listed changes they needed to make to their home and items they needed to buy to meet fostering standards. The fostering social worker commented, 'the following are required to help ensure C's safety in your care'. The fostering social worker told Mr and Mrs B the Children's Social Care department could support them to buy the equipment and furniture needed. The fostering social worker asked Mr and Mrs B to contact her when they had met the requirements.
12. Mrs B emailed C's social worker to say the fostering social worker had said they had been accepted to care for C. Mrs B said the fostering social worker had told her to speak to her about financial support to buy items for C.
13. C's social worker emailed the fostering social worker about the email sent by Mrs B. In the email, C's social worker said, 'Mrs B states she has had confirmation from yourself that the couple have been 'accepted' to care for C.' The fostering social worker emailed C's social worker and suggested Mr and Mrs B had 'gotten a little bit ahead of themselves'. The fostering social worker shared that Mrs B wanted an update because she would like to tell her employer of the plan. The fostering social worker said she had advised Mrs B that 'it should be fine' for her to start preparing their spare room for C.
14. C's social worker left to take a planned extended period of leave. There is no evidence the Council told Mr and Mrs B about this. It was a month before C's new social worker responded to Mr and Mrs B's requests for an update.
15. Mr and Mrs B started to prepare to look after C. They decorated a room for her, altered their home and told their relatives.
16. Mrs B emailed the Council to say she had been unable to get in touch with C's children's social worker. This message was forwarded to the fostering social

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worker because C's social worker was not available. There is no evidence the Council replied to Mrs B.

17. The fostering social worker emailed C's social worker's team manager. The fostering social worker advised the team manager that C's social worker's part of Mr and Mrs B's family and friends fostering assessment was outstanding. The fostering social worker commented that Mr and Mrs B 'are aware that I will be making a positive recommendation and have been proactive in preparing their home for C in the meantime'.
18. In September 2018, the Council assigned a new social worker to C.
19. Mrs B emailed C's new social worker asking for an update. Mrs B explained they wanted to adopt C but were told by the previous social worker that C could live with them sooner if they fostered to adopt.
20. C's social worker visited Mr and Mrs B. Mr and Mrs B told the children's social worker they were confused about the process. They explained social workers who visited them in August 2018 told them to apply to foster to adopt as this would be quicker. Mr and Mrs B said they thought they had been through the assessment, had been approved to care for C and it was just a matter of time before C would live with them. Mrs B explained that she had arranged adoption leave with her employer. C's social worker told them she understood permanency for C had not been agreed and that she would check with her manager and get back to them about this. C's social worker advised Mr and Mrs B the Council would pay for them to get legal advice.
21. The following day C's social worker sent Mr and Mrs B an email and wrote, 'I will also speak to our legal department about the plan which was to place C with you.' Mrs B replied to C's social worker asking whether foster to adopt was happening or if they had been misadvised.
22. C's social worker replied to Mr and Mrs B. She said there would be a court case in October 2018 to discuss the long-term plan for C. Mr and Mrs B say this was the first time the Council told them the case needed to go to court; 9 working days before the hearing. C's social worker told Mr and Mrs B to get legal advice and said the Council would pay £250 towards legal fees, 'to support you both in making a decision about the long-term care needs of C in deciding if you are able to offer permanency for C throughout her childhood.' C's social worker told Mrs B a manager would contact to discuss concerns about the advice she had been given to adapt her home.
23. C's social worker emailed Mr and Mrs B and told them the Council was going to court to seek an interim care order for C. C's social worker explained an interim care order would allow the Council to share parental responsibility with C's mother.
24. The Council completed its viability assessment of Mr and Mrs B. The viability assessment recommended Mr and Mrs B as potential carers for C.
25. Mr and Mrs B sought legal advice. The solicitor told them the court case was to seek a special guardianship order. Mr and Mrs B wanted to adopt C, not to become her special guardian, and they withdrew from proceedings.
26. In October 2018, Mr and Mrs B complained to the Council about:
  - Social workers giving them wrong information about adoption;

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- The Council not listening to them when they said they were only interested in adoption;
  - Social workers leading them to believe C would be placed with them and this would happen quickly;
  - Poor communication; and
  - Confusion about the legal support the Council would provide.
27. A team manager and C's social worker met with Mr and Mrs B to discuss their complaint. Mr and Mrs B said because they were told they could not adopt C and they had lost confidence in the Council, they were withdrawing from the process. The team manager challenged Mr and Mrs B's account of what the social worker had told them in the meeting in July 2018. The Council have been unable to provide a record of this meeting and the social worker involved went on long-term leave in mid-August 2018. It is unclear what evidence the team manager had to support her claims. Mr B told the manager he was being honest about what happened. Mr and Mrs B were distressed by the meeting.
28. The following day, Mr and Mrs B emailed the complaints team to say they were upset by the visit because the team manager had challenged their account of what had happened. Mr and Mrs B said they found the team manager insensitive and rude. Mr and Mrs B said the meeting was intimidating and asked for all future correspondence to be by email. Mr and Mrs B also said they felt the team manager was trying to shift the blame from her team to the family and friends fostering team.
29. In November 2018, the Council responded to Mr and Mrs B's complaint. The Council recognised there was a lack of clarity between C's social worker and the fostering social worker. The Council accepted because of this, Mr and Mrs B could have been under the impression that C would definitely live with them. The Council reflected that it would have been better if workers had been clearer about C's care plan and the likelihood of C being placed with Mr and Mrs B. The Council also accepted it had told Mrs B she could prepare their spare room for C.
30. The Council offered Mr and Mrs B £1000 as a "goodwill gesture".

### **Analysis**

31. The Council did not explain the process of care planning, the likelihood of C being placed with them or the purpose of the fostering assessment clearly. Mr and Mrs B believed the Council was assessing them to foster to adopt. However, the Council were assessing them as family and friends foster carers. This is despite, Mr and Mrs B clearly stating they wanted to adopt C.
32. Mr and Mrs B contacted the Council more than once to raise concerns about the process and make their position clear; see paragraphs 8, 10, 13, 20 and 21. These were opportunities for the Council to manage their expectations and correct any misunderstandings. The Council did not take these opportunities to explain the process.
33. The children's team and the family and friend fostering teams did not work together effectively and this contributed to Mr and Mrs B being given mixed messages about the long-term care of C.
34. The Council is at fault for not explaining the foster to adopt and the family and friends fostering options clearly to Mr and Mrs B. It is also at fault for not correcting their belief that C would definitely be placed with them. The outcome of these failures was that Mr and Mrs B believed they would be able to adopt C and

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prepared for this. Mr and Mrs B spent money on adapting their home and buying equipment. They also invested emotionally.

35. Further to this, the lack of working together between the two Council departments hindered the complaints process and caused Mr and Mrs B further distress.
36. The £1000 “goodwill gesture” offered by the Council covers the money Mr and Mrs B spent preparing for C to come and live with them. It does not remedy the avoidable distress Mr and Mrs B experienced because of the Council’s faults. Mr and Mrs B believed C would live with them. The Council knew this, had opportunities to correct their misunderstanding but did not.

### **Agreed actions**

37. Within one month, the Council should:
- Reimburse Mr and Mrs B £1000 to cover the cost of decorating C’s room, buying equipment and adjusting their home in preparation for C, and getting legal advice.
  - Pay Mr and Mrs £1000 for the avoidable distress caused by the Council’s faults.
38. Within two months, the Council should:
- Review its fostering and adoption policies and procedures to make sure the information given to potential foster carers and adopters is clear and accurate.
  - Provide complaint management training to team managers involved in this case.

### **Final decision**

39. I have completed my investigation and uphold Mr and Mrs B’s complaint. Mr and Mrs B have been caused an injustice by the actions of the Council. The Council has agreed to remedy that injustice.

### **Investigator’s final decision on behalf of the Ombudsman**



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

Summary: The Ombudsman will not investigate Mr X's complaint about a Council social worker's action. It is reasonable to expect Mr X to complain to the Health and Care Professions Council and it is unlikely we could achieve a significant remedy.

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## **The complaint**

1. The complainant, whom I shall call Mr X, says a Council officer wrongly advised his ex partner and called him a liar.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify the cost of our involvement, or
  - it is unlikely further investigation will lead to a different outcome, or
  - there is another body better placed to consider this complaint. (*Local Government Act 1974, section 24A(6), as amended*)

## **How I considered this complaint**

3. I considered the information Mr X provided with his complaint and the Council's reply which it provided. Mr X had an opportunity to comment on a draft version of this decision.

## **What I found**

### **Back ground events**

4. Mr X has a child with an ex partner Ms Y. Mr X says in early February 2019 a Council social worker told Ms Y to stop allowing Mr X contact with their child. Mr X says the social worker also lied about him, and referred to an old assessment report rather than a more recent one.

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5. Mr X complained to the Council. It replied by mid March 2019. It apologised for the advice given to Ms Y. It agreed to change the social worker allocated to the case. A manager met with Mr X to discuss the case and the Council was reassessing the child's care.
  6. Mr X says since then the Council decided the child should have a child protection plan. He says he has applied to Court for it to decide the child's care arrangements.

### **Analysis**

7. We cannot decide the child's care arrangements. This issue is now before the Courts to decide.
8. It is reasonable to expect Mr X to report his concerns about the professionalism or integrity of an individual social worker, to their professional body, the Health and Care Professions Council.
9. The Council has changed the social worker and held a multi agency meeting, called a Child Protection Conference, to consider the child's welfare and care. It is unlikely our investigation could achieve more.

### **Final decision**

10. The Ombudsman will not investigate this complaint. This is because there is another body better placed and is unlikely we could achieve a significantly different outcome.

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

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

Summary: Mrs X complained fault by the Council led to her mother overpaying for home care. The Ombudsman finds the Council was at fault for not providing enough information when Mrs X's mother moved from funding her care privately to getting direct payments from the Council. The Council has agreed to give Mrs X further written explanations and, if her mother paid the care agency more than she should have done, refund the difference. It will also amend staff guidance to prevent the fault recurring.

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## **The complaint**

1. Mrs X complained the Council failed to follow procedures about informing a care provider when her mother, Mrs Y, moved from privately arranged home care to direct payments. Mrs X says because of this the care agency invoiced Mrs Y at the wrong, higher, rate. The agency has now changed the rate and backdated the change to an extent. But Mrs X says Mrs Y has still overpaid for the first 30 weeks of being on direct payments.

## **The Ombudsman's role and powers**

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

## **How I considered this complaint**

4. I have considered information from:
  - Mrs X's complaint, telephone conversations with her and documents she has sent me; and
  - The Council's response to Mrs X through its complaints procedure and its response to my enquiries.
5. I have also considered:

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- The Care Act 2014
  - The Care and Support Statutory Guidance 2014 (“the Guidance”)
  - The Care and Support (Charging and Assessment of Resources) Regulations 2014 (“the Regulations”)
6. I gave Mrs X and the Council the opportunity to comment on a draft of this decision before making this final decision.

## **What I found**

### **The Care Act’s provisions about providing information**

7. The Care Act places a duty on councils to provide information and advice about care and support for people in its area. The Guidance says councils should make all reasonable efforts to ensure information and advice they give meets an individual’s requirements, is comprehensive and is given at an early stage. It says councils must seek to ensure all relevant information is available to people for them to make the best informed decision in their particular circumstances.

### **Charging for home care**

8. Where a council arranges home care and support to meet a person’s needs, it may charge the adult for the cost of the care. The Guidance and Regulations state that people who have over the upper capital limit set by the Council are expected to pay for the full cost of the care they receive at home. However, once their capital has reduced to less than the upper capital limit, they only have to pay an assessed contribution towards their fees.
9. Councils must assess the means of someone who has less than the upper capital limit, to decide how much they can contribute towards the cost of home care. I refer to the amount decided from this process as the assessed contribution. A council must tell the person what their assessed contribution is.
10. A council’s care and support planning process will identify how best to meet someone’s care needs. As part of that, the council must provide the person with a personal budget. The personal budget is the cost to the council of meeting the person’s needs which the council chooses or is required to meet.
11. Councils can make direct payments to a person to pay for some, or all, of their personal budget. Someone receiving direct payments contracts with the care agency directly.
12. The direct payment and assessed contribution should come to the same amount as the personal budget. If a care agency charges more for the care it provides than the personal budget, the person receiving care can choose to pay the extra amount. The extra amount can be referred to as a ‘top-up’.

### **The Council’s direct payments policy**

13. The Council’s policy says it will:
- provide information about direct payments and ensure that service users who choose to receive a direct payment understand their roles and responsibilities; and
  - monitor the status of, and carry out financial audits of, service user accounts.

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## What I found

### Background

14. Mrs Y received care at home from a care agency (the Agency). She had an hour visit every morning and a half hour visit every evening. At the start she funded the care herself. Mrs Y's capital then went below the threshold for self funders.

### July – December 2017

15. In July 2017 the Agency was charging Mrs Y £11.40 for each half hour visit and £19.40 for each hour visit. This was the Agency's self-funders rate and was a higher rate than it charged people on direct payments. Mrs X and Mrs Y were unaware the Agency charged different rates.
16. In early July 2017 the Council assessed Mrs Y's needs. It agreed she was eligible for care and support. The assessment said the next step was to arrange a direct payment to fund her current care package. The assessor also prepared a support plan for Mrs Y. The plan set out her support as an hour visit every morning and a 45 minutes visit every evening – a total of 12.25 hours a week. Using a rate of £15.20 per hour the plan said the personal budget for this was £186.20 a week.
17. By early August 2017 Mrs X and Mrs Y had signed a direct payment agreement with the Council. The agreement said by having direct payments Mrs Y was responsible for arranging and managing her support. The agreement made clear Mrs Y was in control of the direct payment but she nominated Mrs X as the person to help with the management of the direct payment account.
18. In the agreement Mrs X and Mrs Y said they would set up a separate bank account for the direct payments and use them to buy care from the Agency. They also said Mrs Y would pay any assessed contribution into the direct payment account every four weeks. The Council agreed its assessment workers would make sure Mrs Y had a financial assessment and paid her assessed contribution into her direct payment account every four weeks. The Council agreed its Adult Care Financial Services (ACFS) would carry out the financial assessment to decide how much the contribution towards the direct payments would be and pay. The Council said ACFS would pay the direct payment into the direct payment bank account every four weeks and tell Mrs Y about any changes to the direct payments or assessed contributions.
19. In early August 2017 the Council assessed Mrs Y's contribution towards her care.
20. On 1 September 2017 a Council officer, Officer A, recorded she spoke to Mrs X and said when Mrs Y moved over to direct payments she should have been asked to top up the account because the Council would not pay the Agency over the 'managed rate' of £15.20. Officer A noted Mrs X was fine with this and would top up to remain with the Agency. Officer A said she would contact Mrs X the next week to tell her what Mrs Y's contribution and top-up would be. The Council says the case notes showed Officer A advised Mrs X it was Mrs X's responsibility to contact the Agency to confirm the rate payable. However the case notes make no mention of this.
21. Officer A then completed a further support plan for Mrs Y. It said the Council would pay direct payments towards 10.5 hours of care a week at a rate of £15.39 per hour. The personal budget for this was £161.60 a week. The support plan did not refer to Mrs Y's assessed contributions or any top-up needed. The Agency was still charging Mrs Y its self-funders rate of £11.40 for each half hour visit and £19.40 for each hour visit.

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22. The Council's records show it sent a letter to Mrs Y on 11 September 2017. The letter confirmed she would receive a backdated payment for direct payments due from 6 July 2017. The Council would then pay direct payments to her every four weeks in advance. The letter confirmed her assessed contribution and said she would need to pay this into her direct payment account. The direct payment and assessed contribution amounted to £186.20 a week. The letter made no reference to the Agency's different rates for self-funders and people receiving direct payments or to the need for any top-up payments. The Agency was charging Mrs Y £215.60 a week as a self funder, a difference of £29.40 a week.
23. Mrs Y had not received the letter by 19 September 2017 when Mrs X rang Officer A as she had heard nothing about funding. Officer A's note of the call says:
- Officer A told Mrs X Mrs Y's letter should be received shortly, Mrs Y should open the separate account needed, Mrs Y could add the contribution and top-up and then pay this to the Agency.
  - Mrs X said she would open the new account the same day to pay in the cheque.
  - Officer A worked out the top-up due to the Agency as being £6.40 a week. She noted this was the difference between the Agency's 'managed hourly rate' of £15.39 per hour and the 'DP hourly rate' of £16 per hour.
  - Officer A noted *"(Mrs X) was happy with this and understood this"*
24. In early October 2017 Officer A closed the case. The closure summary said the family had been made aware of the Agency's rate and what the Council would pay up to and were happy to make top-up payments to remain with the Agency.
25. Mrs Y continued to pay the Agency according to its self-funders rate and continued to receive 10.5 hours care a week. Mrs X managed the payments by transferring the Council's direct payments from the new direct payment account to Mrs Y's personal account, then paying the Agency in full from that personal account.

### **January – May 2018**

26. The Council's Adult Care Financial Service (ACFS) checked Mrs Y's finances in January and February 2018. ACFS sent alerts to Officer A in January and February because there was no record on the support plan of a top-up having been discussed with Mrs Y, and Mrs Y appeared not to be making her assessed contributions as she should have been. ACFS recorded the top-up as being £54 a week. ACFS asked that Officer A contact Mrs X to explain the need for a top-up and decide whether the underpaid assessed contribution should be addressed. ACFS also said in future Mrs Y must make all payments to the Agency from the direct payment account, not her personal account.
27. Officer A recorded she tried to call Mrs X in mid February 2018 and left a message asking her to call back. There is no record of further contact until 9 May 2018.
28. ACFS's records say Mrs Y started to use a new account from early February 2018.
29. On 9 May 2018 Officer A rang Mrs X again and spoke to Mr X. Officer A recorded she had called to discuss contributions and top-ups. Mr X said Mrs X had sorted the issues with top-ups and was now putting the correct amount into the direct payment account and paying the Agency. The record does not show what figures

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this entailed. Officer A said she would amend the support plan to include reference to the top-up.

30. In early May 2018 Officer A amended Mrs Y's support plan. The plan says the reason for the update was to include the top up fee which had been discussed previously by telephone but not been included on the support plan. The plan said Mrs Y was to get the same direct payment as before, but added she would also need to pay her assessed contribution and a top-up. By then ACFS had amended the assessed contribution for 2018/19 to be £80.60 a week. The plan says the assessed contribution was £80.60 every four weeks. The top-up was recorded as £6.41 a week, the difference between the Agency's rate of £16 per hour and the £15.39 per hour which was the maximum the Council would pay.
31. By May 2018 the Agency was still charging Mrs Y its self funders rate which was now £12 for a half hour visit and £19.98 for an hour visit.
32. Later in May 2018 Officer A contacted the Agency. She said she understood the Agency's direct payment rate was £17 an hour so did not understand why Mrs Y appeared to be paying at a higher rate. The Agency said no-one had told it Mrs Y was getting direct payments from the Council. It confirmed the Agency's self-funder rates were higher than its direct payment rates. The Agency agreed to change the rate but said it could only backdate the direct payment rate to early May 2018. Later the Agency agreed to backdate the rate to 12 February 2018.

### **Mrs X's complaint to the Council**

33. In July 2018 Mrs X complained to the Council. She said Mrs Y was owed money from July 2017 to January 2018.
34. On reviewing the case the Council realised it had calculated its direct payment on the basis that Mrs Y would get 12.25 hours. However her then current plan said she would get 10.5 hours care a week and she had only ever received 10.5 hours care a week. In August 2018 the Council made a one-off payment to Mrs Y's direct payment account of £1412.05 as she had paid for 15 minutes more care each day than she had received.
35. The Council wrote to Mrs Y in September 2018 to say the one-off payment was being made. The letter said Mrs Y would already have discussed and agreed with her social care worker what the payment could be used for and offered further clarification if needed. Mrs X says she does not understand why the payment has been made and has not used it.
36. Mrs Y now both pays for and receives 12.25 hours care a week.
37. However, the Council did not accept it should pay for the difference between the Agency's self funders rate and its direct payment rate between July 2017 and January 2018. The Council considered it was Mrs X and Mrs Y's responsibility to negotiate the appropriate rate with the Agency and Officer A had advised them of this.

### **Findings**

38. Mrs X and Mrs Y did not know the Agency charged a different rate for self-funders compared to people receiving direct payments from the Council. They had always contracted directly with the Agency and just thought the Council was now contributing towards what they paid. They had no reason to think the Agency's rate would change because of the Council's financial help.
39. The Council had a duty to seek to ensure Mrs Y had the information she needed to make informed decisions about moving from being a self-funder to having

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direct payments. The Council should have been aware that moving to direct payments could alter the rate the Agency charged. The Council should either have checked the Agency's rates or advised Mrs X and Mrs Y to check them. There is no evidence anyone at the Council advised Mrs X going on to direct payments might alter the rate payable and that she should confirm the rate payable with the Agency. The direct payment agreement gave no indication this might be an issue. The Council failed to provide the relevant information about rates when it should have done and that is fault.

40. The Council's fault led to the Agency continuing to invoice Mrs Y at a higher rate than it would have done had it known she had moved to direct payments. But, from the evidence I have seen, it is not clear how the Council's fault has affected Mrs Y's finances overall. The Council should now assess this.
41. The Council's fault also led to Mrs X spending avoidable time and trouble trying to sort out Mrs Y's finances.

### **Agreed action**

42. Within two months the Council will write to Mrs X to explain for the period from 6 July 2017 to 11 February 2018:
- both the Agency's and the Council's direct payment rates, and what direct payments the Council paid Mrs Y;
  - what assessed contributions and top-ups (if any) Mrs Y should have paid had she been charged at the Agency's direct payment rate;
  - what assessed contributions and top-ups Mrs Y did pay;
43. If Mrs Y paid more than she should have done, the Council will then refund the difference.
44. Within two months the Council will make changes to its staff guidance on direct payments. The changes will ensure staff are aware that if someone moves from being a self-funder to receiving direct payments staff must advise them they need to check with the care provider to see if there is a different rate for someone receiving direct payments.
45. Within six weeks of a final decision the Council will pay Mrs X £100 to acknowledge her time and trouble trying to sort out the problems caused by the Council's failure to provide enough information.

### **Final decision**

46. I have now completed my investigation because the Council's actions will remedy the injustice caused by its fault.

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



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

Summary: The Ombudsman will not investigate this complaint about highways works carried out by the Council more than three years ago. The complaint is made too late.

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## **The complaint**

1. The complainant, who I refer to here as Mr B, has complained about bollards, a bus stop and parking restrictions installed by the Council on roads near his home. He says these present a safety risk and the Council will not tell him what risk assessments it carried out.

## **The Ombudsman's role and powers**

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate. It says we cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

## **How I considered this complaint**

3. I have considered what Mr B said in his complaint which included the Council's response to his concerns. Mr B commented on a draft before I made this decision.

## **What I found**

4. The Council carried out the works Mr B complains about more than three years ago.

## **Final decision**

5. I have decided we will not investigate this complaint. This is because Mr B did not complain within 12 months of knowing about the matter and there is no exceptional reason he could not have complained to us earlier.

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

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

Summary: On Ms B's behalf, Ms X complains about the amount of money the Council leaves Ms B to live on given the level of Ms B's disability. The Ombudsman will not investigate the complaint because there is no evidence of fault by the Council and an investigation by the Ombudsman would achieve no useful purpose.

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## **The complaint**

1. Ms X complains on behalf of her daughter, Ms B, that the Council's assessment of Ms B's level of contribution towards her care and support package is unfair and leaves her with insufficient funds.

## **The Ombudsman's role and powers**

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

## **How I considered this complaint**

3. In considering the complaint I spoke to Ms B and reviewed the information Ms X provided, including the Council's response to the complaint.

## **What I found**

4. Ms B is severely disabled and Ms X complained to the Council on her behalf about the amount of money Ms B is left to live on once the Council has calculated Ms B's contribution to her care and support package.
5. The Council responded by explaining to Ms X that its complaints procedure could not override or change a policy decision made by Council Committee. It advised

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that it is responsible for calculating the maximum amount a person can contribute towards their care and support and explained the national regulations under which it must operate. It told Ms X that its revised contribution policy would bring the Council in line with many other local authorities and the national guidance given to councils by central government. It encouraged Ms B to check with its Finance Team to ensure she is claiming for all the benefits she is entitled to.

### **Assessment**

6. The Ombudsman cannot review the merits of a council policy nor propose a change or amendment to it when it complies with national guidance. There is no evidence of fault by the Council and no useful purpose to be served by an investigation by the Ombudsman.

### **Final decision**

7. The Ombudsman will not investigate the complaint because there is no evidence of fault by the Council and an investigation by the Ombudsman would achieve no purpose.

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