

The Ombudsman's final decision

Summary: Ms X complained about how the Council assessed her mother Ms Y's care and support needs and about how it handled the financial assessment and Ms Y's financial contribution. There was no fault in the way the Council assessed Ms Y's care needs, in the support it identified she required or in the way it assessed her financial contribution. The Council was at fault for delays in notifying Ms Y of her contribution, for delays in responding to Ms X and for the way it recouped an overpayment which left Ms Y without sufficient funds to pay for her care. The Council has agreed to waive four weeks of Ms Y's contribution and make a payment to Ms X to acknowledge the distress and frustration caused. It has also agreed to review its processes to prevent a recurrence of the faults identified.

The complaint

1. Ms X complained on behalf of her and her mother Ms Y about her mother's care and support and how the Council has handled Ms Y's financial assessment and her contribution to her care costs. In particular she complained the Council:
 1. failed to allocate sufficient care hours to meet Ms Y's needs and failed to carry out a review six weeks after the care started. This caused Ms X additional strain as she had to meet Ms Y's needs.
 2. delayed advising them of Ms Y's contribution to her care costs and then delayed telling them a debt had accrued. Ms Y cannot afford to pay the debt and this has caused her distress.
 3. stopped paying its contribution to the care costs in July 2020 without giving them any notice which left Ms Y without the funds to pay for her care and meant Ms X was not paid as she should have been
 4. failed to ensure there were sufficient funds in the direct payment account from the start so Ms X was only paid for 15 hours of support she provided each week and not the 19 hours of support Ms Y was assessed as needing.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the

complaint. I refer to this as ‘injustice’. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

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

How I considered this complaint

4. I have considered the information provided by Ms X and have discussed the complaint with her on the telephone. I have considered the Council’s response to my enquiries and the relevant law and guidance, including the Care Act 2014 and the Care and Support Statutory Guidance.
5. I gave Ms X and the Council the opportunity to comment on a draft of this decision. I considered the comments I received in reaching a final decision.

What I found

Relevant law and guidance

Assessment of needs

6. A council must carry out an assessment of any adult who seems to need care and support. The assessment must be of the adult’s needs and how they impact on their wellbeing and the results they want to achieve. Having identified eligible needs through a needs assessment, the council has a duty to meet those needs.
7. If a council decides a person is eligible for care, it must prepare a care and support plan. The support plan may include a personal budget which is the money the council has worked out it will cost to arrange the necessary care and support for that person. The detail of how the person will use their personal budget will be in the care and support plan. The personal budget must always be an amount enough to meet the person’s care and support needs.
8. Direct payments are monetary payments made to individuals who ask for one to meet some or all of their eligible care and support needs. They provide independence, choice and control by enabling people to commission their own care and support to meet their eligible needs.
9. Under the Care and Support (Direct Payments) Regulations 2014 direct payments should not be used to pay for care from a close family member living in the same household, except where the council determines this is necessary to meet the person’s needs.

Charging for adult social care

10. The Care Act 2014 sets out the legal framework for charging. Councils can make charges for care and support services they provide or arrange. They must do so in line with the Care and Support (Charging and Assessment of Resources) Regulations 2014. Charges may only cover the cost the council incurs.
11. Councils must assess a person’s finances to decide what contribution he or she should make to a personal budget for care. The assessment must comply with the principles in law and guidance, including that charges should not reduce a person’s income below Income Support plus 25% (also known as the minimum income guarantee). The Council can take a person’s capital and savings into account subject to certain conditions. If a person incurs expenses directly related

to any disability he or she has (disability related expenditure), the Council should take that into account when assessing his or her finances. (*Care Act 2014 Department for Health, 'Fairer Charging Guidance' 2013, and 'Fairer Contributions Guidance' 2010*)

What happened

12. Ms Y is elderly. She has Alzheimer's disease and physical health conditions including arthritis. In late December 2019 Ms Y moved to the Council's area to be nearer her daughter. In January 2020 she requested direct payments to meet her care and support needs. In the council area where she lived previously, Ms Y received direct payments which she used to pay her daughter Ms X to provide her 24.5 hours per week of care and support as Ms Y would not accept support from anyone else.
13. The Council assessed Ms Y's needs. It considered Ms Y had eligible care needs. Her needs included support with medication and personal care, meal preparation and domestic tasks. It assessed Ms Y required 19 hours of support per week for support four times a day plus additional weekly support with shopping and domestic tasks.
14. Ms Y chose to continue using the same third-party direct payment support service she had used previously to manage the direct payment. She wanted Ms X to continue to provide her care and support. As Ms Y received direct payments it was her responsibility, with the help of the third-party direct payment support service, to manage the direct payments and to pay Ms X. The Council sent Ms X a financial assessment form so it could calculate Ms Y's contribution to her personal budget.
15. The Council wrote to Ms Y in February 2020. The letter set out that Ms Y would receive her personal budget as a direct payment and set out how much she would receive each week. It said *'once we have completed a financial assessment...you may have to pay towards your support'*. It went on to say that if Ms Y did have a contribution to pay this would be backdated to January 2020. The Council started paying direct payments for the full amount of the personal budget to Ms Y's third-party direct payment support service to ensure Ms X could be paid.
16. The Council did not receive a completed financial assessment form and so contacted Ms X. She said they had not received it and so the Council agreed to resend it. Ms X and Ms Y completed and returned the financial assessment form to the Council in early March 2020.
17. In late April 2020 the social worker telephoned Ms X. Ms X was unhappy with the level of the personal budget. The social worker explained they were satisfied the level of the personal budget was appropriate to meet Ms Y's needs. They had contacted the previous council where Ms Y lived but it had not provided any information to persuade them to change their view. The notes record they offered Ms X contact details to make a complaint if she was dissatisfied but Ms X declined these.
18. The Council wrote to Ms Y in May 2020 setting out her contribution to her personal budget. Ms X says they did not receive this letter.
19. In July 2020 the Council's audit team contacted Ms X to advise Ms Y had not paid her personal contribution and so Ms Y owed the Council nearly £3000. Ms X could not understand the level of debt and said she would contact the Council's finance team who provided her with a copy of the financial assessment. The Council stopped making payments into Ms Y's account. The third-party direct

payment support service contacted the Council as there was insufficient money in the account to pay Ms X's wages.

20. In late August 2020 Ms X rang the finance team. She said she had contacted the finance team and left messages but it had no record of this. She was unhappy with the level of Ms Y's contribution. The finance team explained how Ms Y's contribution was calculated. It advised her to contact the customer services centre if she considered Ms Y's disability related expenditure was wrong or if she felt there were issues of affordability. Ms X called the customer services centre to report they had not received the letter of May 2020 and Ms Y could not afford to pay her assessed contribution or the debt.
21. In September and October 2020 the records show Ms X contacted the Council a further four times to ask to discuss the direct payments. She said she had not received the letter of May 2020 and had not been paid. The Council responded to Ms X and agreed to reassess Ms Y's needs.
22. In October 2020 the Council reviewed Ms Y's care and support needs. It agreed to increase her support to 24 hours per week. The social worker noted this was '*due to a deterioration in [Ms Y's] condition*'. Ms X contacted the Council again to report she did not consider Ms Y could afford to pay her contribution. In October 2020 Ms Y started to pay her assessed contribution towards the cost of her care package. The social worker advised Ms Y would be invoiced for her contribution and could then apply to pay by instalments. Ms X remained unhappy and complained to the Council.
23. In December 2020 the Council started paying into the direct payment account again.
24. In December 2020 the Council agreed to increase Ms Y's disability related expenditure to £28 backdated to January 2020 to account for additional chiropody costs paid by Ms Y.
25. The Council responded to Ms X's complaint. It was satisfied the level of the support package was appropriate and that this was reviewed by the social worker when they spoke to Ms X in April 2020. It said Ms X was advised Ms Y was not contributing to her personal budget in July 2020 but Ms X did not contact it again until September 2020. It was satisfied the contribution was correctly calculated and had since increased the support to 24 hours per week following a further assessment. It acknowledged Ms X considered Ms Y required 24-hour care but based on the needs assessment it did not agree this was the case. It said it could not waive the charge as Ms X and Ms Y were aware a financial contribution would apply. The Council accepted it delayed writing to Ms Y between early March 2020 when it assessed her contribution and May 2020. It apologised for this.
26. It explained the direct payment had not stopped. However, payments were suspended until it had offset against the amount 'overpaid'. It said it would have expected Ms Y to liaise with the third party direct payment support service. However if she wanted the Council to liaise with it in future she should send through authorisation.
27. Ms X remained unhappy. She reiterated she was not aware of the debt until July 2020. She said the demand for the money had caused hardship and stress. She explained that due to Ms Y's anxiety and high risk of falls she should have 24 hour care. She asked for the debt to be resolved, a reassessment and for her wages to be paid.

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28. In February 2021 the third-party direct payment support service contacted the Council. It said it never received any notification from the Council about Ms Y's personal contribution. It had not been possible to pay Ms X for more than 15 hours a week from the start as the budget was not sufficient. It was now receiving the contribution but could not pay Ms X the back payment owed as there was insufficient in the account.
29. In February 2021 the Council responded to Ms X at the second stage of its complaints' procedure. It explained the direct payment in the account was suspended as Ms Y should have made backdated payments into the account and the continued monthly contribution she was expected to make. It acknowledged it should have explained this more clearly when it wrote to Ms X in May 2020. It said if Ms Y had made the payments she was meant to, there would have been no gaps in the payments made to Ms X. The Council said Ms Y could speak to its financial services team if she could not afford the backdated full amount.
30. It was satisfied the temporary reduction in funds was correct to recoup the additional monies paid by the Council originally to cover the full personal budget. It said the failure to pay Ms X was the result of Ms Y not paying her full contribution. It said this was an employment issue between Ms X and Ms Y. It agreed to waive the personal contribution due for five weeks between April and May in recognition of the delay in completing the financial assessment. Ms X remained unhappy and complained to the Ombudsman.

Findings

Allocation of care hours and review

31. It is for the Council, not the Ombudsman, to decide how much support an individual requires to meet their eligible needs. The Council was not required to fund 24 hours a week of care just because this was funded by the previous council. The Council was required to ensure Mr Y received sufficient budget to fund the care and support necessary to meet the needs identified in the assessment and set out in the support plan. The Council assessed Ms Y's needs and contacted the previous council to discuss the level of support it had funded. It was satisfied Ms Y's needs could be met with 19 hours of funding. There was no fault in the way it reached this decision so I cannot question it.
32. The Council contacted Ms X in April 2020 to discuss the care hours. Ms X did not consider the funding was sufficient, but the Council was satisfied the care hours were sufficient to meet Ms Y's needs. It referred Ms X to its complaints' procedure, but Ms Y did not pursue this at that time. When it reviewed Ms Y's care needs in October 2020 it increased her support to 24 hours per week to reflect a deterioration in her condition. The Council was not at fault.

Delay advising of contribution to care costs

33. The Council's records show it sent Ms X a financial assessment form in January 2020 and Ms Y the outcome of her financial assessment in May 2020. Ms X says she did not receive these but I cannot say that was due to Council fault.
34. The Council has calculated Ms Y's financial contribution to her care charges in line with the relevant statutory guidance, regulations and its own policy. It took into account her income and disability related expenditure. There was no fault in the way it carried out the financial assessment. If Ms Y has evidence of additional disability related expenditure or housing costs which should be taken into account it is for her to provide this to the Council.

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35. The Council delayed calculating the financial contribution between March and May 2020. This was fault. The Council has already waived the contribution for five weeks to reflect this. That was an appropriate remedy.
36. There was a lack of clarity and clear communication around the management of the direct payments. A third-party organisation was employed to manage the direct payments but the Council was reluctant to contact them. It failed to notify the organisation of Ms Y's financial contribution. The Council agreed Ms X could be paid as a carer but in doing so it should have ensured Ms Y understood her responsibility to manage the direct payment and was clear about the responsibilities and role of the third-party organisation to avoid any conflict of interest with Ms X's role as a paid carer. The failure to do this was fault. The consequence of this fault was confusion for Ms X and lack of clarity about the funding situation.

Stopped paying its contribution

37. When it calculated Ms Y's contribution the Council stopped making payments into her direct payment account to reflect the amount she had been overpaid. The Council failed to clearly explain this would happen. This was fault. Ms Y did not receive the financial assessment letter and so was not aware of her contribution until July 2020. By which time Ms Y was not financially able to fund the backdated contribution of nearly £3000. Ms X contacted the Council in August and several times in September and October 2020 to discuss the affordability of the contribution and her concerns she had not been paid. When it did reply in October 2020 it advised Ms X that Ms Y would be reassessed but did not discuss how Ms Y could address the debt. It was not until late in November 2020 Ms X was told Ms Y would be invoiced for the contribution and at that point she could apply to pay by instalments. This delay in responding to Ms X is fault and added to the debt owed. This has left Ms Y with a large debt for her backdated contribution and meant Ms X did not receive the payments she was due as Ms Y's paid carer.

Not allocated sufficient funds to pay Ms Y for the hours worked

38. Ms Y receives direct payments. Ms Y's direct payments are managed by a third party organisation on her behalf. As such it is her responsibility, with the help of the third-party direct payment support service, to manage the direct payments and to pay Ms X. The Council has paid its contribution to the cost of Ms Y's care.
39. The Council initially paid an amount equivalent to the full budget into Ms Y's direct payment account. Ms X only received payment equivalent to 15 hours a week, not 19 hours. I cannot say why the third-party direct payment support service did not pay her for the full 19 hours but that was not Council fault
40. Money is owed to Ms X but this money is owed to her by Ms Y not the Council. I recognise, had Ms Y paid a third party and not her daughter to provide support, the Council may have stepped in and paid the full contribution at the time before arranging for Ms Y to pay back the debt to prevent the care package breaking down. In these particular circumstances I cannot say the Council should pay Ms X only for it to then pursue Ms Y for the debt. However given the delays identified above, I consider the Council should reduce the debt to reflect the injustice this caused.

Agreed action

41. Within one month of the final decision on this complaint the Council has agreed to:

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- a) apologise to Ms X and Ms Y for the distress caused by the faults identified and waive a further four weeks of Ms Y's contribution to her care package.
 - b) pay Ms X £250 to acknowledge the distress, frustration and additional carer's strain she was placed under by the Council's faults.
 - c) Explain the options to Ms Y of how she can pay the outstanding contribution.
 - d) Clarify the responsibilities of Ms X, Ms Y and the third-party direct payments support service in managing Ms Y's direct payments to ensure there is no conflict of interest and each person's role is clearly understood.
42. Within three months of the final decision the Council should review its procedures to ensure there is a suitable arrangement in place to manage direct payments and responsibilities are clearly understood where, due to exceptional circumstances, a family member is providing paid care.

Final decision

43. I have completed my investigation. There was fault leading to injustice which the Council has agreed to remedy.

Investigator's decision on behalf of the Ombudsman

The Ombudsmen's final decision

Summary: We do not consider Nottingham and Nottinghamshire Clinical Commissioning Group acted with fault when it withdrew Mr U's night-time funding from a jointly funded care package with Nottinghamshire County Council. However, both organisations acted with fault handling Mr U's complaints. That caused him significant time and trouble which they should remedy with a financial payment and service improvements.

The complaint

1. Mr U complains that Nottinghamshire County Council (the Council) and Nottingham and Nottinghamshire Clinical Commissioning Group (the CCG) reduced his jointly funded care package in 2019. They stopped his night-time care without considering advice from his GP or a Neurologist. Mr U says the reduced support has impacted his physical health (choking, mobility, hydration, nutrition needs and access to toilet) and mental health (counselling for anxiety and depression). Mr U would like the Council and CCG to apologise, provide a financial remedy, and reconsider its decision.
2. Mr U also complains about how the Council and CCG handled his complaints. He said they have not followed the right procedures handling his complaint. Also, their communication was poor. Mr U says this compounded the distress he has suffered. He would like the organisations to apologise, provide a financial remedy and review the way it handles complaints from people with jointly funded care packages.

The Ombudsmen's role and powers

3. The Ombudsmen investigate complaints about 'maladministration' and 'service failure'. We use the word 'fault' to refer to these. If there has been fault, the Ombudsmen consider whether it has caused injustice or hardship (*Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1), as amended*).
4. If it has, they may suggest a remedy. Our recommendations might include asking the organisation to apologise or to pay a financial remedy, for example, for inconvenience or worry caused. We might also recommend the organisation takes action to stop the same mistakes happening again.
5. The Ombudsmen cannot question whether an organisation's decision is right or wrong simply because the complainant disagrees with it. We must consider

whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended, and Health Service Commissioners Act 1993, sections 3(4)- 3(7)*)

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

How I considered this complaint

7. I have considered information provided by Mr U and the organisations. Mr U, the Council and the CCG had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Key facts

8. Since 2007, the Council funded support for Mr U's daytime care and the CCG funded Mr U's night care.
9. By June 2016, the CCG funded a carer seven nights a week to support Mr U when choking (associated with excessive saliva), and to provide other personal care.
10. Three years later, the Council and CCG carried out a joint review of Mr U's health and social care needs using a Decision Support Tool (DST). The CCG's Continuing Healthcare (CHC) panel could not decide if Mr U's risk of choking was still a problem. He used medication to manage excessive saliva and had not received support from the Speech and Language Therapy (SALT) team in seven years. The panel decided to refer Mr U back to SALT to assess his night care needs, specifically his excessive saliva and choking risk. It also agreed to review 12 months' worth of night care records to better understand his needs at night.
11. On 27 July, the Council completed a review of Mr U's care and support needs. It recognised Mr U's choking risk, but the CCG did not consider it was a health need. Mr U said he needed an overnight carer if he needed to take a drink or use a urine bottle. The Council referred Mr U to a district nurse to support his toileting need. Mr U was not aware of the referral and later refused that support.
12. SALT visited Mr U twice on 24 July and 5 August 2019. On 22 August, SALT reported that: "[Mr U's] *coughing is reported with saliva, food and drink on a daily basis.*" Also, "[Mr U] *reports he can wake up coughing during the night at times. He is able to roll himself onto his back and sit himself up with his propping bed at night to take a drink.*" SALT recommended that people should fully supervise Mr U when he takes food and drink.
13. On 5 August 2019, the CHC panel decided Mr U did not have any health needs. His needs were social and the Council could meet those. SALT had not identified any choking risk associated with excessive saliva. That included a review of 12 months night-time care from Mr U's care provider.
14. On 13 August 2019, the CCG told Mr U it would stop funding for night care.
15. On 30 August 2019, Mr U's landlady and carer, Ms V, told the CCG that Mr U disagreed and wished to appeal the CCG's decision. He was unhappy that his care provider had not been recording his choking at night. In response, the CCG attached its appeals process for CHC decisions.

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16. On 10 September 2019, the CCG tried to informally resolve Mr U's concern. It decided to carry out another joint review of Mr U's needs with the Council and extended its night care funding to November.
 17. On 4 November 2019, Mr U and Ms V met with the Council and CCG to discuss the result of the joint review. The CCG decided its decision to remove the night-time care stood. Ms V appealed the CCG's decision for Mr U. In response, the CCG sent Ms V a copy of its complaints procedure. Ms V said she would like to put in a further appeal for Mr U. The CCG said there was no policy to appeal jointly funded packages of care, so she should make a complaint.
 18. At the same meeting, Mr U and Ms V discussed his night-time needs with the Council. The Council said Mr U should use his direct payments and personal assistants to support his drinking needs at night, and to use his urine bottle. Mr U rejected that idea. The Council referred Mr U for a continence assessment by a district nurse. A week later, Mr U raised his concerns about the Council's assessment again. He queried the complaints process. The Council passed his complaint to Person 1 to investigate his concerns.
 19. On 5 and 8 November 2019, Ms V confirmed she was corresponding with the CCG on Mr U's behalf.
 20. On 12 November 2019, Mr U registered a formal complaint to the CCG about the decision. Two days later, Mr U attached a letter from his Neurologist who had concerns about the CCG's decision (in addition to his own).
 21. On 20 November 2019, the CCG told Mr U its investigation would consider how it carried out the June DST. A week later, Mr U confirmed his specific concerns.
 22. On 2 December 2019, the Council sent its complaint response to Mr U. It said the SALT report did not identify any choking issues at night. Its support at that time met his health and social care needs, and gave him flexibility (with a personal budget) to decide how to support himself.
 23. Mr U chased the CCG on 9 December 2019. He attached the letters from his Neurologist and GP with concerns. The same day, Mr U asked the Council to escalate his complaint to the next stage.
 24. On 13 December 2019, the Council told Mr U it had escalated his complaint to Person 2 to review, who would most likely respond in the New Year.
 25. On 15 January 2020, the CCG sought Mr U's consent for Ms V to act for him. Ms V said she was simply the voice of Mr U; she did not have her own complaint.
 26. The next day, the CCG carried out a second DST.
 27. On 27 January 2020, the CCG sought Mr U's consent again. Also, if the result of the DST did not change, he should appeal. Ms V attached Mr U's consent the next day.
 28. A week later, Mr U and his MP chased a response from the Council. The Council said Person 2 had not finished the investigation but hoped to within three weeks.
 29. On 27 February 2020, the CCG told Ms V it would send its complaint response on 30 April, which was 65 working days since receipt of the signed consent form (received 29 January).
 30. In mid-April 2020, the CCG confirmed it had paused its investigation because of COVID-19 for three months. It apologised and hoped to respond by the end of July.

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31. On 2 May 2020, Person 2 asked the Council if Mr U's complaint was closed. The Council said their response to Mr U was still outstanding.
 32. In late June 2020, a professional advocate said Ms V was confused if the CCG was formally investigating Mr U's complaint. The CCG apologised that it did not send a letter confirming that.
 33. In late August 2020, the advocate chased the CCG's complaint response. The CCG said it was still waiting for a response from the CHC team.
 34. In mid-September 2020, Mr U raised a new complaint to the Council. He said it had delayed responding to his complaint.
 35. On 7 October 2020, Mr U asked LGSCO to investigate his complaint against the Council and CCG.
 36. On 8 October, the Council provided its final response. It recognised it had delayed responding to his complaint. However, his care package meets his assessed needs. Mr U should complain about health issues to the CCG.
 37. In mid-October 2020, the advocate chased the CCG's complaint response. The CCG confirmed it was drafting Mr U's response but could not confirm when it would be sent to him.
 39. In early December 2020, the CCG provided its final response to Mr U's complaint. It apologised for the delay responding to him. It recognised there were discrepancies with the June 2019 DST, but the result would not have been different. The CCG also said the information from the Neurologist and GP did not change the outcome of the June 2019 DST.

Analysis

The CCG's removal of night-time funding

40. The Department of Health's *National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care* (November 2012 (Revised)) (the National Framework) is the key guidance about Continuing Healthcare. It states that where an individual is eligible for Continuing Healthcare funding the CCG is responsible for care planning, commissioning services and case management.
41. CHC is a package of ongoing care that is arranged and funded by the NHS where a person has been assessed as having a 'primary health need'. A person's local Clinical Commissioning Group (CCG) is responsible for assessing their eligibility for CHC. A nurse will usually co-ordinate a full multidisciplinary assessment and complete a Decision Support Tool (DST) form. The DST is a record of the relevant evidence and decision-making for the assessment. If, after a full multidisciplinary assessment a person disagrees with the CCG's decision that they are not eligible for CHC or FNC, they can ask the CCG to review its decision.
42. A local authority may carry out a needs or carer's assessment jointly with another body carrying out any other assessment in relation to the person concerned, provided that person agrees. In doing so, the authority may integrate or align assessment processes to better fit around the needs of the individual. An integrated approach may involve working together with relevant professionals on a single assessment.
43. Where more than one agency is assessing a person, they should all work closely together to prevent that person having to undergo a number of assessments at different times, which can be distressing and confusing. Where a person has both health and care and support needs, local authorities and the NHS should work

together effectively to deliver a high quality, coordinated assessment. (*Care and Support Statutory Guidance 2014*)

44. Any review of jointly funded care packages should be carried out jointly by the CCG and the Council. The National Framework does not provide detailed guidance on how to carry out jointly funded care package reviews. In 2018, the Council and the CCG developed a protocol for jointly funded reviews. It says when there is a material change to someone's needs, they will carry out a joint team assessment and complete a new DST.
45. By June 2019, the Council and CCG had not reviewed Mr U's care and support for around four years. I consider the Council and CCG acted appropriately by deciding to review Mr U's care and support in June 2019 using the DST. They recognised he had not had a joint review in several years, so they needed to ensure his support reflected his level of needs.
46. I cannot say the CCG was wrong when it decided to withdraw funding for Mr U's night-time support. Rather, I have focussed on the way the CCG and Council made that decision.
47. For Mr U's night-time needs, the Panel clearly wanted to better understand the significance of Mr U's choking at night, in relation to his support (overnight carer). I understand why they decided to review 12 months of care records and why they also sought SALT's view on his choking risk.
48. The CCG said there was no evidence of Mr U choking in 12 months' worth of night-time records. I have reviewed those same records and I agree. Mr U disputes the accuracy of the records. He says he was choking after drinking during the night. But his care provider never recorded that. I do not doubt Mr U's version of events. However, based on the evidence available to the CCG, I do not consider it acted with fault when it decided there was no evidence of Mr U's choking at night.
49. The SALT assessment noted Mr U needed to be fully supervised when eating and drinking owing to his risk of choking. The CCG recognised that risk and decided to fund three hours of support during the day, but not at night. I have seen evidence that Mr U was drinking at night (in the 12 months of care records). The CCG says there was no evidence of Mr U choking when drinking at night. It added Mr U's choking risk was more associated with eating during the day.
50. I consider the CCG has provided a robust explanation why it considered the risk of choking was more severe during the day. It has balanced Mr U's views and made robust enquiries to better understand Mr U's needs at night. While I appreciate Mr U disagrees with the CCG's decision, I cannot say it made that decision with fault.
51. Mr U says the CCG did not consider evidence from his GP and a Neurologist which supported the reinstatement of his night-time support.
52. In November 2019, the Neurologist said Mr U's excess saliva was worse than normal which meant he struggled to swallow, triggering choking episodes. Therefore, he needed 24-hour care. He said it would not be safe for Mr U to be left alone for an extended period.
53. In December 2019, the GP said Mr U would not be able to drink if he was unaccompanied at night. So Mr U should receive full support at night. In response, the CCG said the Council supported Mr U at night through a direct

payment. Mr U can manage his own support at night using that payment. The evidence shows Mr U received some support at night from Ms V.

54. The CCG spoke with the Neurologist to discuss his letter and gain a better understanding of Mr U's medications for his excessive saliva. The CCG told me it decided to carry out a second DST to fully assess Mr U's health and social care needs. That DST also considered the GP and Neurologist's views.
55. I have reviewed the January 2020 DST. That DST recognised the Neurologist's concerns. It said: "*High choke risk, excessive saliva treated with Botox (currently low local supply) waiting for appointment*". However, the CCG and Council still agreed there was little evidence Mr U was choking at night.
56. Overall, I am not persuaded the CCG acted with fault when it decided to remove Mr U's night-time funding. Its decision considered the relevant evidence, the views of Mr U and other professionals. It has provided a robust explanation why the Council can safely support his night-time needs. The CCG also formally documented that decision as part of a DST.

The support for Mr U's night-time needs

57. Where councils have determined that a person has any eligible needs, they must meet those needs. When the eligibility determination has been made, councils must provide the person to whom the determination relates (the adult or carer) with a copy of their decision.
58. The Care Act 2014 gives councils a legal responsibility to provide a care and support plan (or a support plan in the case of a carer). The care and support plan should consider what the person has, what they want to achieve, what they can do by themselves or with existing support and what type of care and support may be available in the local area. When preparing a care and support plan the council must involve any carer the adult has. The care and support plan may include a personal budget, which is the amount of money the council has worked out it will cost to arrange the necessary care and support for the person.
59. The CCG decided it was the Council's responsibility to support Mr U's needs at night. The Council said it provided Mr U with a direct payment to pay for his night-time support. It would not fund an overnight carer to support Mr U. As Mr U refused to employ a full-time personal assistant to support his needs at night, there was no formal plan to support his night-time needs.
60. I have considered the Council's assessment and support for Mr U's needs at night. I do not consider the Council acted with fault. It carried out a robust review of Mr U's needs in July 2019. The Council considered his views and the existing support he received. I am satisfied the Council's suggestion that he should use his direct payment to support his night-time needs was proportionate and appropriate to meet his needs.

Complaint handling

61. The complaints procedure for councils and NHS organisations is set out in the Local Authority Social Services and NHS Complaints (England) Regulations 2009. The provisions of the regulations mean that anyone who is dissatisfied with a decision made by the council or NHS is able to make a complaint about that decision and have the complaint handled by the council or NHS.
62. Section 9 is about complaints that concerns more than one responsible body. It states that, in these circumstances, the responsible bodies must co-operate in handling the complaint. This includes duties to: establish who will lead the

process; share relevant information; and provide the complainant with a coordinated response.

63. The CCG told me it did not have a formal agreement with the Council to jointly handle complaints about joint health and social care packages, such as Mr U's. It decided it was their responsibility to respond to the complaint because it was about the decision to remove night-time support.
64. I consider the Council and CCG would have better addressed Mr U's complaint by jointly handling his complaints. The CCG decided to withdraw night-time funding. However, before it decided that, it worked with the Council to determine Mr U's health and social care needs. Therefore, when addressing his complaint, I consider it was a missed opportunity for both organisations to respond together. That was fault.
65. Below I will consider how each organisation handled Mr U's complaint separately.
66. First, I will consider how the CCG handled Mr U's complaint.
67. The CCG told me it did not consider Mr U's complaint as a formal appeal because Mr U was not contesting his eligibility for CHC. Rather, the CCG's decision to amend an existing joint care package. Therefore, it agreed to consider his complaint under the complaint policy.
68. I agree the appeal route would not have been suitable in Mr U's case. The CHC appeal route is for people who wish to challenge a decision that someone is not eligible for CHC. Mr U's main complaint was the removal of his night-time support. I am not persuaded the CCG should have considered Mr U's communication as an appeal.
69. Between August and November 2019, the CCG agreed to review its decision with the Council. I do not consider that was fault. That was an appropriate way to address Mr U's concerns. Once it decided its August 2019 decision stood, it appropriately shared its Complaints Policy with Mr U. I do not consider the CCG acted with fault.
70. I consider the CCG should have been ready to start its complaint investigation at the end of November 2019. By then, Mr U's complaint was clear, and the CCG should have sought his consent at that time, as per its Complaints Policy. Instead, it took the CCG another two months to obtain Mr U's consent. It was clear from November that Ms V was acting on behalf of Mr U. She specifically mentioned that. That delay was fault. I consider it should have started its investigation sooner than it did.
71. When the CCG started its investigation (late January 2020), it should have completed its investigation by the end of April. It should have completed most of its investigation when it decided to pause its investigation for three months (from mid-April). I do not find fault with the CCG's decision to pause its investigation. Under the circumstances, NHS complaints were not a priority and I understand its reasons for pausing all complaint work. However, after the CCG restarted complaint investigations, I am not satisfied the CCG provided its response in a timely manner.
72. It took the CCG another five months to send its response (even with the COVID-19 pause) which was much longer than 65 working days. That was fault. According to its Complaint Policy, the CCG should agree an extension with the complaint if its response is likely to take over 65 working days. The CCG did not do that in this case. Also, it only communicated with Mr U when his advocate

chased a response from the CCG. I do not consider the onus should have been on Mr U and his advocate to chase the CCG's final response.

73. I understand how the CCG's complaint handling caused Mr U frustration and time and trouble. The CCG has already apologised for the delay sending its response. However, I consider it should take further action to remedy the injustice Mr U suffered.
74. Now I will move on to the Council's complaint handling.
75. I consider the Council sent its first response to Mr U's complaint within 20 working days (of 4 November 2019). That was in line with its Complaints Policy.
76. When Mr U returned to the Council and escalated his complaint, it should have sent its second (and final) response within another 20 working days. However, it did not and instead took 10 months. That was fault. The Council's evidence showed that no one seemed to take control of Mr U's complaint.
77. The repeated delay led Mr U to raise a new complaint about the delays. Overall, I consider the Council's lack of internal communication, and with Mr U, was fault. That caused Mr U time and trouble chasing the Council's response.
78. The Council has apologised to Mr U for the delays caused by ongoing assessments of his needs, and COVID-19. However, I consider it should take further action to remedy the injustice Mr U suffered.

Agreed actions

79. Within four weeks of this decision, the CCG and the Council should pay Mr U £200 and £300, respectively, for the injustice Mr U suffered from their handling of his complaints.
80. Within eight weeks of this decision:
- The CCG and Council ensure there is process so that both organisations can jointly address complaints about jointly funded care packages.
 - The Council and CCG respectively ensure all relevant staff are aware of their responsibilities to not delay complaint investigations.

Final decision

81. I do not consider the CCG acted with fault when it withdrew Mr U's night-time funding from a jointly funded care package with the Council.
82. However, both organisations acted with fault handling Mr U's complaints. That caused him significant time and trouble which they should remedy with a financial payment and service improvements.

Investigator's decision on behalf of the Ombudsmen

The Ombudsman's final decision

Summary: Mrs X complained about the Council's conduct of a safeguarding investigation. There is no fault in how the Council involved Mrs X in the investigation or shared Mrs X's personal data. There is fault in the Council's failure to consider relevant evidence. The Council also delayed sending Mrs X minutes of a safeguarding meeting and took too long to complete the investigation. This is fault. The Council has agreed to apologise, pay Mrs X £250 and review its findings.

The complaint

1. Mrs X complains about the Council's conduct of a safeguarding investigation. In particular, she says the Council:
 - Took too long to conduct the investigation
 - Delayed sending her documents and minutes
 - Denied her the opportunity to contribute to the investigation
 - Ignored relevant evidence
 - Shared confidential information about her with third parties
2. Mrs X says this caused her unnecessary distress and has negatively affected her mental health.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. I spoke to Mrs X about the complaint and considered the information she provided.
7. I made written enquiries of the Council and considered its response along with relevant law and guidance.
8. I referred to the Ombudsman's Guidance on Remedies, a copy of which can be found on our website.
9. Mrs X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

10. A council must make necessary enquiries if it has reason to think a person may be at risk of abuse or neglect and has needs for care and support which mean he or she cannot protect himself or herself. It must also decide whether it or another person or agency should take any action to protect the person from abuse or risk. *(section 42, Care Act 2014)*
11. In May 2019, the Council began an investigation to Mrs X's involvement with the care and support of a vulnerable adult, whom I will call Ms Z.
12. In order to protect Ms Z's anonymity, I will not set out the specific nature of her needs or of Mrs X's relationship to her.
13. The Council was concerned about Mrs X's involvement in Ms Z's care package. In particular, whether she had an inappropriate financial interest in Ms Z's care package.
14. The Council's investigation was complex and it took a long time. In February 2021, it concluded its investigation. It found that its safeguarding concerns were substantiated. This means it found that Mrs X had acted in a way which put Ms Z and her care at risk.
15. Mrs X complains about how the Council conducted this investigation.

My findings

16. I will deal with each element of Mrs X's complaint in turn.

Length of the investigation

17. Mrs X says the Council took much too long to complete the safeguarding investigation.
18. In response to my enquiries, the Council says that the investigation took a long time because of the complicated nature of Mrs X's involvement. It also explained the impact of COVID-19 and staff illness on its ability to conduct the investigation.
19. Although the reasons the investigation took so long are understandable, it nonetheless took the Council much longer than the four weeks its policy states. This is a fault.
20. This caused Mrs X additional distress and uncertainty at an already difficult time. This is an injustice to Mrs X.

Delay providing minutes

21. The Council interviewed Mrs X in September 2020. However, it failed to provide her with the minutes of this interview until it responded to her complaint in March 2021.

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22. The Council says it accepted it had failed to send the minutes and had apologised to Mrs X.
 23. Not to send the minutes to Mrs X was fault. This denied Mrs X the opportunity to comment on the accuracy of the record of the meeting and caused avoidable frustration. This is an injustice to Mrs X.

Denied the opportunity to contribute

24. Mrs X says the Council denied her the opportunity to contribute fully to the investigation.
25. The Council says it would not have been appropriate for it to discuss the matter with Mrs X until it had gathered the necessary evidence. It says this was necessary to protect Ms Z and to prevent any opportunity for altering or disposing of evidence.
26. There is no fault in the Council's decision not to discuss the safeguarding concern with Mrs X until it had gathered evidence.
27. Once it had gathered the evidence, the Council met with Mrs X to discuss the matter. Mrs X had the opportunity to explain her role in Ms Z's care and to respond to the Council's concerns.
28. Mrs X may consider that matters could have been resolved more quickly had it spoken with her sooner, or indeed that the outcome of the investigation would be different had it done so. However, it is for the Council to decide how to conduct its investigation and its primary concern must be the welfare of the vulnerable adult. Therefore, I do not find that the Council denied Mrs X the opportunity to contribute to the investigation.

Ignored relevant evidence

29. Mrs X says the Council failed to consider relevant evidence before deciding that the safeguarding concern was substantiated.
30. In particular, she says the Council did not talk to Ms Z's housing provider. Mrs X says this was necessary to understand her involvement in Ms Z's care.
31. There is no evidence the Council considered whether it should seek information from the housing provider. In response to my enquiries, it says it did not consider it necessary. However, there is no evidence it weighed up this decision at the time.
32. Given the serious nature of the Council's findings and the complex nature of Ms Z's care arrangements, I consider the Council's failure to seek information from the housing provider to be fault.
33. As a result, there is uncertainty about whether the Council's findings would have been different were it not for the fault. This is an injustice to Mrs X.

Shared confidential information

34. Mrs X says the Council shared confidential information about her, and the investigation, with third parties. She says this violated her privacy and is a breach of data protection regulations.
35. The Council's records show that it did discuss the safeguarding concern with third parties. However, these third parties were all relevant to the investigation. The records also show that the Council Officer conducting the investigation informed these third parties that the matter was a confidential one.

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36. I find no fault with how the Council dealt with Mrs X's personal information as part of its safeguarding investigation.

Agreed action

37. To remedy the injustice to Mrs X from the faults I have identified, the Council has agreed to:
- Apologise to Mrs X in writing
 - Pay Mrs X £250 in recognition of her avoidable distress, uncertainty, and frustration.
 - seek information from the housing provider about Mrs X's role in setting up and maintaining Ms Z's tenancy and consider whether the information provided affects its findings. Notify Mrs X and other relevant parties accordingly.
38. The Council should take this action within four weeks of my final decision.

Final decision

39. I have completed my investigation. There is some fault by the Council. The action I have recommended is a suitable remedy for the injustice caused.

Investigator's decision on behalf of the Ombudsman