

The Ombudsman's final decision

Summary: There was no fault in the Care Home's actions in relation to falls experienced by Mr and Mrs P or the information in their care plans about their mobility. However, the Care Home was at fault when it failed to update Mr and Mrs P's next of kin, Mr X, about these and other incidents. Although Mr X was not caused a significant injustice, the Council should make service improvements to prevent a reoccurrence. There was no fault in how the Council decided to take the value of the Mr and Mrs P's property into account when deciding what they could afford to pay for their care.

The complaint

1. Mr X complained the care provided to his parents, Mr and Mrs P, after the Council arranged for them to move into residential care, did not meet their needs. Specifically, he said:
 - a) the Council should have placed his mother in a nursing home because she needed nursing care;
 - b) they experienced frequent falls and the Care Home failed to update the family following them; and
 - c) the Care Home did not hold appropriate information about his mother's mobility needs, or his father's need to have his food blended.
2. Mr X also complained the Council:
 - a) failed to properly explain top-ups when he agreed to his parent's residential placement; and
 - b) wrongly decided not to apply a discretionary property disregard to his parent's house which he states he has lived in since before they moved into care.
3. Mr X said that as a result, his parents' health has been put at risk because they did not receive the care they needed, which also caused him distress. Mr X also says that if the Council refused to apply the property disregard, he would be made homeless.

The Ombudsman's role and powers

4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us

about something a council/ has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

5. Mr and Mrs P went into a care home as opposed to a nursing home in April 2020 and Mr X agreed to pay the top-ups around the same time. I can see no good reason why, if Mr X was unhappy about these issues, he could not have raised this earlier with us. Therefore, I will not investigate complaints 1a) and 2a).
6. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
7. We 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*)
8. Part 3 and Part 3A of the Local Government Act 1974 give us our powers to investigate adult social care complaints. Part 3 is for complaints where local councils provide services themselves. It also applies where a council arranges or commissions care services from a provider, even if the council charges the person receiving the care. In these cases, we treat the provider's actions as if they were council actions. (*Part 3 and Part 3A Local Government Act 1974; section 25(6) & (7) of the Act*)
9. We may investigate complaints from the person affected by the complaint issues, or from someone they authorise in writing to act for them. If the person affected cannot give their authority, we may investigate a complaint from a person we consider to be a suitable representative. (*Section 26A or 34C, Local Government Act 1974*)
10. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

11. I considered information provided by the Council and Mr X.
12. I considered the Care Act 2014 (the Act) and Care and Support Statutory Guidance 2014 (the Guidance).
13. Mr X and the Council had an opportunity to comment on my draft decision. I considered their comments before making a final decision.

What I found

Paying for care

14. Where a council arranges care and support to meet a person's needs, it may charge the adult, except where the council must arrange care and support free of charge.
15. If the person lives in a care home and has over £23,250 capital, known as the upper capital limit, they must pay the full costs of their care.
16. Below this level, a person can seek means-tested support from the council. This means that the council will carry out a financial assessment of the person's assets

and will make a charge based on what the person can afford to pay. Where a person's resources are below the lower capital limit of £14,250, they will not need to contribute to the cost of their care and support from their capital.

Deferred payments

17. Deferred payment agreements are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. Under a deferred payment agreement, the outstanding costs of a person's care and support are recouped when their property is sold.

Property disregard

18. A person's property must be disregarded by the council (ie not taken into account when calculating what they can afford to pay for their care) for 12 weeks under certain circumstances. These include when someone first enters a care home as a permanent resident.
19. A person's property will also be disregarded under other circumstances. These include where it is occupied by a relative who is aged 60 or over or is incapacitated. In these cases, it must be the relative's main residence and they must have lived there in the time prior to the person going into a care home. Under these circumstances, the property is disregarded completely unless or until something changes.

What happened

20. Mr and Mrs P went into the Care Home as permanent residents in April 2020. The Care Home fell within the boundaries of the City Council, although the County Council remained responsible for Care Home's actions because it was the council responsible for placing them there. This investigation concerns the actions of the County Council.
21. At this time, the government had introduced new charging arrangements because of the COVID-19 pandemic. This meant all their care was paid for them until September 2020, when these arrangements ended.
22. The Care Home drew up a care plan for each of them. These recorded they were both at high risk of falls. They detailed their levels of mobility and the support they required.
23. In mid-2020, Mr P had an infection which caused him some trouble with eating and drinking. A speech and language therapist assessed him in September 2020 and said the infection had cleared and Mr P could have a normal diet and fluids. There was no record he needed his food blending.
24. When the following events occurred, Mr and Mrs P were self-isolating in their rooms, in line with other residents, because of the COVID-19 pandemic.
25. On 12 February 2021, Mr P had a fall. The Care Home called the paramedics and Mr P was admitted to hospital where he had a scan and then returned to the Care Home.
26. On 13 February, Mr P had a second fall. The paramedics attended again and considered he was safe to stay in the Care Home. Whilst they were still there, the hospital phoned to say the scan from the day before showed Mr X had a small bleed on the brain. He was admitted to hospital again and discharged later that day.
27. The Care Home updated Mr P's care plan to reflect what had happened and the steps it had taken to prevent a reoccurrence.

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28. The Care Home raised a safeguarding alert with the City Council (as it was located within its geographical area – see paragraph 20 above). It concluded there was no evidence of abuse or neglect, and the fall could not have been prevented given the recommendation for residents to isolate because of the pandemic. It was satisfied with the actions taken by the Care Home and, therefore, the referral did not meet the threshold for an enquiry and was closed.
29. Mrs P also had two falls in February. One was unwitnessed. The Care Home called the emergency services and paramedics attended. They recommended Mrs P stay at the Care Home with 15 minute checks. Later that day Mrs P became unwell and the emergency services were called again and Mrs P was admitted to hospital. She returned the following day after a scan showed no concerns. The Care Home amended the way they supported her when mobilising to reduce the risk of a reoccurrence.
30. The Care Home raised another safeguarding alert with the City Council. After investigating it came to same conclusion as it did with Mr P in paragraph 27 and the incident was closed.
31. In March 2021, Mr X complained to the Care Home about the issues in paragraphs 1 and 2 of this decision statement. With regard to Mr X's wish that the Council apply a discretionary property disregard, Mr X said he moved into the property's annex in June 2019 and into the house in April 2020 when Mr and Mrs P went into the Care Home. Mr X said the property was on one level which made it easier for him to manage as he had a disability.
32. The Council responded in April 2021. It made the following points:
- Mr P had two falls on 12 and 13 February. Because they were close together, the Care Home forwarded a urine sample to Mr P's GP who confirmed he had a UTI. The GP prescribed antibiotics and the family was informed. Mr P experienced no other falls subsequently;
 - Mrs P also had two falls in February. The first was in her room and was due to a combination of her leaning forward to get into her wheelchair and a member of staff not following the Care Home's policies on use of equipment. The Care Home had amended Mrs P's care plan so two members of staff now assisted her in getting into her wheelchair. The second fall was unwitnessed, and the Council was unsure how it happened although Mrs P said she had tried to get up and walk;
 - a number of safeguards were in place including call bells, sensor mats and motion sensors to prevent or alert staff to falls. Risk assessments were carried out for both Mr and Mrs P and updated, together with their care plans, when necessary. The Care Home raised safeguarding alerts which had found no evidence of abuse;
 - no family member had power of attorney which meant the Care Home would not share sensitive information unless it was necessary. Furthermore the Care Home only informed the family of incidents if they led to a safeguarding investigation which found fault. However, the Care Home did notify the family about both of Mr P's falls and the bleed on his brain. The Council offered to notify the family of all incidents if they wished; and
 - the family did not advise the social worker or Care Home that Mr P needed a special diet. He was observed being able to eat solid food. A speech and language therapist assessment in September 2020 identified no issues with swallowing and did not recommend a liquid diet.

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33. In relation to the funding for Mr and Mrs P's care, the Council said it would only consider a property disregard if the house had been Mr X's only or main residence before Mr and Mrs P went into the Care Home. The documents already sent in by Mr X were not sufficient to demonstrate this. The Council asked for a utility bill, council tax bill or bank statement dating from before April 2020 to prove he had lived there since then.
 34. The Council said it had applied the 12 week property disregard from when the COVID-19 funding stopped at the end of September 2020. This ran until mid-January 2021.
 35. Mr X submitted a discount council tax letter. The Council acknowledged this but said the date Mr X occupied the property, according to the Department of Works and Pensions (DWP), was February 2021, nearly a year after Mr and Mrs P had gone into care. The Council agreed to provide a temporary discretionary disregard for a period of three months from January to April 2021.
 36. The Council declined to allow a disregard after that date. It said this was because Mr X had not proved he lived there before April 2020. The Council said that as he owned a 50% share in his own home and there was no intention to sell the property he currently resided in, he would not be made homeless.
 37. Mr X denied having any ownership in his own home. The Council sent him a copy of the Land Registry deeds showing he owned the property with his wife.
 38. The Council went on to say it would award a 12 month property disregard from the date it was first included in Mr P's financial assessment to give Mr X time to consider his options.
 39. Mr X remained unhappy and complained to the Ombudsman.

My findings

Complaints 1b) frequent falls and informing the family and 1c) Mrs P's mobility needs, or Mr P needed his food blending

40. The Care Home drew up comprehensive care plans for Mr and Mrs P. These recorded their eligible needs, including their levels of mobility, and the support required to meet their needs. Following the falls, the Care Home updated both plans detailing the additional support.
41. In February 2021, both Mr and Mrs P experienced falls. The Care Home took appropriate action by calling for an ambulance, following medical advice and raised safeguarding alerts with the Council. The Home updated Mr and Mrs P's plans and put additional support in place. The Council investigated and found the falls to be unavoidable and the support in place to be adequate.
42. Mr X was unhappy because the Care Home did not inform him of all of the falls and other incidents, such as Mr P's diagnosis of a UTI. The Council said this was because he did not have power of attorney for Mr and Mrs P and so it was inappropriate to share sensitive information.
43. The Council has not sent me details of any formal communication plan in place between Mr X and the Care Home. This would have allowed processes to be in place specifying in what situations Mr X would be contacted. However, even without such a plan, Mr X was involved in the planning and arrangement of Mr and Mrs P's care and he was their next of kin. The Care Home was aware of this and should have informed him without delay when either of his parents fell, were

diagnosed with any medical condition, needed an ambulance calling or were admitted to hospital. The failure to do so was fault.

44. However, I do not consider Mr X was caused an injustice. He became aware of these incidents shortly after they occurred and the Council addressed his concerns in its complaint response. It also updated Mr and Mrs P's care plans to ensure he would be informed in the future.
45. In relation to Mr P's diet, the records specify Mr P was able to eat a normal diet and did not need to have his food blended. There was no fault in the Council's actions.

Complaint 2b) property disregard

46. In investigating this part of Mr X's complaint, I have considered the relevant legislation and information from the Council. This includes records from Council Tax which stated Mr X has never been registered as living at Mr and Mrs P's property and the Land Registry which state Mr X owns a property with his wife.
47. The Act and Guidance lay out what a council must take into account when considering whether to award a property disregard. This includes issues such as when the relative moved into the property, their age and disabilities and whether selling the house would make them homeless.
48. The Council decided Mr X did not meet the requirements to award a permanent property disregard. He did not provide proof he was living in Mr and Mrs P's property before they went into the Care Home and it was not his only or main residence. He owned 50% of his matrimonial house and because the Council did not intend to sell his parents' property, he would not be made homeless if he chose to move in there. The Council exercised its discretion to apply a disregard for 12 months to enable Mr X to consider his options. There was no fault in the way the Council made its decision.

Agreed action

49. Within one month of the date of the final decision, the Council has agreed to remind staff at the Care Home of the need to have communication plans in place for residents to ensure next of kin and families are updated appropriately.

Final decision

50. There was fault but it did not cause an injustice. The Council has agreed to my recommendation and I have completed my investigation.

Investigator's decision on behalf of the Ombudsman