

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

Summary: Mr X complained about the Council's refusal to apply an extinguishment order to a section of a highway on his property. We should not investigate this complaint. This is because there is insufficient evidence of fault which would warrant an investigation.

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## **The complaint**

1. Mr X complained about the Council refusing to agree to his request for an extinguishment order to be applied to part of a public highway on his land. He says it is being discriminatory because a developer has been allowed to stop up the highway at one end.

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

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

## **How I considered this complaint**

3. I have considered all the information which Mr X submitted with his complaint. I have also considered the Council's responses.

## **What I found**

4. Mr X says he has tried to get the Council to close a public right of way on his land for some years. In January 2020 he asked the Council to apply for an extinguishment order to close the route. The Council told him that it would not apply for an order because the route was an adopted highway and carried utility services beneath it which would require access in the future. It said it would be unlikely the magistrates would accept the order with these in place and the highway was still required.
5. Mr X says that the Council has allowed a developer to block one end of the route with development which shows favouritism to another party. The Council says no extinguishment orders have been applied for and that the route remains public highway. The Highways Act 1980 says that highways should not be extinguished simply because they are temporarily obstructed, and it remains a highway in law.

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6. The Ombudsman is concerned with process. We are not a court of appeal. If there has been no flaw in the process through which a decision has been taken, we have no power to challenge the merits of the decision itself.

### **Final decision**

7. We should not investigate this complaint. This is because there is insufficient evidence of fault which would warrant an investigation.

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

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

Summary: We upheld one of Mr X's complaints. There was poor communication by the Council because it did not write to him to say it was commissioning an agency to do his care after stopping his direct payment. This caused Mr X avoidable distress for which the Council will apologise. There was no fault in transferring Mr X's case from the mental health to adult social care team and no evidence a social worker verbally attacked one of Mr X's personal assistants.

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## **The complaint**

1. Mr X complained about Nottinghamshire County Council (the Council). He said it:
  - a) Transferred his case from the mental health team to the older adults' team
  - b) Unreasonably stopped his direct payment and replaced it with a care agency
  - c) Verbally attacked his Personal Assistant (PA) causing them to leave
  - d) Refused to do an assessment or provide care before 2016.
2. Mr X said he has not had any care since his last PA finished in July 2019 and he is suffering as a result.

## **What I have investigated**

3. I have investigated events from December 2018 (complaints (a), (b) and (c)). My reasons for not investigating older matters in complaint (d) are at the end of this statement.

## **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. 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*)

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

## **How I considered this complaint**

7. I considered Mr X's complaint to us, the Council's responses to his complaint and documents described later in this statement. I discussed the complaint with Mr X.
8. Mr X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

## **What I found**

### **Relevant law and guidance**

9. A council must carry out an assessment for any adult with an appearance of need for care and support, applying national criteria to decide if a person is eligible for care. (*Care Act 2014, section 9*)
10. Where a council agrees a person has care and support needs which meet national eligibility criteria, it must issue them with a care and support plan which sets out their needs, explains which is an eligible need and says how much funding the person is entitled to. (*Care Act 2014, sections 24 and 25*)
11. Many people choose to have a direct payment. This is money a council gives a person so they can arrange and pay for their own care and support.
12. Guidance explains a council should review a care and support plan at least every year, on request or in response to a change in circumstances. The purpose of a review is to see how a care and support plan has been working and to decide if any revisions need to be made to it. The council should act promptly after receiving a request for a review. (*Care and Support Statutory Guidance, Paragraphs 13.19-21 and 13.32*)
13. Care and Support Statutory Guidance (CSSG) says:
  - Councils need to be satisfied a person can manage the direct payment by themselves or with support. (*paragraph 12.21*) They can stop a payment if the person no longer appears to be capable of managing them with whatever support is necessary. (*paragraph 12.69*)
  - Councils can use pre-payment cards which allow direct payments without the need for a separate direct payment account. (*paragraph 12.58 and 12.59*).
  - Councils should only stop a direct payment as a last resort and should take all reasonable steps to address problems without ending payment. (*paragraph 12.67*)
  - If there is a decision to stop a payment, there should be a review and revision of the care and support plan to ensure the plan is appropriate to meet needs. (*paragraphs 12.68 and 12.81*)

### **What happened**

14. Mr X's social care assessment of 2018 concluded he had eligible social care needs. The Council agreed a care and support plan for 12 hours a week of personal and other care. Mr X received a direct payment which he used to employ a PA.

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15. The finance team wrote to Mr X in December 2018 setting out his weekly care charge.
  16. The social worker and a team manager visited Mr X at the start of December 2018 to discuss a number of issues. The team manager wrote to Mr X after the visit saying it was not possible for his case to go back to the mental health team and he needed to pay his care charge onto the prepayment card.
  17. The social worker visited Mr X in February 2019 to review his care and support plan. Mr X explained his PA had not been able to do all the hours since December 2018. The social worker agreed to find an agency to cover the hours the PA could not do. The records indicate Mr X was in agreement with this.
  18. In February 2019, the finance team wrote to Mr X to say his care charge would be increasing in April because of a change in charging policy. The letter set out the new charge and advised Mr X to get in touch immediately if his circumstances had changed.
  19. The notes indicate the social worker referred Mr X's case to the Council's brokerage team to find a care agency to do the hours Mr X's PA could not do. An agency took on all Mr X's care from the second week in March as his PA was going on an unplanned holiday for three weeks. The agency would then do the hours the PA could not do on her return from holiday.
  20. In the middle of April Mr X's PA told the Council she would not be supporting Mr X any longer. She said she was doing only domestic work for him and little to no personal care. The PA and social worker spoke again the following week and the PA said she had not visited Mr X for 10 days and did not intend to return as he had sent her abusive text messages. The social worker contacted the agency to see if they could cover the PAs hours. The agency said they would find it hard to place staff who would work with Mr X as he had been verbally abusive. The social worker referred Mr X's case to the brokerage team to find a second agency.
  21. The Council's direct payments team wrote to Mr X at the end of April to say his direct payment ended on 12 April. It asked him to ensure his care charge payments were up to date.
  22. The social worker visited Mr X at the start of May. She said the Council was trying to find an agency to do the PAs hours. Mr X said a friend had been supporting him without pay and the friend was interested in becoming his (paid) PA. The friend was at the meeting and the social worker spoke to him. There is no record of any concern or difficult or inappropriate conversation between the friend and the social worker during the meeting.
  23. The notes indicate the brokerage team continued to send Mr X's details to care agencies (as a back-up plan in case the new PA changed his mind) but there was no availability.
  24. The social worker carried out a review of Mr X's care and support plan in the middle of May. Mr X said the previous PA had been unreliable and had sometimes not turned up. He also said the agency was ok, but some staff did not like his pet. Mr X's friend was at the review and the plan was for the Council to set up a direct payment so he could employ the friend as a PA. The social worker reminded Mr X he would need to set up a standing order to pay his care charge. She noted Mr X agreed to do this. Mr X signed a direct payment agreement which said he agreed to pay his care charge into the direct payment account or onto the prepayment card.

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25. At the end of May, the social worker told Mr X that the second agency could now provide all his care from June, but Mr X said he hoped the new PA was going to start. The social worker said the agency could be a back up plan. The case notes indicate the new PA started at the end of June.
  26. The social worker visited Mr X at the end of June to discuss paying his care charge. Mr X said the charge was too high and he could not afford it. The social worker listed Mr X's expenses and outgoings and his income. The social worker said Mr X needed to pay the charge or his direct payment would be at risk. She arranged for a fresh financial assessment to take place.
  27. The second PA left a voicemail message for the social worker at the end of June to say he was stopping work for Mr X as Mr X had not been paying him enough. The records indicate the social worker left Mr X a message the same day. Mr X did not call back.
  28. I asked Mr X why the second PA left and he said it was because he was not able to pay the PA fully because there was a problem using the prepayment card. He told me he did not contact the social worker or anyone else about this. Mr X also told me he had paid the second PA his care charge directly rather than into his direct payment prepayment card/account.
  29. The Council commissioned an agency to do Mr X's care from the middle of August. Mr X told me he was not aware of this at the time and he'd had nothing in writing from the Council or the agency to say this. The case records support what Mr X said to me. There is no letter on file from the social worker to say she had arranged an agency.
  30. The social worker spoke to the agency on three consecutive days and they said Mr X had not been answering his door to carers. The social worker also left two messages for Mr X on consecutive days. She carried out a visit, but Mr X did not answer the door. Neighbours reported they had seen him going out in his car the previous day.
  31. Carers from the agency continued to visit Mr X, but he would not let them in. At the end of August, the agency reported he was leaving notes on his doorstep saying he was out and they should go away. Mr X told me he was not answering the door to strangers and he had expected an introduction beforehand.
  32. The direct payments team wrote to Mr X in September to say his direct payment had ended on 26 July.
  33. The Council ended the care agency in October 2019 as Mr X continued to refuse carers.

#### **Mr X's complaint**

34. Mr X complained to us in December 2019. We referred his complaint back to the Council for a response. This is because in most cases we expect complainants to use a council's complaints procedure before we get involved and there was no reason for us to depart from our usual practice in Mr X's case.
35. The Council responded to Mr X's complaint in January and February 2020 saying:
  - Officers had reviewed his direct payment because he was not paying his care charge into his direct payment account. The social worker told him it was not acceptable to pay this to the PAs directly and he needed to pay it into the account or the direct payment would be at risk. Officers had also told him the same thing at a meeting in December 2018.

- The social worker reviewed his care and noted his needs could be met with an hour a day of personal care and an extra 5 hours a week to be used flexibly.
- His PA told officers they could not meet his needs due to personal circumstances, so the Council put in place a care agency to work some of the PAs hours. The PA then withdrew and so the Council then commissioned the agency to take over all the hours
- Mr X then found a second PA and officers supported him to employ the PA to take over all the hours. The second PA left when he was not paid the full amounts.
- Mr X still did not pay his care charge into his direct payment account.
- The Council then commissioned an agency which started in August 2019. He did not let the carers in. Officers made several attempts to visit and phone and left a note, but he did not reply. The agency said carers reported seeing notes on the front door asking carers not to visit. This continued for two months and the care package was cancelled in October following several attempts to contact him by phone
- There was no evidence the social worker verbally attacked the second PA and this was not the reason the PA gave for leaving
- The mental health team would not support him for reasons given at the meeting in December 2018: his physical health was the primary issue rather than his mental health
- The social worker agreed to arrange a financial assessment in June 2019 because Mr X said he could not afford the care charge. This did not go ahead because he refused agency care and so care then stopped.
- The Council was willing to do a further social care assessment and he needed to phone the social care team to arrange this. The finance team would also do a fresh financial assessment following the social care assessment.

#### **Case notes since the complaint to the Council**

36. The case notes indicate Mr X phoned the Council's duty social care team in May 2020 asking for a social care assessment. The Council agreed to carry out an assessment. Mr X said he wanted his case transferred to the mental health team. The duty social worker explained the Council would not transfer his case to mental health services for reasons already given, but staff were all competent to deal with customers with mental health difficulties. Mr X said he did not want an assessment from the older adults' social care team only a worker from the mental health team. Mr X said he would seek legal advice and ended the call.
37. Mr X contacted us again in November 2020. He said he was still not receiving care and the Council was pursuing him for unpaid care charges.

#### **Was there fault and if so did this cause injustice?**

##### **Complaint a: The Council transferred Mr X's case from the mental health team to the older adults' team**

38. I did not uphold this complaint. Where a person has physical and mental health needs, a council has discretion in which team should deal with them and it should make no difference to the care funding or the way a case is dealt with in any event. I see no fault in the Council deciding to deal with the case within the adult social care service rather than the mental health team as it considered Mr X's primary needs were around his physical health.

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**Complaint b: The Council unreasonably stopped Mr X's direct payment and replaced it with agency care**

39. The Council acted appropriately in commissioning an agency to deliver part and then all of the first PAs hours when she could not do all the hours and then left. The records indicate this was with Mr X's agreement; the social worker discussed it with him beforehand and checked to see how he was getting on with agency care. She also carried out a review of the care and support plan in May 2019. This was in line with Care and Support Statutory Guidance, paragraphs 13.19-21 and 13.32 and there was no fault. I consider there was no fault in stopping the direct payment after the first PA left because the agency was carrying out the care with Mr X's agreement.
40. The Council also acted appropriately after Mr X found a second PA by setting up a direct payment for him again, at his request. Mr X said he could not access the money to pay the second PA, but there is no record of a phone call from him to the social worker or direct payment team. So it is unlikely that this was the problem.
41. I do however find fault by the Council in the way it handled the case after the second PA left. The records indicate Mr X was not responding to attempts to contact him by phone and was not answering the door when visited. So the Council should have written to him suggesting agency care. The decision to commission an agency was an attempt by the Council to fulfil its legal duty to meet Mr X's eligible care needs. But the Council should have written to Mr X to confirm this was what it was doing. I consider Mr X suffered avoidable distress as he the lack of written communication meant he did not know what the Council had arranged for him and meant he may have been alarmed by agency staff turning up at his home without his knowledge.
42. The Council should have also written to Mr X before stopping the agency care. The failure to write to him was poor communication. I do not consider the outcome would have been any different though as Mr X continued not to engage with the Council.
43. The Council explained in the complaint response that one of the reasons for stopping the direct payment was Mr X had not been paying his care charge onto the prepayment card. There is evidence officers told Mr X he needed to pay the charge onto the prepayment card on several occasions, verbally and in writing. And he signed a direct payment to say he agreed to do so. Mr X told me however, that he had paid the second PA the care charge directly in cash, which was against the terms of the direct payment agreement, as he was aware. I consider the Council was entitled to stop the direct payment in line with Care and Support Statutory Guidance paragraphs 12.21 and 12.69 because it was not satisfied Mr X was managing the direct payment. I am satisfied the Council made all reasonable efforts to address the problem with Mr X in line with Care and Support Statutory Guidance paragraph 12.67 and so there was no fault. I note Mr X said in June 2019 that he could not afford the charge. The social worker acted appropriately in response by arranging a fresh financial assessment. This did not happen because Mr X did not engage with the Council or the agency and so it eventually cancelled his care.
44. I am satisfied the Council responded appropriately to Mr X's contact in 2020 by offering him a fresh social care assessment. It is a matter for Mr X to decide whether he wants to have an assessment. There was no fault in the Council

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refusing to transfer his case to the mental health team to do this assessment, as I have explained above.

**Complaint c: The social worker verbally attacked Mr X's Personal Assistant (PA) causing them to leave**

45. There is no evidence the social worker verbally attacked the second PA as Mr X suggested in his complaint. I am satisfied the reason the second PA left was because he was not fully paid, as this is what he told the social worker.

**Agreed action**

46. The Council will apologise to Mr X for poor communication, within one month of my final decision. The Council has already discussed the case with staff involved and this will improve practice and reduce the risks of recurrence.

**Final decision**

47. We upheld one of Mr X's complaints about the events that led up to Mr X's direct payment stopping. We did not uphold his complaints about a social worker or about transferring his case from the mental health team. The Council will apologise for poor communication.
48. I have completed the investigation.

**Parts of the complaint that I did not investigate**

49. Mr X also complained about the Council's refusal to provide care before 2016. I did not investigate that complaint because it was late and Mr X could have complained to us sooner.

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

10 March 2021

**Complaint reference:**

20 004 405

**Complaint against:**

Nottinghamshire County Council

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

Summary: Mr C complained the Council failed to ensure a stage three panel had the relevant information before it reached its conclusions on his complaint. There is no fault in how the stage three panel considered the complaint.

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## **The complaint**

1. The complainant, whom I shall refer to as Mr C, complained the stage three panel, when considering his complaint, did not have access to the relevant information. Mr C says if panel had access to the minutes of two review meetings and a copy of his son's letter to the director it would likely have reached different conclusions.
2. Mr C says this has caused his family distress as the Council has not accepted its role in the breakdown of his relationship with his son and the impact that has had on other family members.

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

3. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a Council's decision is right or wrong simply because Mr C disagrees with it. He must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
4. If we are satisfied with a Council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

5. As part of the investigation, I have:
  - considered the complaint and Mr C's comments;
  - made enquiries of the Council and considered the comments and documents the Council provided.
6. Mr C and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

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## What I found

### Background

7. Mr C and his partner adopted a sibling group but later moved out of the Council's area. Mr C and his partner contacted the Council at the end of 2018 as they were having difficulty managing their eldest son's behaviours. The Council tried but failed to find a suitable placement close to Mr C and his partner and therefore placed their son in an alternative placement out of area in April 2019. The Council did that under section 20 of the Children's Act which is a voluntary agreement where Mr C and his partner agreed to their son being in care.
8. The initial plan was for Mr C's son to have a psychological assessment and therapy. That was the confirmed way forward at the review meeting which took place in April 2019. By the June 2019 review meeting though the plan had changed. The Council says this is because Mr C's son had made progress in his placement and it no longer considered a psychological assessment necessary. The Council had made a referral to child and adolescent mental health services at the end of May 2019 and had told Mr C and his partner about that when a social worker visited them the day after making the referral. The plan at that point was still for Mr C's son to move back to the same area as Mr C and his partner, albeit likely living independently and dependent on whether he chose to remain in his current area to study. The contingency plan if it was not possible for him to return to live near Mr C and his partner was for him to remain in the accommodation with the support of the Council until he reached independence.
9. Mr C's son began visits back to his family home for a short period. Following one of those visits an issue arose and Mr C's son said he did not want contact with Mr C and his partner. Mr C rescinded the section 20 agreement and expected this would result in his son returning home. However, as his son was over 16 he signed his own section 20 agreement which meant the Council continued to provide accommodation for him. As it currently stands Mr C has declined to have contact with his son due to concerns about the risk this poses to the other children.
10. Mr C put in a complaint to the Council. The Council responded to the complaint at stage one and at first refused to take the complaint to stage two as it did not feel it could achieve the outcomes Mr C was seeking and because his son had not agreed for his records to be shared. Following the Ombudsman's intervention the Council carried out a stage two investigation which did not uphold any of the areas of complaint. Mr C was not happy with the outcome of the stage two investigation and asked the Council to progress the complaint to stage three. The stage three panel considered the complaint and agreed with the findings of the stage two investigation, except for one area where it recommended the Council apologise for the tone and timing of an email telling Mr C his son had signed his own section 20 agreement.
11. Mr C says it was the Council's failure to carry out the psychological assessment and therapy for his son which resulted in the breakdown of the relationship.

### Analysis

12. Mr C says the Council, when considering the complaint at stage three, failed to ensure panel had the relevant information. What Mr C is referring to here are the minutes from the review meetings in April and June 2019 and a letter his son wrote to the director in July 2019. Mr C says those minutes and his son's letter

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provide information panel was not aware of and would have affected its conclusions.

13. The first point to make here is the role of the stage three review panel is not to reinvestigate the complaint. The role of the stage three panel is to consider the adequacy of the stage two investigation. I would therefore not expect the panel to have access to the background documentation. I am, however, satisfied the papers presented to the stage three panel included Mr C's representations about the inadequacy of the stage two investigation. In his comments Mr C specifically referred to panel's need to see the minutes of the two review meetings and his son's letter to the director in July 2019. I am therefore satisfied panel was aware of that request. As I have made clear though, it is not usual for panel to consider the documentary evidence on which a stage two investigation is based. There is no evidence to suggest panel considered it necessary to see those documents to reach a conclusion on the complaint.
14. In this case I am satisfied the stage three panel had access to various pieces of information which included a copy of the stage two investigation report and Mr C's response to that report. I am satisfied those documents set out the original plan from the April 2019 review and the new plan by the time of the June 2019 review. The evidence Mr C presented then set out his concerns about how that plan had been changed. I am also satisfied those were issues panel discussed during the meeting, during which Mr C and his partner had an opportunity to present their concerns. So, while panel did not have access to the minutes of the two reviews it is clear it knew of the issues relating to the difference between those two reviews, the Council's reasoning for the change in plan and Mr C's concerns about that change in plan when reaching its conclusions. I am therefore satisfied panel had enough evidence to reach its findings without seeing the minutes of the review meetings. Given panel knew about the difference between the outcome of the two review meetings and Mr C's concerns about that I do not consider having access to the minutes themselves would have resulted in a different outcome.
15. In terms of the letter from Mr C's son to the director, this relates to concerns the Council failed to act on Mr C's son's wish to return to the area Mr C lives in, albeit likely in independent accommodation. I am satisfied panel did not see that letter. I am also satisfied though the letter was referred to during the discussion at the panel meeting. The investigating officer was clear the letter had not been shared because this was a letter from Mr C's son and he had not given his permission to share the information and had not been part of the complaint to the Council. I cannot criticise the Council for not presenting a copy of Mr C's son's letter to the panel when he had not given permission for it to be shared. Nor do I consider it would likely have resulted in a different outcome. I say that because the relationship between Mr C's son and his family broke down shortly after that letter was written and well before the panel meeting. Mr C's concern is that his son's wish to return to live close to Mr C and his partner were not respected. However, Mr C's son has not supported the complaint, has withdrawn permission for Mr C and his partner to have access to his records and has not made a complaint in his own right about the plans for his future or any lack of therapy. In those circumstances I do not consider it likely having sight of the letter Mr C's son wrote to the Council would have resulted in a different outcome.

## **Final decision**

16. I have completed my investigation and do not uphold the complaint.

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

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

Summary: We will not investigate the complainants complaint about the Council's handling of his daughter's child protection case. This is because it is late.

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## **The complaint**

1. The complainant, who I shall refer to as Mr C, complains that the Council's children's services team failed to respond to safeguarding concerns he raised about his daughter, and has failed to help him have contact with his daughter.

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

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. We cannot investigate a complaint about the start of court action or what happened in court. (*Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended*)
5. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

## **How I considered this complaint**

6. I have considered Mr C's complaint and the Council's response. I have invited Mr C to comment on a draft version of this decision.

## **What I found**

### **What happened**

7. Mr C has a daughter who is subject to a child protection plan and who lives with her mother.
8. In November 2017, Mr C complained to the Council about its children's services teams involvement in his family. Mr C submitted further complaints during 2018.

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9. Mr C complained that the Council had not taken safeguarding concerns which he had raised about his daughter seriously. He also complained that the Council had failed to ensure he had contact with his daughter.
  10. In December 2018, the Council issued a final response. It said that appropriate measures were in place to protect his daughter, and that there was no basis for it to take any further action. The Council said if Mr C was dissatisfied with the response, he could raise his complaint with the Ombudsman.
  11. The Council said that it could not intervene regarding contact between Mr C and his daughter, because this was due to be decided by the courts.

### **Assessment**

12. I will not investigate Mr C's complaint about the Council's children's services teams involvement with his family because Mr C's complaint is late.
13. We normally expect people to complain to us within twelve months of becoming aware of a problem, and do not exercise discretion to look at late complaints unless there is good reason to do so.
14. In this case, I see no reason why Mr C could not have raised his complaint with us much sooner.
15. But even if Mr C's complaint were not late, we would still not investigate his complaint about access to his daughter. This is because this was decided in court, and we cannot consider anything which forms part of legal proceedings.

### **Final decision**

16. We will not investigate this complaint. This is because the complaint is late.

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

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

Summary: We will not investigate Miss B's complaint that the Council is at fault in refusing to cease her children's Child Protection Plans. This is because we cannot achieve the outcome she wants.

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## **The complaint**

1. The complainant, who I will refer to as Miss B, complains that the Council is at fault in refusing to cease her children's Child Protection Plans.

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

## **How I considered this complaint**

3. I have considered what Miss B has said in support of her complaint. I have offered her the opportunity to comment on a draft of my decision.

## **What I found**

4. Miss B's children have been subject to child protection action and are currently subject to Child Protection Plans. Miss B has complained to the Council about the Plans and about the actions of two social workers, which she regards as unreasonable. Specifically, she complains about the number of visits they make to her home. She wants the Council to cease the Plans as she believes they are no longer necessary. The Council has denied its officers have been at fault.
5. We will not investigate Miss B's complaint because we cannot achieve what she wants. Investigation by the Ombudsman cannot result in a Child Protection Plan being ceased. Whether to do so will be a decision made by a multi-agency child protection conference. It is not for the Ombudsman to express a view on the matter.

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## **Final decision**

6. We will not investigate this complaint. This is because we cannot achieve the outcome Miss B wants.

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

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

Summary: Mrs X complains the Council has refused to accept liability for damage caused to her car when she hit a pothole. We will not investigate as this is a matter for the courts.

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## **The complaint**

1. Mrs X complains about the costs to her from damage caused to her car when she hit a pothole. Mrs X complains the Council has refused to accept liability for the damage.

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

2. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

## **How I considered this complaint**

3. I have considered what Mrs X said in her complaint and sent her my draft decision on it for her comments.

## **What I found**

4. Mrs X complains about the costs she has incurred due to damage caused to her car when she hit a pothole. Mrs X complains the Council has refused to accept liability for the damage.

## **Analysis**

5. Mrs X has the right to make a court claim for the damages she seeks and we cannot normally investigate when someone can take the matter to court.
6. We can exercise discretion to investigate but I do not consider there are reasons to do so in this case. This is because only the courts can determine if the Council is legally liable for the damage caused to Mrs X's car and if damages should be paid. Additionally, there is a simple, low-cost procedure open to anyone to make a money claim in the court.
7. For these reasons, it is reasonable to expect Mrs X to resort to court action and we will not therefore investigate.

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## **Final decision**

8. My decision is we will not investigate this complaint. This is because it is reasonable to expect Mrs X to resort to court action for the damages she seeks.

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

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

Summary: I will not investigate this complaint about Child Protection procedures. This is because the complaint is made late and there is no good reason to investigate it now.

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## **The complaint**

1. The complainant, who I will call Miss X, says that the Council:
  - Was wrong to put her on Child Protection procedures; and
  - Should have investigated her complaint.

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

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

## **How I considered this complaint**

4. I looked carefully at what Miss X said, and I sent her a draft decision for her comments.

## **What I found**

5. Miss X says that the Council started a Child Protection investigation about her care for her child in 2017. It then put her on a Child Protection Plan.
6. Miss X says this was wrong and unfair. It still makes her feel unhappy.
7. We will not investigate the complaint, however. This is because these events took place in 2017. We cannot look at complaints about something the person knew about more than 12 months ago, unless there is a good reason. In this case I have not seen a good reason to set aside the bar.
8. Miss X says that the Council was wrong to say it would not look into her complaint, but it could not do so, as she made the complaint more than 12 months after the events.

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## **Final decision**

9. I will not investigate this complaint. This is because it is made late.

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

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

Summary: Mr B complained the Council did not explain or provide sufficient information about his mother's contribution towards her care home fees. We find fault with the Council as it did not provide clear information to Mr B for him to know he had to pay a care contribution. Mr B has suffered an injustice of uncertainty and has been put to the time and trouble of complaining. The Council agrees to apologise and pay Mr B the sum of £350 for uncertainty and putting him to the time and trouble of complaining.

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## **The complaint**

1. Mr B complained that the Council did not clearly explain that his mother, Mrs C, would be responsible for paying a contribution towards the cost of her residential care home place. He says he had not been made aware of the client contribution until the Council issued an invoice in November 2019, some five months after Mrs C was placed in the care home.
2. Mr B says the Council should waive the client contribution for Mrs C.
3. Mr B represents his mother, Mrs C in making this complaint.

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

4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. We may investigate a complaint on behalf of someone who cannot authorise someone to act for them. The complaint may be made by:
  - their personal representative (if they have one), or
  - someone we consider to be suitable.(*Local Government Act 1974, section 26A(2), as amended*)
6. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

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## How I considered this complaint

7. I have spoken to Mr B by telephone and considered the correspondence in support of his complaint.
8. I have made enquiries with the Council and considered the responses provided.
9. I have sent a draft to Mr B and the Council and have considered the comments before making a final decision.

### Law and Guidance

10. The charging rules for residential care are set out in:
  - The Care Act 2014.
  - Care and Support (Charging and Assessment of Resources) Regulations 2014.
  - Care and Support Statutory Guidance 2014.
11. When the council arranges a care home placement, it has to follow these rules when undertaking a financial assessment to decide how much a person has to pay towards the cost of their residential care.
12. The Care Act 2014 provides a single legal framework for charging for care and support under sections 14 and 17. It enables a local authority to decide whether or not to charge a person when it is arranging to meet a person's care and support needs or a carer's support needs.
13. The rules state that people who have over the upper capital limit of £23,250 are expected to pay for the full cost of their residential care home fees. However, once their capital has reduced to less than the upper capital limit, they only have to pay an assessed contribution towards their fees.
14. The council must assess the means of people who have less than the upper capital limit, to decide how much they can contribute towards the cost of the care home fees.
15. Most people will have to pay something towards the cost of a care home even if they have capital of less than the lower capital limit of £14,250. Usually a person is expected to pay all of their regular income towards their placement after deducting an amount for their personal spending which is known as their personal expenses allowance.
16. The framework is therefore based on the following principles that local authorities should take into account when making decisions on charging. The section of principles are that the approach to charging for care and support needs should:
  - ensure that people are not charged more than it is reasonably practicable for them to pay
  - be comprehensive, to reduce variation in the way people are assessed and charged
  - be clear and transparent, so people know what they will be charged
17. Where a local authority has decided to charge, except where a light touch assessment is permissible, it must carry out a financial assessment of what the person can afford to pay and, once complete, it must give a written record of that assessment to the person. This could be provided alongside a person's care and support plan or separately, including via online means. It should explain how the assessment has been carried out, what the charge will be and how often it will be

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made, and if there is any fluctuation in charges, the reason. The local authority should ensure that this is provided in a manner that the person can easily understand, in line with its duties on providing information and advice.

### **What I found**

18. Mrs C suffers with dementia and was admitted to hospital in June 2019. Upon her discharge later that month she moved from supported living into a residential care home where her needs could be met. Mrs C was self-funding at this time and the residential home was selected by Mr B.
19. Mr B, her son, holds power of attorney for both finance and welfare for Mrs C. He contacted the Council by email in mid-July 2019. He informed the Council that he felt Mrs C would need long term residential care. Mr B said as his mother was self-funding he was concerned about her funds depleting and asked if the Council could help with the cost of her care.
20. The Council replied and said a staff member would be in touch within 28 days. Mrs C's social worker telephoned Mr B and discussed his mother's needs and an appointment for a face to face meeting was scheduled for early August 2019.
21. The social worker met with Mr B and Mrs C at the residential home in early August 2019. At this point Mrs C had been at the home for approximately six weeks. The Council noted that she was self-funding. It acknowledged that the cost of the care home was more than the local authority rate the Council would usually expect to pay for a residential care home placement and said the difference should be paid by a top up.
22. Later in August 2019, the Council carried out a financial assessment to determine how much Mrs C and Mr B needed to contribute towards her care home place. The Council say that at this meeting an officer verbally discussed third party top-up fees and contributions with Mr B. It has provided a note from the officer to say it was explained that Mrs C would have to pay "as much as they could afford to pay towards the banded rate of service."
23. Mr B says that it was at this meeting the Council told him that it would take care of the costs of Mrs C's care.
24. The financial assessment form says the information given is needed to 'assess the contribution'. The declaration also says that that "we agree to pay the assessed contribution." Further sections in the declaration say there is a liability for payment in accordance with the Care Act 2014. It goes onto say that the signer acknowledges and understands the extent to which they are eligible to be charged for care and services received. The financial assessment form was completed and signed by the Council and Mr B.
25. In early September, the Council sent Mr B a copy of the Adult Social Care Directory by email. This document contains sections explaining financial arrangements for care and explains that care is means tested and explains the thresholds for capital limits and payment of fees. The document also covers third party top-ups and contributions. The Council says that it pointed Mr B to 'useful information' in the directory that it recommended he should be read.
26. At the same time the Council's notes also say that the social worker had a conversation with Mr B and asked about the progress of the financial assessment. It says it verbally explained that Mrs C would have to make a contribution to her

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care as well as discussing that she could not be responsible for paying her own top-up.

27. Mr B signed a Third Party Financial Contract in October 2019. This form explained the signer must ensure that they are able to afford the agreed contribution and made it clear this would be the responsibility of Mr B to pay. The contract explained the Council would pay the residential care home every four weeks and said this includes the top up amount. Mr B signed to agree to pay £389 per week from mid July 2019. The contract said, “these payments are to meet a proportion of the full cost of accommodation which is higher than the amount the Council is prepared to pay for this category of care.”
28. In November 2019, the Council sent Mr B an invoice addressed to Mrs C for her care contributions. The invoice detailed the cost was for 13 weeks of two days care between July 2019 and October 2019.
29. Mr B complained to the Council in February 2020 to dispute the invoice. He said he was uncertain why it had sent him two invoices for similar dates. Mr B explained he had not been made aware that his mother would have to pay a contribution towards her care. He said that this had come as a shock and was unaffordable. He said during the meeting with the Council in August 2019 he had been told the Council ‘would take care of payments’ from July 2019. He told the Council he based his decision on the written figures contained in the third-party contract. He said if he had been aware that Mrs C would have to make contributions alongside his own top-up fees the decision regarding residential care would have been different.
30. The Council did not uphold Mr B’s complaint. It said its records show the Council had a conversation with Mr B about the need for Mrs C to make contributions. It also said it had emailed a copy of the Adult Social Care Directory which contained information about financial assessments and paying for care. The Council said it was Mr B who had placed Mrs C into the care home, only informing the Council of this when her placement had started. It said it would have informed Mr B about third party top ups earlier and would have sought a more affordable option if it had been involved with Mrs C’s care from the start.
31. Mr B was unhappy with the reply and said that the communication from the Council had been poor, even though he said he had been in touch with it every week. He said that he expected something as complicated and as important as care home contributions to have been put in writing. He asked the Council to reconsider his complaint.
32. The Council did look again at Mr B’s complaint but it did not uphold it. It commented that although it accepted that Mr B did not know the exact contribution, it was satisfied that he was aware charges would be raised.
33. Mr B complained to the Ombudsman in September 2020.

### **Analysis**

34. Mrs C’s residential care placement started in late June 2019. As she was self-funding, Mr B did not make the Council aware of the placement until mid-July 2019. In placing Mrs C in residential care Mr B took the risk that they may not be eligible for assistance, or if they were, there may have been a contribution to pay towards the costs following a financial assessment.
35. The Council is not at fault for requesting Mrs C pay a contribution for her residential care costs. The law says even if a person has less than £14,250 they

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are still required to contribute some of their income to pay for their care home placement.

36. A financial assessment was completed and signed by Mr B in August 2019. The Council has provided me with evidence to say that verbal discussions were held at the time the financial assessment was completed about third party top ups and care contributions.
37. The guidance says that once the financial assessment was completed the Council must give a written record of that assessment to the person and explain what the charge should be and how often it should be made. The Council did not do this. This was fault and caused Mr B avoidable uncertainty and confusion. The Council, in its reply to Mr B's complaint, also accepted he would not have known the exact amount he was to be charged.
38. The Council's records also show Mrs C's social worker spoke with Mr B in September 2019 and explained that following the financial assessment Mrs C would be responsible for paying a contribution toward her care costs separate from the top up fees being charged. Mrs C's social worker also sent Mr B The Adult Social Care Directory at around the same time. This referred generally to contributions towards care costs, so I am satisfied the Council did alert Mr B that Mrs C would have to pay a care contribution following her financial assessment.
39. The Council failed to follow up the conversation in September between Mrs C's social worker and Mr B with a letter setting out the expectation that Mrs C's would have to make a contribution, and from when she would be expected to pay. This was fault and a further missed opportunity for the Council to prevent the uncertainty caused by not explaining the outcome of the financial assessment. This led to further avoidable confusion for Mr B who did not realise the significance of the contribution until he received an invoice in November 2019.
40. Where we find fault that has caused injustice we aim to put the person back in the place they would have been but for the fault. Our Guidance on Remedies suggests that where this is not possible, we will recommend the Council makes a symbolic payment in recognition of the uncertainty caused and the avoidable time and inconvenience to which Mr B have been put.
41. In this case, Mr B would always have had to pay a contribution on behalf of Mrs C even if the Council had informed him in writing. The Council also had no involvement with the choice and cost of the residential care for Mrs C. Mr B made this decision without informing the Council first, as he was entitled to do.

### **Agreed action**

42. To address the injustice caused the Council has agreed by 24 May 2021 to:
  - a) Apologise to Mr B for the uncertainty caused and being put to the time and trouble of complaining.
  - b) Pay Mr B the sum of £350 in recognition of its failure to provide sufficiently clear information about care home charges and for time, trouble and uncertainty.
  - c) Share the final decision with staff to ensure in future clear written information is given to clients about care home charges.

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## **Final decision**

43. We find fault with the Council as it did not provide sufficiently clear written information that Mrs C needed to pay client contributions. This has caused an injustice to Mr B. The Council has agreed to remedy this so I have completed my investigation.

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

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

Summary: Ms X complained the Council delayed dealing with her sister Miss Y's request to move care homes. The Council was at fault. It failed to properly consider Miss Y's preferences and failed to provide any suitable alternative options to meet Miss Y's needs. It failed to acknowledge Ms X was not willing to support her sister long term. This caused Ms X and Miss Y uncertainty and frustration and placed Ms X under significant strain as she had to care for her sister far longer than she expected to. The Council has agreed to apologise to Ms X and Miss Y and make a payment to recognise the impact the faults had on them. It has also agreed to progress Miss Y's move to a care home as soon as possible.

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## **The complaint**

1. Ms X complained the Council delayed dealing with her sister Miss Y's request to move care homes. In addition, the Council failed to deal with Ms X's complaint properly. This caused Ms X additional strain in caring for her sister and caused both sisters upset, worry and distress.

## **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 considered the information provided by Ms X and discussed the complaint with her on the telephone. I considered the Council's response to my enquiries and the relevant law and statutory guidance.
5. I gave Ms X and the Council the opportunity to comment on a draft of this decision. I considered any comments I received in reaching a final decision.

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## What I found

### The relevant law and guidance

#### Assessment and care planning

6. Sections 9 and 10 of the Care Act 2014 require local authorities to carry out an assessment for any adult with an appearance of need for care and support. They must provide an assessment to all people regardless of their finances or whether the local authority thinks an individual has eligible needs. The assessment must be of the adult's needs and how they impact on their wellbeing and the results they want to achieve. It must also involve the individual and where suitable their carer or any other person they might want involved.
7. The Care and Support (Eligibility Criteria) Regulations 2014 sets out the eligibility threshold for adults with care and support needs and their carers. Where local authorities have determined that a person has any eligible needs, they must meet these needs.
8. Everyone whose needs the council meets must receive a personal budget as part of the care and support plan. The personal budget gives the person clear information about the money allocated to meet the needs identified in the assessment and recorded in the plan. The council should make sure the process is person-centred and must consider the individual's preferences. The council may reasonably consider its own finances and budgetary position. However, the council should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes.
9. Section 27 of the Care Act 2014 gives an expectation that local authorities should conduct a review of a care and support plan at least every 12 months.

#### Choice of accommodation

10. The (Choice of Accommodation) Regulations 2014 (SI 2014/2670) sets out what people should expect from a council when it arranges a care home place for them. It says that once a needs assessment has determined what type of accommodation will best suit the person's needs, the person will have a right to choose the particular provider or location, subject to certain conditions.
11. The council has to arrange to accommodate the person in a care home of his or her choice provided:
  - The accommodation is suitable for the person's assessed needs;
  - To do so would not cost the local authority more than the amount in the adult's personal budget for accommodation of that type;
  - The accommodation is available; and
  - The provider of the accommodation is willing to enter a contract with the local authority to provide the care at the rate identified in the person's personal budget on the local authority's terms and conditions.

#### Carer's assessment

12. Where an individual provides or intends to provide care for another adult and it appears the carer may have any needs for support, local authorities must carry out a carer's assessment. Carer's assessments must seek to find out not only the carer's needs for support, but also the sustainability of the caring role itself. This includes the practical and emotional support the carer provides to the adult.

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13. Where the local authority is carrying out a carer's assessment, it must include in its assessment a consideration of the carer's potential future needs for support. It must also consider whether the carer is, and will continue to be, able and willing to care for the adult needing care. (*Care and Support Statutory Guidance 2014*)

### **Mental capacity**

14. The Mental Capacity Act 2005 is the framework for acting and deciding for people who lack the mental capacity to make particular decisions for themselves. The Act (and the Code of Practice 2007) describes the steps a person should take when dealing with someone who may lack capacity to make decisions for themselves. It describes when to assess a person's capacity to make a decision, how to do this, and how to make a decision on behalf of somebody who cannot do so themselves.
15. A person must be presumed to have capacity to make a decision unless it is established that he or she lacks capacity. A person should not be treated as unable to make a decision:
- because he or she makes an unwise decision;
  - based simply on: their age; their appearance; assumptions about their condition, or any aspect of their behaviour; or
  - before all practicable steps to help the person to do so have been taken without success.

### **What happened**

16. Miss Y is in her fifties and has a learning disability and some physical health issues which affect her mobility and coordination. Miss Y uses a four wheeled walker to move around. She lived at care home A for around four years and attended the day services it provided. Miss Y had previously lived with her elderly parents and preferred living with older adults. Miss Y also stayed with her sister Ms X every other weekend.
17. In May 2019 Ms X contacted the Council to advise Miss Y no longer wished to attend day services. She also raised concerns about the care provided at the care home and said she was looking for an alternative care home. Ms X was also concerned Miss Y had not had a care review since 2016. A Council officer visited Miss Y who said she did not like the day services and did not want to attend.
18. In June 2019 care home B contacted the Council to advise Ms X had visited and was keen for Miss Y to move there. An officer telephoned Ms X who confirmed she wanted Miss Y to move to care home B. Ms X said care home B was closer to where she lived and more suitable to meet Miss Y's needs. The Council agreed to carry out a review of Miss Y's needs. The Council explained if Miss Y needed a move this would need to be considered by the younger adults' accommodation panel who would consider the best option available which the Council considered was affordable and suitable to meet Miss Y's needs. The Council asked an Occupational Therapist (OT) to assess Miss Y's independent living skills to help to establish the appropriate accommodation for Miss Y.
19. Later that month the Council's accommodation panel refused the request for Miss Y to move to care home B. The team manager from the community learning disability team told Ms X the panel wanted the team to complete a review and reassessment of Miss Y. Care home B was more expensive than care home A and it wanted the team's view of care home A and of Miss Y's needs.

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20. In early July an officer carried out an assessment of Miss Y's needs. Ms X asked to see the reviewing officer without the care home management present as she was concerned Miss Y would be reluctant to speak in front of the manager. The officer agreed to see Miss Y and Ms X first before meeting with the manager. Ms X raised concerns about the food offered to Miss Y, the lack of activities and Miss Y not being regularly bathed. The officer then met with the care home manager. The needs assessment identified Miss Y had eligible needs in most areas and required support for between seven and eight hours a day. She needed support throughout the day to meet her basic needs with continuous background support. She would be unsafe left alone without support for long periods. The officer produced a support plan which set out Miss Y's needs could be met by residential care or supported living accommodation.
  21. In July 2019 an OT carried out an assessment and noted a decline in Miss Y's functioning since she was last assessed in 2014. They made some recommendations relating to personal care, eating and drinking, mobility, for more planned activities and to *'consider a move from current accommodation with a fresh start to incorporate the recommendations made above'*. The notes of the visit record the OT suggested the option of a supported living bungalow to Miss Y but Miss Y was not interested. The OT also raised a safeguarding concern with the Council about care home A. The concerns included issues around the provision of food and fluids, the personal care provided to Miss Y, Miss Y's care plan was out of date, issues with Miss Y's en-suite and a lack of security when they entered the home. The Council also noted the Care Quality Commission (the inspector of care homes) rated care home A as requiring improvement and the Council's own Quality and Market Management Team (who monitor the social care providers used by the Council) had concerns about the care home and was carrying out extra monitoring.
  22. Ms X asked the Council not to contact care home A about the safeguarding as she was concerned this may have a negative impact on Miss Y's care.
  23. In July 2019 Ms X wrote to the accommodation panel setting out her concerns about the care provided at care home A and the positives of care home B. The team manager asked the accommodation panel for permission for Ms X to visit a supported living placement so she could see the benefits if Miss Y chose to move there or if a best interest decision was made. On the form they ticked Miss Y did not have the capacity to decide where she lived but did not answer the question which asked if a capacity assessment had been completed. They noted Miss Y did not have high needs and could manage basic personal care and toileting and could feed herself. They noted Miss Y could share support and did not need much 1:1 care. The panel had some concerns about the suitability of the supported living placement. Depending on the outcome of the capacity assessment and potential best interest decision it recommended liaison with the housing with support team to look at what alternative supported living was available.
  24. In late July 2019 Ms X took Miss Y on holiday. After the holiday Ms X contacted the Council to advise Miss Y did not want to return to care home A. Ms X told the Council Miss Y could stay with her until her new accommodation was arranged.
  25. A social worker telephoned Ms X about the safeguarding referral. The social worker advised they wanted to complete a mental capacity assessment and had also made a referral for an advocate for Miss Y. Ms X questioned why an advocate was needed when she could and did support Miss Y. Ms X confirmed she was happy for the safeguarding to be investigated now Miss Y was no longer

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staying at the care home. She requested a copy of the needs' assessment and the outcome of the July accommodation panel. The social worker advised that the panel had recommended a visit to a supported living accommodation and a mental capacity assessment of Miss Y. Ms X agreed to view the suggested supported living placement. However, the visit did not go ahead as the Council had concerns about its suitability given Miss Y's needs and the needs of other residents.

26. The social worker met with Miss Y and Ms X in August 2019 to carry out a mental capacity assessment (MCA) regarding Miss Y's capacity to decide where she lived. The social worker noted during the assessment that Miss Y often looked at Ms X to finish what she was saying. They noted Miss Y's main focus was getting the activities she liked while Ms X worried more about how she was cared for. Miss Y told the social worker she had visited care home B and wanted to live there. However, Miss Y agreed if she was able to look at other options that also had activities she would consider them. The social worker asked about supported living but Miss Y said she would not like this option and felt she would prefer a residential setting. The social worker also asked Miss Y if she would consider living with her sister. Ms X said this was not really a long-term option. She had Miss Y stay every other weekend but would not commit to having her living with her. During the meeting they also discussed the safeguarding issues.
27. The social worker visited a second time to complete the MCA. Miss Y told the social worker she liked to be around lots of people and to have space to move around. The social worker discussed different options with Miss Y, including supported living and living with a family (such as through a shared lives scheme). The notes record Miss Y was very clear she wanted to live in a residential setting.
28. The social worker recorded on the MCA form that Miss Y could understand the information relevant to the decision and could communicate a decision but they did not consider she could use or weigh the information to make a decision. They noted this was difficult to assess as Miss Y kept looking to Ms X for support and was fixated on going to care home B. They had used a balance sheet to support Miss Y to identify the positive and negative points of different accommodation placements and Miss Y could not think of anything positive about supported living or shared lives and could not think about anything negative about residential living.
29. In August 2019 the social worker agreed with the Team Manager to send a further request to the accommodation panel stating a preference for care home B. They also advised it had been difficult to get a true reflection of Miss Y's wishes and feelings. This was because she looked to Ms X to answer questions for her, which made it difficult to assess her capacity. They recommended an advocate meet with Miss Y without Ms X. They also suggested to Ms X that she had a carer's assessment to identify any difficulties she faced having Miss Y live with her and *'evidence the reasons you are unable to care for her on a longer term basis and my manager would like me to complete a home visit to see how [Miss Y] is managing at your home and any issues for you both'*. They said their manager wanted Ms X and Miss Y to visit a short breaks unit which could provide activities for Miss Y and who could care for Miss Y on a regular basis. In late August 2019 the Council sent Ms X a copy of the care and support assessment and support plan.
30. In August 2019 the team manager updated the accommodation panel. They noted the capacity assessment and safeguarding process were ongoing and the

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- social worker would try and arrange an advocate and for Ms X and Miss Y to visit the short breaks unit. On the form for the accommodation panel they noted Ms X would not allow a referral to an advocate. They noted the social worker thought Miss Y had capacity to decide where to live but the team leader believed the assessment showed Miss Y lacked capacity to use and weigh up information about options because she did not state any positive factors in relation to supported living. They reported Ms X did not allow a discussion about Miss Y continuing to live with her. The team leader noted on the form their view that it was in Miss Y's best interests to remain living with Ms X and to have regular breaks at the short breaks unit. They noted there was no evidence of Ms X being unwilling or unable to house Miss Y as she was doing it already and had not provided any evidence of this causing any difficulty. They noted the social worker would offer Ms X a carer's assessment.
31. On the form they noted the other options considered which included shared lives. They noted Miss Y did not want to live with a family, which would be too quiet, nor did she want supported living which Miss Y said would not have activities on site. Miss Y also reported she did not like going to day services and preferred shorter activities in residential care homes so if she chose not to take part she could go to her room. They noted the social worker would arrange for Ms X and Miss Y to visit the short breaks unit. *'This will help delay the decision on residential care'*.
32. Ms X complained the Council was frustrating the process of finding Miss Y a new home and had failed to properly consider her views. In particular:
- there was a lack of needs assessments in previous years;
  - a failure to provide Ms X and Miss Y with a copy of the recent needs assessment;
  - the Council was trying to push Miss Y to supported living against her wishes, it was continually pushing for Miss Y to live with Ms X when Ms X made it clear this was not an option; and
  - the social worker had said Miss Y had capacity and then changed their view.
33. Ms X asked that the case be transferred to another community learning disability team.
34. Ms X emailed the team manager to ask the reasons for the panel's refusal of care home B and asked what alternative was being proposed given Miss Y did not want to live in supported living or shared lives but wanted to continue to live in a care home with older people. Ms X said they had visited the short breaks unit but Miss Y did not like it. She noted the social worker had mentioned the possibility of Miss Y living permanently with Ms X but Ms X was not willing and able to do that and asked that her wishes be respected. She added she did not want a carer's assessment. She noted that at the end of the meeting the social worker had said that on the balance of probabilities Miss Y had capacity to make the decision about where she wanted to live. She asked therefore what the next steps would be as the continued uncertainty was causing Miss Y unnecessary stress and worry.
35. The social worker emailed Ms X in late August 2019. They reported the accommodation panel had not given permission to go ahead with care home B and they *'wondered if you would like me to talk to the manager of the supported living team to discuss what other possible suitable options may be available?'*

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36. The team leader sought internal advice. The team leader considered Ms X was willing and able to care for her sister. They said they had offered supported living and shared lives but these were turned down. They were willing to create a support plan with one-to-one support to give Ms X a break. They said if Miss Y returned to care home A they could fund activities. They asked if they could write and inform Ms X the evidence was that she was willing and able to care for Miss Y and they would offer an assessment of Miss Y's needs.
  37. In mid-September the social worker liaised with the team leader with a view to looking at what other care homes were available in the area. I have seen no evidence that any care homes were considered.
  38. Ms X complained again to the Council in mid-September 2019. She said the needs assessment was wildly inaccurate and they were not involved at all in the production of the support plan. She said Miss Y was not asked about any of the matters covered in the assessment and it appeared to be a rehash of old documents without any input from Miss Y or consideration of Miss Y's views.
  39. In September 2019 the Council completed the safeguarding enquiry about care home A. It found general issues with poor security and paperwork management at the home. There was poor record keeping relating to an injury Miss Y had and in relation to professionals' visits. There were issues around bathing Miss Y. Any risks to Miss Y were removed as she no longer lived there and the Council's Quality and Market Management Team were dealing with the other issues.
  40. The Council responded to Ms X's complaint in late October 2019. It apologised for not conducting an annual review in 2017 and 2018 and for the delay in providing her with a copy of the needs' assessment. It agreed to reallocate Miss Y's case to another community learning disability team and to request they conduct a more thorough review of the assessment and support plan. It said the accommodation panel accepted Miss Y wanted to live with older people in a quiet environment and supported Miss Y's move from care home A. However, it required the team to consider all the available options so an informed choice could be made. It accepted communication between the panel and assessment teams such as the community learning disability teams was not as good as it should have been and its responses should have been clearer.
  41. In November 2019, a social worker from the second community learning disability team visited Miss Y and Ms X to reassess Miss Y's care needs. They assessed Miss Y needed support for between 11.5 and 12 hours a day. Ms X refused to complete a carer's assessment. She considered it intrusive and said she had made it clear she was not willing or able to care for Miss Y and Miss Y was only staying with her temporarily until new accommodation could be found.
  42. In mid-December the social worker visited again to complete the support plan for a move to care home B. The social worker advised they needed to complete a capacity assessment around Miss Y's capacity to move to residential care. This was completed in January 2020 and the social worker decided Miss Y had the capacity to decide to move to residential care. Under 'can the person use or weigh the information to make a decision', they noted Miss Y had experienced living at home with her parents, with her sister and in a residential home. She was able to weigh up the information and say which she preferred. She repeatedly stated she wanted to live with old people and to make new friends in an old people's home.
  43. In March 2020, the accommodation panel agreed Miss Y could move to care home B. A move date of late April 2020 was proposed. However, given the

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outbreak of the COVID-19 pandemic, the social worker asked Ms X if she wanted Miss Y to move during this time given the risks it may expose Miss Y to. They also advised Miss Y would need to spend two weeks in isolation when she moved in. Ms X considered it best for Miss Y to remain with her until the situation became clearer.

44. In February 2021 Ms X contacted the Council for an update on progress with the move to care home B. At the current time Miss Y remains living with Ms X.

### **Findings**

45. In the complaint response to Ms X the Council accepted it had not reviewed Miss Y's care needs in 2017 and 2018. This was fault. Had the Council done so it may have become aware of Ms X's concerns much earlier.
46. The Council was not at fault for wanting to carry out a reassessment of Miss Y's needs when Ms X first requested that Miss Y move to care home B. The Council is responsible for meeting Miss Y's eligible needs and it needed to be satisfied the move was appropriate.
47. When the Council carried out a new needs assessment and produced a support plan it was not person-centred. When the officer met with Miss Y and Ms X the discussion centred around the issues with the care provided at care home A and not Miss Y's care needs. The assessment did not properly consider Miss Y's wishes and feelings and did not accurately reflect all her care needs. This was fault.
48. Miss Y was very clear she wanted to continue to live in residential care. Miss Y had spent four years living in a care home. She knew what to expect and another care home was her preferred option. The Council was not at fault for considering other options but the support plan set out that Miss Y's needs could be met by supported living or residential care. When Miss Y was clear she did not want to consider supported living the Council failed to progress the option of residential care and this was fault.
49. Ms X had identified an alternative care home, care home B, for Miss Y in June 2019. Care home B was significantly more expensive than care home A. The Council accepted care home A no longer suitable for Miss Y. In deciding whether to support the move to care home B the Council was entitled to consider the cost. However, it did not explore whether another care home option may be available which would meet Miss Y's needs at lower cost. Instead, it continued to suggest other options which Miss Y did not want to consider and did not propose any other suitable alternatives which could meet Miss Y's needs and were available. This was fault.
50. After the holiday with Ms X, Miss Y did not want to return to care home A so Ms X agreed she could stay with her. That was Ms X's choice. However, Ms X made it clear this was a temporary arrangement while the move to care home B was arranged.
51. The Council acted appropriately when it offered Ms X a carer's assessment which she refused. Had Ms X agreed to an assessment it would have enabled the Council to consider what additional support it could provide whilst Miss Y lived with her. However, Ms X chose not to pursue it as she was willing to provide a temporary short term stay but not to provide full time permanent care. Ms X was clear throughout she did not want Miss Y to live with her permanently or to be Miss Y's carer on a permanent basis.

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52. Ms X repeatedly expressed she was not willing or able to support Miss Y long term. The Council repeatedly sought evidence of why this was the case. This was fault. Ms X did not have to 'prove' she did not want to care for her sister. She repeatedly asserted it was a temporary arrangement. The support plan identified Miss Y's needs should be met in supported living or residential care. The Council sought to discuss the option of Miss Y living with Ms X as part of the mental capacity assessment when Ms X had made it clear it was not open for debate. The team leader also considered it was in Miss Y's best interest to remain at her sister's. This was fault. It was not for Miss Y to choose whether she wanted to live with her sister but for Ms X to decide whether she was willing to provide the support on a permanent basis and she was not.
53. The Council wanted to involve an advocate as it was concerned Miss Y was not able to give her view. There was no evidence Ms X was not a suitable representative for Miss Y. There was no evidence Ms X was not acting in Miss Y's best interests. When the Council discussed the use of an advocate with Miss Y she did not want one. She was satisfied Ms X represented her views. The insistence on involving an advocate was fault.
54. When the social worker carried out a mental capacity assessment in August 2019 they advised Ms X that Miss Y had capacity to decide where to live. They changed their view following discussion with the team leader and when they completed the MCA form. In particular, they considered Miss Y did not have capacity to weigh information to make a decision. This seems to be because Miss Y did not provide any positive comments about supported living or shared lives or any negative comments about residential care. I am concerned that the Council decided Miss Y did not have capacity because she was unwilling to consider other options than residential care. If the Council considered Miss Y did not have capacity to make a decision about where she should live it should have held a best interest meeting. It did not do so and that was fault. Following a reassessment in January 2020 it later decided Miss Y did have capacity and agreed to support Miss Y's move to care home B.
55. The Council's complaint response did not address all the issues Ms X raised which added to her frustration.
56. Ms X chose to allow Miss Y to stay with her while a new placement was sorted. However, Miss Y has stayed far longer with Ms X than either of them originally anticipated. If not for the Council fault it is likely Miss Y would have moved by Autumn 2019 at the latest and long before the start of the COVID-19 pandemic. This has had a significant impact on Ms X who has had to meet Miss Y's care needs long term even though she did not want to do so, placing her under significant strain. Miss Y has had her care needs met but is not living in a place where she wants to be. She has had reduced contact with other people, a lack of social stimulation and the uncertainty has caused her distress and frustration.

### **Agreed action**

57. Within one month of the final decision on this complaint the Council has agreed to apologise to Miss Y and pay her £300 to acknowledge the frustration and uncertainty caused to her. It has also agreed to apologise to Ms X and pay her £2,000 to acknowledge the frustration caused to Ms X and the additional strain placed on her in caring for Miss Y for significantly longer than she anticipated.

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58. The Council has agreed, as soon as possible, to progress Miss Y's move to care home B. If this is no longer possible it should seek, within three months, to identify a suitable alternative care home placement to meet Miss Y's needs.
59. Within three months of the final decision, the Council has agreed to:
- Review its processes to ensure it reviews the care needs for all adults, at least annually;
  - Remind relevant staff of the need to ensure a person-centred approach to care planning and, in particular, that where an adult refuses a certain type of care, it considers alternatives without delay;
  - Remind relevant staff that a carer is entitled to say they do not wish to care for someone on a long term basis and this should be respected;
  - Consider whether staff need additional training on carrying out mental capacity assessments to ensure these are carried out in line with the law and guidance.

### **Final decision**

60. I have completed my investigation. There was evidence of fault by the Council causing injustice which the Council has agreed to remedy.

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

## The Ombudsman's final decision

Summary: There is no evidence of fault in the way the Council reached its decision that Mrs X had deprived herself of assets in order to avoid care costs.

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## The complaint

1. Mr A (as I shall call him) complains the Council has failed to consider all the relevant information when deciding his mother deliberately deprived herself of assets in order to avoid the costs of care.

## The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## How I considered this complaint

4. I considered all the information provided by Mr A and the Council. Both Mr A and the Council had the opportunity to comment on an earlier draft of this statement before I reached a final decision.

## What I found

### Relevant law and guidance

5. The Care and Support Statutory Guidance says (Annex E) "*When undertaking or reviewing a financial assessment a local authority may identify circumstances that suggest that a person may have deliberately deprived themselves of assets in order to reduce the level of the contribution towards the cost of their care.*" Deprivation of assets means where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. This means that they must have known that they needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support.

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6. The guidance goes on to say that examples of deprivation might include sudden expenditure which is out of character, or the reduction of assets by extravagant living.
  7. The guidance says, “*There may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:*

*(a) whether avoiding the care and support charge was a significant motivation in the timing of the disposal of the asset; at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?*

*(b) did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?*

*For example, it would be unreasonable to decide that a person had disposed of an asset in order to reduce the level of charges for their care and support needs if at the time the disposal took place they were fit and healthy and could not have foreseen the need for care and support.”*

8. The Mental Capacity Act 2005 introduced the “Lasting Power of Attorney (LPA)”. An LPA is a legal document, which allows people to choose one person (or several) to make decisions about their health and welfare and/or their finances and property, for when they become unable to do so for themselves. The ‘attorney’ is the person chosen to make a decision, which has to be in the person’s best interests, on their behalf.

There are two types of LPA:

**Property and Finance LPA** – this gives the attorney(s) the power to make decisions about the person’s financial and property matters, such as selling a house or managing a bank account.

**Health and Welfare LPA** – this gives the attorney(s) the power to make decisions about the person’s health and personal welfare, such as day-to-day care, medical treatment, or where they should live.

To be effective, an attorney must register a LPA with the Office of the Public Guardian when it is made.

### **What happened**

9. Mrs X is an elderly lady who now lives in a flat with one of her sons (Mr B). Her other son, Mr A, has held power of attorney for her property and financial affairs since 2017. The Lasting Power of Attorney document was registered in March 2017. Mrs X now has dementia and a capacity assessment from September 2020 deemed she lacked capacity to manage her own financial affairs.
10. Mrs X has received care services from the Council since January 2017. In May 2017 Mrs X went into a care home for a period of time while her house was converted to enable her to live on the ground floor. The Council’s records show that it sent Mrs X information about the costs of her care explaining that if she had assets over £23,250, she would be liable to pay the full cost of her care. The information leaflet explained about deprivation of assets. It said the Council would collect financial information from Mrs X to determine her contribution towards the cost of her care. It said if a service user disposed of assets the Council was entitled to take account of them as though they were still owned.

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11. In 2018 Mrs X decided to sell the house and buy a flat instead where she would live with her son Mr B. The sale of the property realised £206,000. After Mrs X had purchased a flat, she was left with about £82,000.
  12. Mrs X moved into the flat in November 2018 and began to receive care services there from the Council.
  13. In May 2019 the Council wrote to Mrs X after she submitted a fresh financial assessment. It said it had recalculated her contributions as the financial assessment showed since the sale of her house, she had assets over £23,250. It said there was now an outstanding debt for care charges of £3220 for care services Mrs X had received since she moved into the flat. It said from now on she would be liable for the full cost of her care.
  14. Mr A disputed the charges Mrs X was being asked to pay. He complained to the Council. He said Mrs X had now spent all but £9000 of her capital but the Council had said it considered she had £69,000 of 'notional' capital left. He said his mother was very worried she would not be able to pay for her home care.
  15. In August 2020 a senior officer wrote to Mr A. She said the Council had a statutory duty to meet the needs of people eligible for care and support and the process to determine whether Mrs X had deprived herself of her assets would not affect that. She said it was up to Mr A and Mrs X to provide evidence to the Council that the money had been spent legitimately or the Council would deem the money was still available. She asked what had happened to the large cash withdrawals which had been made from Mrs X's bank account. She asked for evidence of the investments held by Mrs X. She asked for evidence of the balance on any other remaining investments.
  16. In September 2020 a social worker assessed Mrs X's capacity to manage her finances. Mrs X believed she managed her own finances without help. She was unaware her sons had paid all bills for some time. She was assessed as lacking capacity to manage her finances.
  17. In October 2020, after Mr A had sent the Council a number of receipts and invoices for carpets and furnishings, the senior officer wrote to him again saying the notional capital had now been able to be reduced to £52,363. She said Mrs X had not adhered to the requirement to notify the Council promptly of a change in financial circumstances, although she had received care services from the Council since January 2017 and the Council had written to her annually when the financial assessment was reviewed to remind her to do so.
  18. The senior officer concluded, *'it is reasonable for the Council to expect residents to have consideration of the potential of having care needs and to plan how they intend to make provision for these. As Power of Attorney for Property and Finance you have a duty to make decisions on (Mrs X's) behalf and act in her best interest. (Mrs X) was already in receipt of care and support from the Council at the time you became Power of Attorney and, as detailed above, you were advised of the need to contribute towards or pay in full for any care and support provided by the Council.'*
  19. Mr A asked for the Council to investigate his complaint further. He asked how the notional capital sum had been reached. He said the Council appeared to base its decision on the fact that Mrs X had *'foolishly'* spent her capital but asked what evidence there was to show she had done so deliberately to avoid the costs of care.

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20. In April 2021 a manager wrote to Mr A with the Council's final response. She said the notional capital figure had been set out in previous letters but included the proceeds of the sale, *'less evidenced expenditure such as renovation costs, and purchase of a prepayment funeral plan'*.
21. In respect of Mr A's query about the assumption of a deliberate decision by Mrs X to deprive herself of assets to avoid care costs, the manager pointed out that Mrs X had received care services since 2017, Mr A had held power of attorney since then, and a financial factsheet had been sent to them in 2017 which explained about paying for care and support. She concluded, *'My view is that when (Mrs X) sold her property in March 2019 there was a reasonable expectation of the need for care and support for her in the future and that there would be a financial implication for this and that her property may be taken into consideration.'*
22. Mr A complained to the Ombudsman. He said the Council had incorrectly and unfairly determined his mother had intentionally deprived herself of assets to avoid paying for her care. He acknowledges she spent the money, mostly on paying for renovations for the flat and buying new furniture but says this was not done to avoid paying for care. He says although he had power of attorney his mother did not lack capacity to manage her finances for the whole of the time the Council says.
23. The Council says it reached the decision that there had been a deprivation of assets on the grounds that:
- Mrs X had been provided with personal care and support services from the Council since January 2017 and was required to pay a contribution towards the cost;
  - When Mrs X sold her property there was a reasonable expectation of the need for care and support (as she was already in receipt of a service);
  - The Council's records show contacts with Mr A since January 2017 about the funding process;
  - The Council had sent Mrs X fact sheets which included a warning about deprivation of capital assets. The Financial Assessment Form which was signed included a declaration that if a person disposes of capital assets, property or investments, the Council may take account of these resources as if they were still theirs and charge accordingly;
  - The Council was not notified of a change in circumstances, despite annual letters to confirm an increase in the amount Mrs X paid due to benefit uplifts and requesting she notified the Council if anything was incorrect in the financial assessment.

### **Analysis**

24. The Council was entitled to reach a decision about deprivation of assets. It considered all the relevant information before it did so.
25. It is not the role of the Ombudsman to question the merits of a decision which the Council reached properly.
26. Either Mrs X had capacity to manage her finances, or Mr A had Power of Attorney to do so. In either respect there was a responsibility to inform the Council of the change in circumstances.

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## **Final decision**

27. I have completed the investigation as there was no fault in the way the Council reached its decision Mrs X had deprived herself of assets in order to avoid the cost of care.

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

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

Summary: We will not investigate Mr B's complaint about a bill for a care service. This is because the complaint is late and there is insufficient information for us to reach a safe enough conclusion now on whether the Council is at fault by pursuing payment of the charges in question.

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## **The complaint**

1. The complainant, Mr B, has complained on behalf of his aunt, Mrs C, that the Council has pursued payment of a bill for a care service when the care providers had not provided the contracted service and the service fell below the standard required.

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

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

## **How I considered this complaint**

4. I have considered the information Mr B provided. Mr B has had an opportunity to comment on my draft decision.

## **What I found**

5. In September 2019 Mr B wrote to the Council about the bill in question. He explained his concerns about the care service his aunt, Mrs C, had received after she had left hospital earlier that year. Mr B said he had arranged a new care provider in April 2019. He said his aunt's health had then improved significantly and she became much happier and content.
6. The Council replied to Mr B in December 2019. It did not agree to waiving the charges for the service. Mr B pursued his complaint further in January 2020 but the Council failed to reply to it until August 2020. In its response the Council said it had paid the care provider for the service hours it had commissioned. The Council said the case officer involved was no longer working for the authority and it did not believe it would be appropriate to expect Mrs C to recall accurately what

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had happened in 2019. The care provider had also ceased trading. The Council included extracts from its case records in its letter to Mr B. It did not agree to waive the charges.

7. People must bring their complaint to us within twelve months of first becoming aware of the issue they are complaining about. The time limit runs from then and not from the date of the Council's final response to the complaint. Mr B should have complained to us by September 2020 but he did not complain until March 2021 so his complaint is late. As time goes by it becomes increasingly difficult for us to investigate complaints effectively. We have discretion to consider late complaints if there are good reasons. There has been delay by the Council in responding to Mr B's correspondence. But, in any case, there is insufficient information for us to reach a safe enough conclusion now on whether the Council is at fault by pursuing payment of the charges in question.

### **Final decision**

8. We will not investigate this complaint. This is because the complaint is late and there is insufficient information for us to reach a safe enough conclusion now on whether the Council is at fault by pursuing payment of the charges in question.

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