

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

Summary: The Ombudsman will not investigate Mr X's complaint about what the Council recorded or failed to pass on. The outcome he seeks is one more appropriate for a court and it would be reasonable for him to return there.

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## **The complaint**

1. Mr X says the Council failed to tell him about an assessment of his child it carried out. He says if he had known about his, it would have been easier to demonstrate to a court the poor childcare by his former partner and her new partner. He says the Council also formed a negative view of him and underestimated the issues with the former partner. He says the result has been significant time, trouble, cost, and stress.

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

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. The law says we cannot normally investigate a complaint when someone 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*)
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'. 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, or
  - there is another body better placed to consider this complaint.(*Local Government Act 1974, section 24A(6), as amended*)
5. We can decide whether to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6) and 34B(8), as amended*)

## **How I considered this complaint**

6. I read Mr X's complaint and the complaints correspondence sent by the Council. I gave Mr X the opportunity to comment on a draft decision.

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## **What I found**

7. A court decided the contact and residence arrangements of Mr X's child, following the end of the parental relationship. The Council accepts there were errors in social work, including not sharing an assessment of the child it carried out in 2018 with Mr X. It apologised for these. Mr X wants his legal fees reimbursed and compensation for the stress caused to him.
8. It was open to Mr X to rebut evidence he disagreed with in court. It would be reasonable for him to seek a court order for fresh contact and residence arrangements if he wishes to challenge the current ones.

## **Final decision**

9. The Ombudsman will not investigate this complaint. This is because Mr X has a right to return to court it would be reasonable for him to use.

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

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

Summary: Mr D complains about the Council reducing his support hours after a review of his care needs. And it not carrying out a remedy in line with an earlier Ombudsman decision. We find the decision on the support hours was made without fault, so we cannot question its merits. But we do uphold the complaint, because the Council did not backdate an increase in disability related expenditure to a date it had agreed with the Ombudsman. We also find fault with the way the Council handled Mr D's complaint. And fault in the way it has dealt with Mr D's direct payment. The Council has agreed to our recommendations.

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## **The complaint**

1. The complainant, whom I shall refer to as Mr D, complains the Council has:
  - reduced his care and support hours by four hours a week;
  - allowed an increase in his disability related expenditure. But it did not follow an earlier agreement with the Ombudsman when deciding on how long to backdate the increase.

## **What I have investigated**

2. This complaint follows earlier complaints from Mr D. This investigation has only dealt with matters not considered by our earlier investigations.

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

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

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## How I considered this complaint

6. As part of the investigation, I have:
  - considered the complaint from Mr D;
  - considered the agreed action from an earlier decision;
  - made enquiries of the Council and considered its response;
  - spoken to Mr D;
  - sent my draft decision to Mr D and the Council and invited their comments.

## What I found

### Legal and administrative background

#### The Care Act

7. The 2014 Care Act introduced a single framework for assessment and support planning. Sections 9 and 10 of the Care Act 2014 require local authorities to carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the results they want to achieve. The Act says the assessment should also seek to promote independence and reduce dependency.
8. A council should revise a care and support plan at least yearly. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. (*Care Act 2014, sections 27(4) and (5)*)
9. The *Care and Support Statutory Guidance* ('the Guidance') has a checklist of broad elements to cover in a review.

#### The Council's Assessment, Eligibility, Support Planning, Reviews & Personal Budgets policy

10. The Council's Adult Social Care Strategy has an aim to support independent living. It has three stages:
  1. helping people to help themselves;
  2. helping people when they need it;
  3. maximizing people's independence and keeping their progress under review.
11. It says, in considering what might help, its staff should consider the person's own strengths and capabilities. And what support might be available from their wider support network, or within the community, to help.
12. If there is a disagreement, and the Social Care Worker/their Manager believes all reasonable steps have been taken to resolve any dispute, they should direct the person to its complaints procedure.

#### Charging for non-residential services

13. Councils can make charges for care and support services they provide or arrange. Charges may only cover the cost the council incurs. (*Care Act 2014, section 14*)
14. There are certain items of spending that can be deducted from a person's income, before a council decides whether a person can afford to contribute to social care costs. This is called Disability Related Expenditure, or DRE. Councils

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must take DRE into account when assessing a person's finances. The financial assessment should set out exactly what a council considers to be DRE.

15. The Guidance allows councils to use a standard rate DRE allowance, although this should not work as a blanket allowance, when a service user has DRE above the standard figure.
16. The Council uses a standard DRE allowance of £20 a week.

### **Personal Budgets**

17. Everyone whose needs the local authority meets must receive a personal budget, as part of the care and support plan. The personal budget gives the person clear information about the money allocated to meet the needs identified in the assessment and recorded in the plan. The detail of how the person will use their personal budget will be in the care and support plan. The personal budget must always be an amount enough to meet the person's care and support needs.
18. There are three main ways in which a personal budget can be administered:
  - as a managed account held by the local authority with support provided in line with the person's wishes;
  - as a managed account held by a third party (often called an individual service fund or ISF) with support provided in line with the person's wishes;
  - as a direct payment.

### **Adult Social Care complaints**

19. Councils should have clear procedures for dealing with social care complaints. Regulations and guidance say they should investigate complaints in a way which will resolve them speedily and efficiently. A single stage procedure should be enough. The council should say in its response to the complaint:
  - how it has considered the complaint; and
  - what conclusions it has reached about the complaint, including any matters which may need remedial action; and
  - whether the responsible body is satisfied it has taken or will take necessary action; and
  - details of the complainant's right to complain to the Local Government and Social Care Ombudsman.

*(Local Authority Social Services and National Health Service Complaints (England) Regulations 2009)*

### **What happened**

#### **Background**

20. Mr D has a visual impairment, since an accident in 2003. He had a nervous breakdown then. He still suffers from some mental health problems, including social anxiety. He also has a skin condition that flares up when he is stressed.
21. The Ombudsman has investigated earlier complaints from Mr D. Most recently this was about:
  - his care and support plan review; and
  - a financial assessment of his DRE.

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### **The care and support plan review**

22. While our investigation of Mr D's last complaint was ongoing, the Council carried out a new review of his care and support. It was not the place of that investigation to investigate that review, or its outcomes.
23. The Council says it knew the review process was a concern for Mr D, due to his anxiety and depression. So it completed the review in three meetings over a three month period. The Council says Mr D at first refused referral to an advocate but later did have advocate support.
24. The Council's records of the review:
  - noted Mr D advised some changes to his conditions and that he was using, independently, some community resources, such as Dial a Ride transport;
  - noted Mr D's view about his needs;
  - said its view was Mr D had seen some improvements in his life, so a small reduction in his support hours was reasonable;
  - noted '...real potential for increased independence';
  - said an early next review was recommended, to discuss with Mr D whether he had met any of his outcomes and to set new goals;
  - had an action plan around counselling. The Council also wanted to refer Mr D to organisations for enabling/rehabilitation work, although it noted Mr D declined these due to his anxiety levels;
  - reduced Mr D's care package from 25.75 to 21 hours a week;
  - says it provided Mr D with funding to buy internet access, to address his social isolation, by adding it to his support plan costs.

### **The backdating of the DRE**

25. The Council agreed, as part of our last investigation, to accept any information Mr D sent it in support of an increase of his DRE allowance. It also agreed to backdate any increase to January 2019 (the date of the Council's most recent financial assessment, at the time of our decision on that complaint). At that time it was allowing Mr D its standard £20 a week for DRE.
26. The Council says in early 2020 its officer met Mr D to complete an income and expenditure form (the Council had been asking Mr D for some time to complete this, but he was anxious about the implications of completing one). As a result of this meeting, the Council says it increased Mr D's DRE allowance to £59.73 per week. It backdated the start date of the increased allowance to 8 April 2019.
27. It says, at a district team level, it was not aware of the Ombudsman's recommendation of a start date of January 2019 for any change. It advised it was an oversight on its part and was happy to backdate the increased DRE to the earlier date.

### **Complaint handling**

28. In January 2020 Mr D tried to complain to the Council about the outcome of the review reducing his support hours (and another matter about his charges). The Council replied to advise it could not investigate this through its complaint procedure. It noted the Ombudsman had not found fault with the Council expecting him to contribute towards his care and support. It went on to advise a manager had looked at the review records and was satisfied it was of a high

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standard and reflective of Mr D's assessed needs. It gave some details of its reasons for that view. It referred Mr D to the Ombudsman.

### **Mr D's direct payment administration**

29. The Council says that, during its preparation of its response to the Ombudsman, it discovered it had not reduced Mr D's direct payment to reflect the reduction in the eligible hours in his support plan. It says this was a human inputting error.
30. The Council advised that the payment support service that manages Mr D's funds have been following the plan based on the new 21 hours per week of support. This means that Mr D has not had access to, or used, any surplus funds in the account. There is currently a surplus in the account greater than the overpaid amount.
31. The Council advised the best option for adjusting these payments was to wait for its next review and make any adjustments from the new date. Mr D has agreed that that is an acceptable solution.

### **Was there fault by the Council?**

#### **The care and support plan review**

32. The Council's records demonstrate it did consider Mr D's needs when carrying out its review. A key aim, both of the Care Act and the Council's own policy, is to increase independence. My view is the Council's reasoning behind its decision to make the modest reduction in Mr D's support hours fits with its assessment of Mr D's needs and capabilities and its assessed potential for more independence. It also agreed to allow Mr D's online connection costs in its calculation and suggested an action plan.
33. The length of time the Council took to carry out the review demonstrates it was both alert to Mr D's anxiety and its need to work through with him the reasoning behind its view. I am aware Mr D still believes the Council should not have reduced his hours. But the Ombudsman cannot question the merits of the decision, when, as here, there is no evidence of administrative fault.

#### **The DRE**

34. The Council has accepted its team was not aware of the Ombudsman's earlier recommendation and the Council's agreement with it. That was fault.

#### **The complaint response**

35. The Council should have accepted a complaint from Mr D about the review of his support plan. To advise Mr D it would not accept a complaint was fault. This was a new issue and it led to a significant change in his care and support. I note the Council's own policy refers service users who disagree with a decision towards making a complaint.
36. However, in effect, the Council did carry out an investigation. Its manager checked the records and the response provided some reasoning why its view was there was no fault in its decision.

#### **The administrative error with the direct payment**

37. In response to my investigation, the Council advised me of an error with the amount it was paying to Mr D's support service. That was fault.

### **Did the faults cause an injustice?**

38. To summarise, I have found fault with:

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- the Council not fully meeting an earlier Ombudsman recommendation and not backdating a payment to the correct date;
  - advising Mr D it would not take a new complaint from him;
  - an administrative error with Mr D's direct payment.
39. Each of these errors is relatively minor. But each also had the potential to cause Mr D some anxiety, due to his disability, amplifying the potential for distress.

### **Agreed action**

40. The Council has agreed to my recommendations that, within a month of this decision it will:
- send me evidence it has made the agreed payment and paid the additional backdated DRE;
  - apologise to Mr D for the faults I have identified;
  - pay Mr D £100 as a token recognition of the distress the faults will have caused him;
  - confirm in writing to Mr D that it will settle the error with his direct payments after its next care and support review.

### **Final decision**

41. I uphold this complaint. The Council has agreed to my recommendations. So I have completed my investigation.

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

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

Summary: Mr X complains that the Council failed to complete adaptations to his mother's property before sending her home with a care package. We have found no fault by the Council.

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## **The complaint**

1. Mr X complains on behalf of his mother, Mrs Y. He says that the Council failed to complete adaptations to Mrs Y's property before sending her home with a care package. Mr X says his mother is struggling to cope at home and this is affecting her health and wellbeing.

## **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 the information provided by Mr X and discussed the complaint with him. I made enquires of the Council and considered the comments and information it provided.
5. I provided Mr X and the Council with a copy of my draft decision and invited their comments.

## **What I found**

### **Legislation**

6. The Care and Support Statutory Guidance says that:
  - Councils must carry out an assessment for any adult with an appearance of need for care and support. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must also involve the individual and where appropriate their carer or any other person they might want involved.

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- If a person has eligible needs (needs which meet the eligibility criteria), a council can meet these by providing or arranging care and support at home, in a care or nursing home or in other ways.
  - A council has to have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs.

## What happened

7. Mrs Y is 89 years old. She lives alone in a first floor flat in a supported living complex. Mr X visits his mother regularly and provides support. Mr X and his wife hold a lasting power of attorney for Mrs Y.
8. On 29 February 2020 Mrs Y had a fall and broke her wrist. A week later she was discharged from hospital to a care home for rehabilitation. Her case was allocated to the Transfer to Assess Team and Mrs Y was supported by an occupational therapist (OT).
9. Mr X told the Council his mother required long term residential care. He explained Mrs Y had frequent falls, was not managing her personal care and there was a general decline in her health and memory. The Council said it would complete an assessment of Mrs Y's care and support needs and consider all options for her future.
10. On 20 April 2020 a social worker discussed Mrs Y's case with the OT. The OT said Mrs Y had made it very clear that she did not want to return home and wanted to go into residential care, closer to her son. The OT said it was unlikely Mrs Y would meet the criteria as she was quite capable and mentally alert to make her own decisions.
11. The social worker contacted Mr X about arrangements for Mrs Y to return home with a care and support package. Mr X said the Council had not assessed Mrs Y in her own home. He said she was at high risk of falling and her condition of Osteoporosis and brittle bones meant that the smallest of injuries could be fatal. The social worker agreed to an access visit to Mrs Y's home before deciding her care and support needs.
12. The OT carried out the access visit on 11 May 2020. Mr X was also present. The OT said Mrs Y had a spacious flat and the only issue was the height of the kitchen worktops. Mr X said Mrs Y could not reach the worktops or open windows. He said Mrs Y should be in long term care. The OT explained that Mrs Y could return home with a care package as carers could provide meals, drinks, and support with Mrs Y's care needs. The OT said Mrs Y did not have a previous care package and had no nighttime needs.
13. On 21 May 2020 the Council recorded that Mrs Y was "*ready to return home. She is mobile, does not have any cognitive needs and is independent at night.*" "On the same day Mr X contacted the social worker. He said his mother had been advised by the care home that she would be going home. Mr X questioned the Council's reasoning for its decision. He said due Covid-19 no face to face assessment had been carried out. The social worker explained she had gathered evidence from the Transfer to Assess Team and Mrs Y was managing well, mobilising, and mainly taking herself to the toilet. Mrs Y needed assistance with all aspect of drinks and meals because of her height and being extremely stooped. The social worker said Mrs Y's needs could be met at home with a care package. Mr X's wife said it was Mrs Y's wish to go into a residential care home. Mr X also said he had

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been told the Council would carry out a home visit with Mrs Y before any decision was made. The social worker explained that the Care to Assess Team had been continually assessing Mrs Y but agreed to carrying out a home visit with Mrs Y. Later the same day a conference call was held with the social worker, OT, Mrs Y and Mr X. It was agreed a home visit with Mrs Y would be carried out the next day.

14. A home visit was carried out by the OT. Mrs Y and Mr X were also present. It was noted that Mrs Y mobilised independently with a rollator frame. She also had a four wheeled walker and a three wheeled walker. The OT reported that whilst Mrs Y was at risk of falling due to stoop and curvature she did have tolerance to mobilise safely over increased distance. The OT observed that Mrs Y was fully independent with chair and bed transfers. Mrs Y was able to use the toilet without assistance. The OT recognised Mrs Y would not be able to use the shower without support and Mrs Y confirmed that she had not used the shower for some time.
15. The assessment established Mrs Y's greatest difficulty was in the kitchen. She struggled to lift the kettle to fill it with water due to not being able to lift her head to see what she was doing and with the weight of the kettle with the water in it. For the same reasons, Mrs Y struggled to lift meals in and out of the microwave. Mrs Y could not reach the wall cupboards and there was a risk of falling when bending down to access the base cupboards. Mrs Y was unable to reach switches on the wall that controlled her appliances and heating controls that operated her central heating. Mrs Y could not open the windows in her flat due to the positioning of the handles.
16. The OT recommended Mrs Y could return home with a package of care to support her with personal care to shower and supervision of dressing; prepare meals and hot drinks and prompting with daily medication.
17. Mr X complained to the Council. He said Mrs Y did not want to return home and required long term residential care. The Council delayed Mrs Y's discharge until it had investigated and responded to the complaint. In its complaint response the Council explained how and why it decided Mrs Y could return home with a care and support package. The Council upheld its decision.
18. The Council confirmed the Short Term Assessment and Reablement Team would support Mrs Y on discharge, with four calls a day. It said that it had already contacted the District Council as it was responsible for carrying out the adaptations. It said the District Council would assess the adaptations further once Mrs Y was home.
19. Mrs Y was discharged on 9 July 2020 following liaison with Mr X.

## **Analysis**

20. It is not the Ombudsman's role to say what a person's needs are or what services they should receive. The Ombudsman's role is to consider if the Council has followed the correct processes to assess a person's needs.
21. I have considered the documents provided by the Council which included Mrs Y's case notes and assessments. I find no fault in the completion of the assessments and the way the Council concluded that Mrs Y's care needs could be met at home. The Council considered all the relevant factors including observations carried out whilst she was in rehabilitation and during the home visit. The Council engaged Mrs Y and Mr X throughout the process and considered their comments

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and the concerns they raised. The Council said the care and support package reflects the independence and confidence Mrs Y had before her fall and following her rehabilitation. This is a decision the Council is entitled to take.

22. The Ombudsman cannot question the merits of the decision itself without evidence of fault in the way it was made.
23. The Council delayed Mrs Y's discharge until it had responded to the complaint and confirmed the specific details with Mr X. This is good practice.

### **Final decision**

24. For the reasons explained above I have found no fault by the Council and I have completed my investigation on this basis.

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

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

Summary: Mr X complained about the Council's decision to reduce his support package following a review of his care needs. We have not found the Council to be at fault.

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## **The complaint**

1. Mr X complains about the Council's decision to reduce his package of care support even though his needs have not changed. He says this has left him struggling to manage and relying more on his parents.
2. Mr X is represented by his mother, Mrs D, in making this complaint.

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

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

## **How I considered this complaint**

5. As part of my investigation I have:
  - considered the complaint and documents provided by Mrs D;
  - made enquiries of the Council and considered its response;
  - considered the relevant legislation (Care Act 2014 and Care and Support Statutory Guidance - "the Guidance");
  - spoken to Mrs D; and
  - sent a draft version of this decision to both parties and invited comments on it. Comments received from Mrs D have been taken into consideration.

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## What I found

### Law and guidance

6. The Care Act 2014 gives local authorities a legal responsibility to provide a care and support plan. The care and support plan should consider what the person has, what they want to achieve, what they can do by themselves or with existing support and what care and support may be available in the local area. The support plan must include a personal budget which is the money the council has worked out it will cost to arrange the necessary care and support for that person. The personal budget can be administered as Direct Payments.
7. In setting this budget the Guidance states, “the local authority should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes – doing so would not deliver an approach that is person-centred or compatible with public law principles. The authority may take decisions on a case-by-case basis which weigh up the total costs of different potential options for meeting needs, and include the cost as a relevant factor in deciding between suitable alternative options for meeting needs. This does not mean choosing the cheapest option; but the one which delivers the outcomes desired for the best value.” (Paragraph 10.27)
8. The Care and Support (Eligibility Criteria) Regulations 2014 set out the eligibility threshold for adults with care and support needs and their carers. The threshold is based on identifying how a person’s needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing.

### What happened

9. I have set out below a summary of the key events. It is not meant to show everything that happened.
10. Mr X is a young adult with a learning disability and autism. He lives in his own flat with support from a package of care funded by a direct payment. This care is provided by his family and an employed carer. He has a full-time job. He received 40 hours’ worth of paid support for several years. This helped him with tasks such as meal preparation, getting ready for work, shopping, maintaining his home, attending social events and participating in sport.
11. In May 2019, the Council carried out an annual review of Mr X’s care needs. The Council decided his needs could be met with less support, with a view to promoting his independence. It initially reduced his weekly hours down to 17, with an additional 16 “contingency” hours to reflect the fact Mr D was vulnerable because of a recent relationship breakdown. The Council said this would be reviewed again in three months.
12. Mrs D objected to this significant reduction. She explained that Mr X was only able to cope because of the support he received, both by the paid carers and the help he received informally from his family. She told the Council Mr X presented as more able than he was and this had affected the outcome.
13. In response, the Council said an occupational therapist (OT) would carry out a further assessment of Mr X’s skills. This would focus on his ability to perform tasks such as making a sandwich and using the vacuum cleaner. This would inform the Council’s future decision making.
14. It was also proposed and agreed that Mr X should have an advocate. This was due to a potential conflict of interest between Mrs D’s role as her son’s representative and her also being his paid carer.

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15. In November 2019, a review took place. Mr X, Mrs D, the advocate, the OT and two social workers attended. This review confirmed the previous reduction of support. However, some additional contingency hours were available, together with an annual budget of £2400 to fund short breaks for Mr X. The Council explained this would also provide Mrs D and her husband with a break from their caring responsibilities.
  16. In January 2020, Mrs D requested a reassessment. The Council refused because it was felt the hours provided met his assessed needs. The annual review carried out in March 2020, confirmed the reduced hours should continue.

### **Mrs D's complaint**

17. Mrs D first complained in June 2019 and again in July 2019. As her complaint was not upheld she brought her complaint to the Ombudsman in March 2020. Between July 2019 and March 2020, discussions continued between the Council and Mrs D about the reduction in support hours.
18. For brevity, I have not included all Mrs D's comments and objections, but they followed a common thread relating to the following matters:
  - a) Reduction in support hours from 40 to 17. This was informed by a poor assessment process that failed to take into consideration Mr X's views, was carried out by someone without knowledge of Mr X, did not take into account relevant information from other professionals or the impact such a reduction would have on Mr X.
  - b) Being pressured into accepting an advocate, whose views were misinterpreted.
  - c) Poor communication and complaint handling.
19. In response, the Council made the following points:
  - a) From December 2017, care packages were reviewed against the Council's "Adult Social Care Strategy". The focus was in supporting and maximising independence with more involvement from OT's. The Council acknowledged that historically care packages were often more generous.
  - b) The Council was satisfied the assessment process was robust and the revised support plan met his identified eligible needs, while promoting Mr X's opportunities for greater independence in certain areas.
  - c) Some of the areas of support provided by Mrs D were not "eligible care needs" that would normally be funded by the Council. It would be Mrs D's choice to continue to support her son with these activities if she chose to do so.
  - d) The advocate was necessary because of a possible conflict of interest between Mrs D acting as Mr X's representative and her being a paid carer who was adversely affected by the Council's reduced support package.

### **Analysis**

20. It is clear that Mrs D wants the very best for Mr X. It entirely understandable that she would be anxious that a reduction in Mr X's support package would be challenging for him. However, although Mr X and Mrs D are unhappy with the outcome of the assessment, that is not, in itself, evidence of fault on the part of the Council. The role of the Ombudsman is to investigate complaints that injustice has been caused by an administrative fault, not to question a decision which has been taken properly, however much someone may dislike or disagree with it.

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21. The Council was correct to conduct a review of Mr X's care needs and support package and should do so annually.
  22. I understand the reduction in service has led to a change to arrangements that had worked well for several years, but the Council was permitted to do this as long as it properly considered all the relevant information. Having considered all the available evidence, including the care assessments, support plans, detailed correspondence between Mrs D and the Council, I am satisfied it did.
  23. The review process was thorough. I have seen evidence of Mr X and Mrs D being involved and meaningfully participating. While I understand Mrs D was unhappy about Mr D being involved (where previously she had been able to deal with reviews on his behalf), I do not criticise the Council for insisting Mr X was present. I accept historically reviews may have been carried out differently, but the introduction of the Care Act has encouraged assessments to be more "person centred". Direct involvement of Mr X would be a crucial way of achieving this. It is clear from the social worker's notes from the assessment that she was mindful of Mr X's sensitivity and was careful to make sure he was as comfortable as possible.
  24. The Council had regard to his learning disability and carried out the May assessment at home. When Mrs D challenged the outcome, the Council responded appropriately by making the referral to the OT service. This was the correct approach, particularly as there was a difference of opinion about Mr X's functional abilities. This also addressed Mrs D's concerns about the May review being flawed because the assessor did not have sufficient knowledge of Mr X, having not previously met him. The OT had several one to one sessions with Mr X.
  25. The OT's report was considered by the Council as part of the November 2019 review. The OT acknowledged that Mr X required support with many everyday tasks, including meal preparation and deep cleaning
  26. I do not agree with Mrs D's assertion that the Council did not have regard to this report in its decision making. In response, the Council increased his evening call to one hour, three times a week, by rearranging his care package. It also considered it reasonable for Mr X to privately fund a deep cleaning service if so required.
  27. Mrs D raised a number of other concerns about the Council's proposals being inadequate and inappropriate (for example, Mr D not needing support on a Saturday because he usually ordered a takeaway and was able to do online shopping). It is not necessary for me to respond to each point made by Mrs D, but I am satisfied both the review and resulting support plan followed the Care Act guidance. It considered all the outcomes and how these could be met by the proposed arrangements. Mr X was offered more support with promoting his independence, but this was refused. The Council properly explained its rationale. The Council made a professional judgement about how his needs could be met. It decided they could be met with less support. They were decisions the Council was entitled to make.
  28. Mrs D claims this was a cost cutting exercise. The Council has denied this but has been open about the fact that historically care packages were more generous. There is no evidence to support what Mrs D has said. The Council can have regard to the budget implications of individual care packages (see paragraph 7 above). There is no evidence of this being the overriding consideration.

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29. I appreciate that Mr X and Mrs D disagree with the adequacy of the care package, but the documentary evidence I have seen indicates the Council properly considered his needs, and so it is not for the Ombudsman to question the Council's decision as to what amount of care provision is appropriate.
30. Nor do I criticise the Council for arranging an advocate for Mr X. There could have been a conflict of interest with Mrs D acting as both representative and paid carer. In relation to this, I note Mrs D had concerns about the Council misquoting the advocate's agreement to the reduced care package. A case record from March 2020 confirmed the advocate informed the Council she did not agree with the Council's level of support. I am therefore satisfied the Council was aware of her disagreement at this point. But I have found no evidence the advocate specifically told the Council she did not agree prior to this, and the Council deliberately misrepresented her views. For this reason, I do not find fault here.
31. Nor do I find fault with either the Council's communication with Mrs D or its complaint handling. The main and contentious issue was the decision to reduce the support hours and I am satisfied the frustration felt by Mrs D was in relation to this, rather than the resultant communication about it.

### **Final decision**

32. There was no fault in the way the Council reassessed Mr X's care needs and reduced his support hours. I have therefore completed my investigation.

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

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

Summary: We will not investigate Mr X's late complaint about the Council refusing to enter into a third party top-up agreement relating to his brother-in-law's care. There is not a good reason Mr X did not bring his complaint to the Ombudsman sooner.

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## **The complaint**

1. Mr X complained the Council refused to enter into a third party top-up agreement with him and his wife in May 2019, in relation to his brother in law (Mr Y). The Council said it was unlawful to do so, despite this conflicting with its policy. The Council then did not provide a satisfactory explanation and refused to consider their complaint because the courts had considered the matter. This caused significant stress and nearly prevented Mr Y being able to move accommodation.

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

2. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

## **How I considered this complaint**

3. I considered the information Mr X provided when he complained to us.
4. I considered Mr X's comments on my draft decision.

## **What I found**

5. In May 2019 the Council said it could not enter into a third party top-up agreement with Mr X and his wife in relation to his brother-in-law's (Mr Y's) care. Third party top-ups are paid when a particular preferred placement costs more than the amount a Council is prepared to pay towards a person's care.
6. The Court of Protection was involved in the decision about whether Mr Y should move from a care home to a nursing home, closer to Mr X and his wife. The court process concluded in June 2019. Mr Y did not move to the nursing home Mr X says he and his wife preferred and were willing and able to pay a top-up for.
7. Mr X made two information requests to the Council, and received its second response in December 2019. This confirmed the Council's policy allowed it to enter into third party top-up agreements with family members.

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8. In June 2020, Mr X asked the Council to explain why it had said during court proceedings it could not enter into a top-up agreement.
  9. In October 2020, Mr X made a formal complaint to the Council. It responded to say it could not consider the matter through its complaints procedure because the matter had been considered during court proceedings. Mr X complained to us in November 2020.
  10. The law says we cannot investigate complaints brought to us after more than 12 months unless there are good reasons for the delay. Mr X says the 12 months should begin in December 2019 when he considers he had the information he needed to complain. But the decision Mr X complains about is the Council's assertion in May 2019 that it could not enter into a third party top-up agreement.
  11. I have accounted for Mr X and his wife's poor health in early 2020, as well as the death of Mr Y in February 2020, which accounts for some delay between December 2019 and June 2020. However, these events followed an already significant period during which Mr X could have complained to the Council and then us. We do not require people to have gathered significant evidence before they can bring complaints to us. Mr X knew of the Council's decision, which he and his wife did not agree with, in May 2019. There is not sufficiently good reason Mr X did not complain to the Council, and then the Ombudsman, much sooner. There is not a good reason for us to exercise discretion to investigate this complaint.

### **Final decision**

12. The Ombudsman will not investigate this late complaint. This is because there is not a good reason Mr X did not complain to us sooner.

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