

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

Summary: The Ombudsman will not investigate Mr X's complaint that the Council will not pay to move a street light outside his property. The complaint is late and it is unlikely we would find fault by the Council causing Mr X significant injustice. If Mr X wishes to move the street light he will need to pay the Council's costs.

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## **The complaint**

1. The complainant, Mr X, complains the Council will not move a street light on the pavement outside his property unless he pays £1,500.

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

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

*(Local Government Act 1974, section 24A(6), as amended)*
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 reviewed Mr X's complaint, shared my draft decision with him and considered his comments.

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## **What I found**

5. The Borough Council granted Mr X planning permission to extend his property several years ago. The decision notice included a non-binding statement that Mr X would need to widen access to his driveway and that he should contact the County Council to discuss this.
6. Mr X contacted the County Council in 2015 and was told he would need to pay £1,500 to move the street light before he could widen the dropped kerb. Mr X suggests he did not proceed with the work as he considered the cost unreasonable. He says the position of the street light is unsuitable and that it causes him problems accessing his drive.
7. The Ombudsman will not investigate this complaint. Mr X asked the Council about moving the street light to widen the dropped kerb in 2015 and did not complain to the Ombudsman until 2018; his complaint is therefore late.
8. Although the Ombudsman has discretion to investigate late complaints I do not consider it would be appropriate to exercise our discretion in this case. This is because it is unlikely we would find fault by the County Council causing Mr X significant injustice.
9. The Council installed the street light before Mr X purchased his property and the installation did not therefore cause Mr X injustice; the light only affects Mr X now because he bought the property. Had Mr X felt the light would cause problems in accessing his driveway it was for him to decide whether to proceed with his purchase.
10. The Council is under no obligation to pay to move the street light simply because Mr X has concerns about its position. The Borough Council's decision on Mr X's planning application states Mr X should liaise with the County Council about widening access to his driveway but it does not bind the County Council to agreeing to his proposal or paying for any work. Mr X's complaint suggests the County Council has agreed to move the street light at Mr X's expense so it is for him to decide whether to go ahead with this.

## **Final decision**

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

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

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

Summary: Ms X complained the Council wrongly decided her late mother, Mrs Y, deliberately deprived herself of an asset to avoid future care costs. The Council considered the timing and motivation for the transfer of the asset, having regard to legislation and guidance operating at that time. It therefore made its decision without fault.

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## **The complaint**

1. Ms X complained the Council wrongly decided her late mother, Mrs Y, deliberately deprived herself of an asset, her home to avoid care costs. She says her mother transferred ownership of part of her home to Ms X in 2011 because of tax reasons, not to avoid costs.
2. Ms X wants the Council to change its decision and accept her mother did not purposefully deprive herself.

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

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. The key decision made by the Council about Mrs Y's disposal of assets, happened in 2015 and Mrs Y and Ms X were aware of it then. However Ms X complained to the Council about this decision in 2017 and it then investigated her complaint. Therefore, although it would have been reasonable for Ms X to have complained to the Ombudsman earlier, I have exercised my discretion to investigate the 2015 decision and the Council's subsequent actions.
5. 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*)
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 spoke to Ms X about the complaint.

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8. I asked the Council questions and considered evidence it provided.
  9. I read the National Assistance (Assessment of Resources) Regulations 1992, Charging for Residential Accommodation Guide (CRAG) 2011, Care Act 2014 and associated Care and Support Statutory Guidance.
  10. I gave the Council and Ms X the opportunity to comment on my draft decision. I considered Ms X's comments before making my final decision.

## What I found

### Legislation and guidance

11. People who have savings above a certain level (currently £23,250) are expected to pay the full cost of their residential care home fees. In this statement I have called this the 'capital threshold'. Once their savings reduce to less than this upper limit, if they are eligible for financial assistance they only have to pay an assessed contribution towards their fees.
12. In deciding how much assets someone has available, councils can consider whether the person has deliberately chosen to reduce their assets to avoid paying care costs. During the time covered by this complaint, various legislation and guidance has been in force governing how councils should make this type of decision.
13. In 2012, when Mrs Y transferred part of the value of her house to her children, the National Assistance (Assessment of Resources) Regulations 1992 was the key legislation concerning decisions about council charges for care.
14. This said "*A resident may be treated as possessing actual capital of which he has deprived himself for the purpose of decreasing the amount that he may be liable to pay for his accommodation*". This meant a council could treat someone as still having capital assets if it decided they deliberately transferred them to someone else to reduce what they might need to pay towards their care.
15. The Charging for Residential Accommodation Guide (CRAG) 2011 was key guidance at the time. It explained what councils had to consider when making this type of decision. Important considerations for this complaint were:
  - The person's purpose in disposing of the asset. For a council to say deliberate deprivation occurred, it had to show avoiding the accommodation charge was a significant motivation for the disposal.
  - The timing of the disposal of the asset. Any transfer had to occur when the person could reasonably have foreseen needing to move to residential accommodation, incurring care costs.
16. By the time Mrs Y's savings ran out in 2015 and the Council decided she had deprived herself of assets, the Care Act 2014 and associated Care and Support Statutory Guidance was in force. This set out the rules the Council had to follow when undertaking the financial assessment.
17. In any case, the Care Act guidance about deprivation is broadly the same as the earlier CRAG. It requires councils to consider:
  - Was avoiding the care and support charge a significant motivation for asset transfer?
  - The timing of the disposal of the asset – could the person have reasonably expected to need care and support at the time they disposed the asset?

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- Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs at the time they transferred assets?
18. The capital value of a person's home is disregarded for the first 12 weeks of a stay. This is called a property disregard. Statutory Guidance says councils must disregard the value of a person's main or only home when the value of their non-housing assets is below the upper capital limit. It says this applies for the 12 weeks after the point "*When they first enter residential care as a permanent resident*".

### **Background**

19. Mrs Y was an elderly woman who lived in her own home in 2010. She had a Council assessed personal budget for her care, but because she had savings over the capital threshold she paid the full cost of this home care. Her daughter, Ms X moved in to help look after her in 2010.
20. The Council's record of an occupational therapist visit in June 2011 said Mrs Y was "*thinking seriously about the level of support she needs and now feels the care package needs to continue*". A Council record later that month said Mrs Y "*doesn't anticipate that much improvement in her mobility can be achieved*".
21. Mrs Y went into hospital later in 2011. The Council says it gave her a leaflet at that time about services, explaining what contribution someone needing residential care would need to make.
22. In December 2011 Mrs Y left hospital and went into residential care. Initially she paid for all her care costs as a self funder.
23. In February 2012, Mrs Y transferred 80% of her home to Ms X and her brother. Mrs Y kept 20% of the share. Ms X says her mother started making this transfer in late 2011 and completed the process in February 2012. This was therefore happening at the same time as she moved into residential care. Ms X says this transfer was to reduce potential future inheritance tax. She says it was not to avoid the Council counting the asset in its calculation of what she would need to pay towards care costs. She says this was not the intention or motivation.
24. In May 2015 Ms X told the Council that Mrs Y was using up her available money and would soon not be able to afford to pay for her residential care. She asked it for assistance. To avoid risking continuity of the placement, the Council started to pay for it in June 2015, whilst carrying out a financial assessment.
25. As a result of its assessment the Council decided Mrs Y needed to pay the full cost of care because it said she had assets above the capital threshold (including the value of the house). This was because it treated her as if she still had the entire value of her house. It wrote to Mrs Y in November 2017 to explain this decision was because:
- At the time she transferred part of her house she knew about the Council's charging policy.
  - She had existing health problems at the time of transfer. There had been several contacts since 2013 and she was struggling with her personal health needs.
  - Since then the occupational health team had been involved with intermediate care and a care package.

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- She had been in residential care, self-funding, since December 2011. It said the paying for care booklet had been given to her then, explaining the charging policy.
26. The letter said that because of these four factors it considered the transfer of property to be a deprivation of assets and she was eligible to pay the full cost of care.
27. The Council told Ms X that as it was already paying the care home directly, Mrs Y could arrange to pay it whatever she could afford, over and above her income, minus her personal allowance. It says Ms X, who had power of attorney did not make any arrangements and stopped making payments in July 2017.
28. Ms X contacted the Council in 2017 sending a valuation of Mrs Y's property asking it to reconsider how it treated this asset. It replied to say this had no impact on liability for charges. It explained that, as Ms X was already aware, the Council included all of the value of the house as it had decided Mrs Y had deprived herself of this asset when she transferred 80% of it to Ms X and her brother. It said the only way to appeal this decision was by a complaint.
29. Ms X complained to the Council in December 2017. She said Mrs Y had made the transfer to reduce inheritance tax liability. All Mrs Y's money had now been spent on her care. She said the transfer happened before Mrs Y knew she needed long term care. She asked for a face to face meeting or formal response.
30. The Council replied in January 2018. It said it had decided Mrs Y had deprived herself of assets to avoid care costs having considered that:
- The Council had been in contact with Mrs Y since July 2003 providing occupational therapy support
  - Mrs Y had told the Council, in June 2011 she had capital above the threshold and she would be a self-funder. She had paid for home care from July 2011 until December 2011.
  - It had given Mrs Y a booklet whilst in hospital setting out charging arrangements.
  - Mrs Y had gone into the care home as a self funder in December 2011.
  - Contact in July 2015 had triggered a financial assessment as Mrs Y's savings were reducing.
  - A letter confirming its decision to charge full costs had been sent on 27 November 2015. The reasons for this decision were detailed in that letter.
31. The Council also referred to the file note from June 2011 that said Mrs Y was seriously thinking at that time about what support she needed. It said she had been getting attendance allowance since 2015. It said it would arrange for calculation of when Mrs Y would become eligible for any council funding towards her care costs. It advised Ms X about its power to recover charges from her as Mrs Y's attorney.
32. Later in January 2018 the Council advised Ms X of its calculations. It said, based on the value of her house and on her care costs, Mrs Y would continue to have capital assets above the threshold until 2022. Ms X continued to complain regarding this matter. She said the Council was considering the complaint against the Care Act which wasn't in force at the time of the events.
33. The Council replied again in March 2018. It explained it had used the regulations in force before 2014 to guide its decision. It said the tax threshold operating at the

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time was several times the value of Mrs Y's house so this was not a plausible motivation for transfer. It said it had considered the timing of the transfer and whether Mrs Y had a realistic expectation of needing to contribute towards the cost of care at that time.

34. It referred to the earlier file records showing Mrs Y was seriously thinking about her future support needs. It confirmed its decision that Mrs Y had deprived her assets to reduce or avoid care charges.
35. It said that Mrs Y could have asked the Council for support when her savings fell below £23,250 and it would have assessed her situation. It said this was not an 'entitled threshold'. Because of its decision she had deliberately deprived herself of assets, it still considered she had savings above this limit. It said the 12 week property disregard had expired in February 2011.
36. Ms X then complained to the Ombudsman. She said the Council was wrong to say the tax reduction motive was irrelevant. The family had been concerned about future changes that could have brought the property into the relevant threshold.
37. Mrs Y died in August 2018.

### **My findings**

38. The Council's letter explaining its decision, in 2015, that Mrs Y had deprived herself of assets explained why it considered she had a reasonable expectation of needing to contribute towards the cost of her care. It referred to the Council giving Mrs Y information about charging, and about her health and likely future care needs at the time of the transfer. The Council therefore correctly followed the CRAG guidance concerning its consideration of the timing of disposal.
39. The Council's letter did not explain how it considered Mrs Y's motivation for the transfer of part of her assets. Guidance operating at that time said that in order to decide whether deliberate deprivation had occurred, the Council needed to decide avoiding the accommodation charge was a significant motivation for the disposal. However Ms X and Mrs Y did not question this matter further at the time.
40. The Council's response to Ms X's complaint in 2017 explained how it made its decision about the timing of the transfer, referring to relevant evidence about Mrs Y's condition and her expectations of future health in 2011. It explained why it therefore decided Mrs Y had a reasonable expectation of future care needs at the time of the transfer.
41. The Council also explained why it did not accept Ms X's alternative explanation about the motivation for the transfer. Ms X strongly disagrees with this and maintains the transfer was to avoid future tax liability. The Ombudsman is not an appeal body and cannot say what was the motivating factor. Our role is to decide whether the Council followed the correct process and considered relevant information in coming to its decision about motivation.
42. The Council should have explained, in its letter about its 2015 decision, how it considered Mrs Y's motivation for asset transfer. However, because of Ms X's complaint, the Council reviewed the basis for that decision. It has now explained its reasoning for that decision. It has explained how it considered Ms X's explanation for why the transfer took place. There is no fault in how the Council made that decision.
43. The Council also explained it would not apply the 12 week property disregard because this ran out in February 2011. Statutory guidance states councils must apply the disregard for 12 weeks after a person first enters residential care as a

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permanent resident. Therefore there was no fault in how the Council made that decision.

### **Final decision**

44. I have completed my investigation. The Council acted without fault.

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



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

Summary: The Ombudsman will not investigate this complaint about how the Council has reduced the speed limit on two roads near the complainant's home. It is unlikely he would find evidence of fault by the Council.

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## **The complaint**

1. The complainant, who I refer to here as Mr C, has complained because the Council has reduced the speed limit on two roads near his home. He says the Council has ignored objections to the change, including his own.

## **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'.
3. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if, for example, we believe it is unlikely we would find fault. (*Local Government Act 1974, sections 24A(6) and 34B(8), 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*)

## **How I considered this complaint**

5. I have considered what Mr C said in his complaint, the Council's response to his concerns and information on the Council's website.

## **What I found**

6. To change a speed limit, a council must make a traffic regulation order (TRO) in accordance with the Regulations. These set out procedures for consultation and dealing with objections to a proposal before a council makes a TRO. (*Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996*)
7. It is clear the Council consulted on the proposed TROs. Elected Members on the Council's Communities and Place Committee considered a report on the outcome of the consultation and decided to make the TROs. That was a decision the

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Committee was entitled to make even though some people, including a local councillor, had objected to the proposal.

8. I have seen nothing to suggest fault in how the Council made the decision to make TROs. In the absence of fault, we cannot criticise the Council's decision. Further, I have seen no evidence of fault in how the Council made the TROs themselves.

### **Final decision**

9. I have decided we will not investigate this complaint because we are unlikely to find evidence of fault by the Council.

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

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

Summary: The Ombudsman will not investigate this complaint about the behaviour of two social workers involved with the complainants' family. This is because we could not add to the Council's investigation and could not achieve the complainants' desired outcome.

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## **The complaint**

1. The complainant, who I refer to here as Mr D and Ms E, say that:
  - Two social workers for the Council who have been previously involved with their family have behaved unprofessionally towards them. They have provided untrue information, bullied and threatened them, refused to recognise positive steps made, and breached confidentiality; additionally
  - The Council has not investigated the complaint properly or provided a proper remedy.

## **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 a complaint if it is about a personnel issue. (*Local Government Act 1974, Schedule 5/5a, paragraph 4, 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:
  - it is unlikely we could add to any previous investigation by the Council, or
  - 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*)

## **How I considered this complaint**

5. I considered the information provided by the complainants, and I have sent them a draft decision for their comments.

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## **What I found**

6. Mr D and Ms E have a son, who has been subject to Child Protection procedures.
7. Mr D and Ms E feel that the social workers who have been involved with their family during this process have treated them in an unprofessional manner.
8. They say that one of the social workers was rude and judgemental towards them, and has made unsupportive and unprofessional comments to them and about them. They feel her actions amount to bullying and harassment.
9. Mr D and Ms E have also complained about a data breach, in which confidential information about them was inappropriately shared.
10. The Council has considered the complaint. It upheld the issue regarding the data breach. It found this was due to an error, and has apologised for it.
11. It does not uphold the complaints about the behaviour of the social workers. It says that the records show that many positives have been recognised, but that the social workers' duty is to the child. It characterises the social workers' behaviour as firm in relation to potential dangers to the child, and does not agree they have been unprofessional.
12. Mr D and Ms E have now complained to the Ombudsman, but we will not investigate the complaint as we cannot add anything to the Council's investigation, or achieve the outcome that the Mr D and Ms E want. They want disciplinary proceedings to be taken against the social workers, but we cannot achieve that as all personnel matters are out of our jurisdiction.
13. Mr D and Ms E do have the right to go to the social workers' professional body, the Health and Care Professionals Council, if they believe that the social workers have been unprofessional.
14. They also have the right to complain to the Information Commissioner's Office regarding the data breach if they are not happy with the outcome to their complaint about it.

## **Final decision**

15. The Ombudsman should not investigate this complaint. This is because we cannot add to the Council's investigation or achieve the complainants' desired outcome.

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

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

Summary: Mr X's parents complain on his behalf that the Council did not act in his best interests when his social worker failed to find him alternative accommodation in the community. The Ombudsman will not investigate the complaint because there is insufficient evidence of fault by the Council or injustice caused to Mr X.

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## **The complaint**

1. Mr X's parents, who I refer to as Mr and Mrs B, say their son's social worker should have found him alternative accommodation in the community instead of placing him back into the care unit in which he had been living. They say she did not listen to them when they said he needed his own flat.

## **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. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
  - it is unlikely we would find fault, or
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify our involvement, or
  - it is unlikely we could add to any previous investigation by the Council, or
  - it is unlikely further investigation will lead to a different outcome, or
  - we cannot achieve the outcome someone wants. (*Local Government Act 1974, section 24A(6), as amended*)

## **How I considered this complaint**

4. In considering the complaint I spoke to Mrs B and reviewed the information she provided, including the Council's responses to the complaint under its complaints procedure. I gave Mr and Mrs B the opportunity to comment on my draft decision.

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## **What I found**

### **What happened**

5. Mr X, who has mental health problems, moved from an NHS care unit, where he had been living for about 6 months, to a shared house. A few days after moving in, Mr X was asked to leave the accommodation because of his behaviour. His social worker, Ms Q, arranged for him to stay a few nights in a hotel before arranging with the care unit to take him back.
6. In deciding to make this arrangement, Ms Q spoke to Mr X and to senior managers. She took into account his condition and concluded he would be safer and better placed in hospital than the community. When Mr X was interviewed by a doctor, he said he wanted to go back to the care unit. Mr and Mrs B say Mr X had been placed under pressure and had not really been given a choice about this.
7. Mr and Mrs B complained to the Council that Ms Q did not act in Mr X's best interests after he had been asked to leave the shared accommodation and did not listen to them or consider alternative accommodation in the community for him.
8. In responding to their complaint, the Council explained Ms Q had supported Mr X to see his Community Psychiatric Nurse and receive his medication while he had been in the hotel. She had visited him there and had had concerns about his safety. She discussed his case with senior managers and decided he would not be able to manage a tenancy at that time and needed either to return to hospital or residential care so that future plans could be made for him. It found Ms Q had continued to support Mr X and found no grounds on which to uphold the complaint against her.

### **Assessment**

9. Ms Q, in discussion with her managers, used her professional judgement in deciding that Mr X would be best placed to return to the care unit rather than be placed in alternative accommodation in the community as she did not consider he would be able to adequately cope with it.
10. Mr and Mrs B do not believe this was the right decision for Mr X but we cannot review the merits of it. It was a decision Ms Q, on behalf of the Council, was entitled to make and I have seen no evidence to suggest there was fault in the way she dealt with matters or that Mr X was caused injustice.

### **Final decision**

11. The Ombudsman will not investigate this complaint because there is insufficient evidence of fault by the Council or injustice caused to Mr X.

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

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

Summary: The Ombudsman does not have reason to investigate this complaint that the Council had unreasonably excluded the press and public from meetings of a Councillors' working group. This is because we could not achieve a meaningful outcome for the person who complained now that the Council has disbanded the working group.

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## **The complaint**

1. The complainant, who I shall call Mr X, complained that the Council had unreasonably excluded the press and public from attending meetings of its Cross Party Working Group ('CPWG') of Councillors, which was considering proposals for local government re-organisation in the county. Mr X also complained the Council had unreasonably refused to disclose documents considered by the CPWG and records of its meetings. He alleged that, by doing so, the Council was wrongly preventing access to information which was in the public interest, and was contravening principles in its constitution regarding openness and accountability.

## **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 an investigation if, for example, we believe:
  - it is unlikely we would find fault, or
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify our involvement, or
  - it is unlikely further investigation will lead to a different outcome, or
  - we cannot achieve the outcome someone wants.

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

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## **How I considered this complaint**

3. I considered the information Mr X provided with his complaint. I also gave Mr X an opportunity to comment on a draft of this decision before I reached a final view in his case.

## **What I found**

4. The Council is currently debating proposals for a restructuring of local government in the area. The proposals include options to keep the present system of County, Borough and District Councils, or to create new unitary authorities from the existing Councils.
5. The Council decided to set up a CPWG, including Councillors from all political parties, to consider the restructuring proposals.
6. Mr X is a journalist with a special interest in local democracy issues. Mr X asked to attend the CPWG meetings so he could report on its activities, but the Council refused. The Council also refused to provide Mr X with copies of documents considered by the CPWG and minutes of its meetings.
7. Mr X complained to the Council about this matter. In particular he said the CPWG was effectively a committee or sub-committee of the Council, but renamed as a working group to get around the rules about access to meetings and documents.
8. In its response to Mr X's complaint, the Council disagreed with his analysis of the CPWG. In particular the Council said it was entitled to set up a working group to discuss the emerging reorganisation proposals in confidence, and it stressed the CPWG had no decision-making powers.
9. However, the Ombudsman does not have reason to start an investigation of Mr X's complaint about this matter. In particular there has been a significant change regarding the CPWG since Mr X made his complaint in that one of the political parties subsequently decided its members would stop going to CPWG meetings. Following this the Council decided to scrap the CPWG.
10. In the circumstances, I do not see we could achieve a meaningful outcome for Mr X's complaint now that the CPWG has been disbanded and there will be no further meetings.
11. In addition, Mr X has been able to obtain documents from the meetings which have taken place, from another source. So this appears to have substantially mitigated any injustice he suffered as a result of being denied access to the earlier meetings.

## **Final decision**

12. The Ombudsman does not have grounds to investigate Mr X's complaint that the Council had unreasonably refused him access to the meetings and records of a Councillors' working group. This is because we could not achieve a meaningful outcome for Mr X now that the group has been discontinued.

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



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

Summary: Mrs X complains the Council is not providing suitable school transport for her daughter who has autism. The Council is not at fault in the way the Council considered Mrs X's transport request for her daughter. We do not uphold Mrs X's complaint.

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## **The complaint**

1. Mrs X complains the Council is not providing suitable school transport for her daughter (Child D) who has autism. She says Child D has missed school because the transport provided is not appropriate.

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

2. 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**

3. I have considered Mrs X's complaint and supporting information. I have also considered the information provided by the Council.
4. Mrs X and the Council have had an opportunity to comment on my draft decision.

## **What I found**

### **The law**

5. Councils must make 'suitable travel arrangements', 'as they consider necessary', for 'eligible children' to attend their 'qualifying school'. The Council must provide this transport free of charge.
6. The relevant 'qualifying school' is the nearest school with places available that provides 'education appropriate to the age, ability and aptitude of the child, and any special educational needs the child may have'.
7. The Council has published Home to School transport policy statements for under-16s and post-16s. Child D is 17 years old. The policy statement sets out details of:
  - who is eligible to apply for post-16 special transport;
  - how the Council assesses applications;

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- the type of help that is available;
  - independent travel training; and
  - the rights of review.

### **What happened**

8. Child D is autistic and attends a specialist school. A letter from the school says that Child D struggles with her balance and is unsteady on uneven surfaces. A letter from her doctor says that she has great difficulty in being close or being touched by anyone.
9. Mrs X says the Council has provided transport for Child D for the past 4 years. This has been a van taxi with a driver and an escort.
10. In August 2018, the Council confirmed that it would provide home to school transport for Child D. The letter says that a licensed car with regular driver and escort would collect and drop off Child D from the start of term in September.
11. On the first day of term, the taxi operator sent a standard car to collect Child D. The Council says this is standard practice as Child D was the only passenger (other than the escort).
12. Mrs X says that Child D refused to get into the car. She says her daughter needs routine and she was used to a large van taxi. Mrs X has provided evidence which says her daughter needs a large van taxi so she can move around with the confidence of not falling and so no one is close or touching her on the journey.
13. The next day, the Council provided an eight-seater car that Child D happily travelled in.
14. The following week, the Council provided a different eight-seater car. Mrs X says that Child D refused to get into the taxi because she was confused and upset that it was a different, smaller car.
15. For a 2-week period, the taxi operator provided daily reports for the Council. They said that in their view, Child D has been safely and happily boarding the car in the morning. In their view, it appears that Mrs X removes her daughter from the car rather than the daughter refusing to get in.
16. The Council wrote to Mrs X to say that it had made adjustments to the vehicle arrangements for Child D. It said that if Child D did not use the car, the Council would withdraw the transport.
17. The Council said that if Mrs X took her daughter to school, it would be prepared to consider offering mileage reimbursement at 22.6p a mile. This is the 'public transport rate' for two return journeys a day, as set out in the Council's transport policy statement. Mrs X says this is not enough. She says the family has so many extra costs because of Child D's complex needs.
18. The Transport Review Panel considered Mrs X's appeal for a larger car to transport Child D to school. The view of the Panel was the Council had made reasonable adjustments for Child D. The Council has exceptionally agreed to provide an eight-seater vehicle for her to travel in alone. The Panel felt the vehicle and crew being provided were suitable. It also noted the operator had advised that they had suggested ways to encourage Child D into the car.
19. The Panel upheld the Council's decision not to provide a larger car. It also provided Mrs X with details of how to apply for Direct Travel Assistance Payment. This is available to students with an Education, Health and Care Plan. It can be

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used by parents to enable them to make their own home to school travel arrangements.

20. Child D has not been to school since the second week of September 2018. Mrs X has been home schooling Child D since then. The Council withdrew transport and the Panel made its decision at the end of September 2018.

### **Analysis**

21. The Council has assessed Child D's needs and has provided suitable transport. It responded almost immediately to Mrs X's request for a larger car when her daughter refused to get into the standard car on the first day of term.
22. There is no fault in the way the Council has considered Mrs X's transport request for her daughter nor in the way it responded to her complaint. The panel also appears to have properly considered matters in upholding the council's decision.

### **Final decision**

23. I do not uphold Mrs X's complaint. There is no fault in the Council's actions. I have closed this case.

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