

The Ombudsman's final decision

Summary: Mrs X complained about the Council's actions when her child, D, who is disabled, moved from children's to adult social care services. The Council gave Mrs X wrong information about direct payments, failed to keep her updated, and delayed its transition assessment for D which caused a gap in care and support. The Council agreed to apologise, pay a financial remedy to the family, and cover the cost of any financial loss caused to Mrs X by the wrong information it provided. It will also review relevant policies and procedures, and issue guidance to its staff.

The complaint

1. Mrs X complains about the Council's actions when her child, D, who is disabled, moved from children's to adult social care services in 2022. She says the Council failed to:
 - a) provide her with correct advice about a redundancy payment for D's Personal Assistant when the support with children's services ended. Mrs X had arranged this support herself using direct payments from the Council;
 - b) plan properly for the transition between services, and communicate properly between its children's and adult social care teams to ensure the right support was in place for D;
 - c) provide her with necessary information about the transition, and respond to her queries in good time; and
 - d) assess D's needs within adult social care, and arrange suitable support to meet those needs, within good time.
2. Because of this Mrs X says:
 - she owes a redundancy payment to D's previous Personal Assistant which she cannot afford to pay. This caused her significant stress, time, and trouble, and affected her ability to care for D. It also placed a strain on family relationships because the Personal Assistant is Mrs X's mother;
 - there was a gap between services, so D missed care and support for over seven months, which caused issues with their behaviour, anxiety, and stress;
 - Mrs X did not have any breaks from caring for D for those seven months; and
 - she has lost trust in the Council and its direct payments process, which she still needs to use to arrange support for D through adult social care services.

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3. Mrs X wants the Council to:
 - confirm whether she owes D's previous Personal Assistant a redundancy payment, and if so cover the cost; and
 - review its procedures to ensure no one else experiences the same issue with direct payments and redundancy for Personal Assistants.

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 significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
5. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we look at the available relevant evidence and decide what was more likely to have happened.
6. If there was no fault in how the organisation made its decision, we cannot question the outcome. (Local Government Act 1974, section 34(3), as amended)
7. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

How I considered this complaint

8. I considered:
 - information provided by Mrs X and discussed the complaint with her;
 - documentation and comments from the Council;
 - relevant law and guidance; and
 - the Ombudsman's [Guidance on Jurisdiction](#) and [Guidance on Remedies](#).
9. Mrs X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.
10. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

What I found

What should have happened

Children with special educational needs (SEN)

11. A child or young person with special educational needs (SEN) may have an Education Health and Care (EHC) plan. This sets out their SEN and the arrangements that should be made to meet the needs. An EHC plan should be reviewed annually and may continue until the young person is aged 25 years. The Council is responsible for ensuring the support arrangements set out in the EHC plan are delivered.

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12. For young people with special educational needs (SEN) who have an Education, Health and Care (EHC) plan under the Children and Families Act, preparation for adulthood must begin from year 9.

Disabled children

13. The Children Act 1989, section 17, requires councils to safeguard and promote the welfare of 'children in need' in their area, including disabled children, by providing appropriate services for them. All disabled children are regarded as 'children in need' and entitled to an assessment under section 17.
14. Assessments of the child's needs should take account of the needs of the whole family. While some services may be offered directly to the disabled child, services may also be offered under section 17 to parents or siblings.
15. When a council is assessing a child under section 17, it is required to consider whether it is necessary to provide "short breaks". These allow the child to participate in activities, and their parent(s)/ guardian(s) to have a break from caring.

Transition from children's to adult social care

16. When a child reaches 18 years old, they are legally an adult and responsibility for meeting their needs moves from the council's children services to its adult services. The legal basis for assessing their needs changes from the Children Act 1989 to the Care Act 2014. However, councils can decide to treat a children's assessment as an adult assessment and can also carry out joint assessments.
17. Statutory guidance says professionals should work together to share information and build new relationships in advance of transition from children's to adult services. It also says councils should have a clear understanding of their responsibilities, including funding arrangements.
18. The Care Act 2014 says councils must carry out a social care needs "transition" assessment where there is likely to be a need for care and support after the young person turns 18. There is no set age to carry this out, but the intent is to decide what services the child will need when they turn 18. Transition assessments should begin when it would be of "significant benefit" to the young person, i.e., when the council is reasonably confident about what their needs for care and support will be when they turn 18.
19. A young person or their representative has the right to request a transition assessment. A council must consider the request and decide whether the person is likely to have needs for care and support as an adult, and whether it is the right time to begin an assessment. If so, it must undertake an assessment. If not, it must provide its reasons to the person in writing, in a timely manner. If the Council considers it is not the appropriate time to carry out an assessment, it should consider what timescale it can give to the person. The onus is on the council to contact the person to agree the timing of the assessment, rather than leaving them in uncertainty or having to make repeated requests for an assessment.
20. The purpose of the assessment is to provide the young person and their family with information so they know what to expect in future and can prepare for adulthood. The assessment must identify all the young person's needs for care and support and identify the outcomes the young person wishes to achieve. The assessment should also consider whether the carer is able to continue in their caring role after the young person turns 18.

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21. Transition assessments should be carried out in a reasonable timescale. Councils should inform the person or carer of an indicative timescale over which the assessment will be conducted and keep them informed.
 22. After completing the transition assessment, the council must give the person an indication of which of their needs are likely to be “eligible needs” under the Care Act 2014, and which are not. This is so they can understand the care and support they are likely to receive and can plan accordingly. For those needs that are not eligible the council must provide information and advice on how those needs can be met.
 23. If a council is going to meet the person’s needs under the Care Act after they are 18, it must create a care and support plan and produce a personal budget. This is the money the council has worked out it will cost to arrange the necessary care and support for that person. This needs to be done early enough that the package of care and support is in place at the time of transition.
 24. If transition assessment and planning is carried out as it should be there should be no gaps in care and support. However, if adult care and support is not in place when the young person turns 18, the council must continue providing the services under children’s legislation until it is in place, or until it decides the person does not have eligible needs.
 25. The Children and Families Act enables councils to continue children’s services beyond age 18 and up to 25 for young people with EHC plans.

The Council’s process for transition from children’s to adult services

26. The Council’s policy on transition from children’s to adult services says:
 - its social care teams may play a part in identifying young people aged 12 – 25 who may need additional support to prepare for their adulthood;
 - its EHC plan team, children’s disability service, and social care teams may be involved in planning dates for the transition assessment, which it calls the “Preparing for Adulthood (PFA) review”.
27. In response to our enquiries, the Council told us the following.
 - a) Where a young person is entitled to short breaks from children’s social care, children’s services can make a referral for a transition assessment at any point after the person is 14 years old. Usually, the children’s short breaks team makes a referral when the person is approaching 17 years old. This is discussed with the person or their representative at the short breaks review nearest to their 17th birthday.
 - b) When the transition team receives a referral for an assessment, it contacts the referrer to gain more information, and to share information or guidance. It then allocates the referral for consideration. It may decide to postpone an assessment until it considers it to be an appropriate time; and
 - c) The Council does not have a formal or written policy about when transition assessments should begin. However, it said usually it aims to begin assessments at the following ages.
 - i. 16.5 years for young people with complex needs, and accommodation needs.
 - ii. 17 years for young people with complex needs within community services, and overnight short breaks.

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- iii. 17.5 years for young people who have a small allocation of short breaks or Personal Assistant hours from children's services.

Direct payments

28. Where there is a need for care and support for a child or adult, the Council can:
- provide or commission services to provide the support directly; or
 - make direct payments to the service user (or their representative), so they can arrange care and support themselves.
29. Where an authorised person in receipt of direct payments uses them to employ a Personal Assistant (PA), they become the PA's employer and have legal responsibilities under employment law. When they end the PA's contract, a redundancy payment may be due.

The Council's policy on direct payments

30. The Council issues internal guidance to its staff about direct payments. This says the following.
- a) Recipients of direct payments who employ a PA should not need to make a redundancy payment out of their own estate.
 - b) Employer's liability insurance policies may include redundancy cover, and the person's insurer should be contacted in the first instance to see if it will cover the redundancy payment.
 - c) Where the insurer will not cover the cost of redundancy, a one-off payment by the Council may be required to cover the cost. If insufficient funds are available as surplus in the person's direct payment account when a redundancy payment is needed, an additional one-off payment should be arranged.

What happened

31. Mrs X's child, D, turned 18 in mid-2022. Before this, D received support from the Council's children's social care service. D also had an EHC plan in place to meet their special educational needs. While under children's services:
- the Council provided Mrs X with direct payments to arrange care and support herself to meet D's needs; and
 - Mrs X used the direct payments to arrange short breaks for D at a day centre, and a Personal Assistant (PA) to provide overnight respite care. Mrs X's mother, Ms Y, was D's PA.
32. The Council began a transition assessment for D to decide what social care support they would receive in adulthood, in December 2021. In late-July 2022, after D turned 18 years old, the Council children's social care service ended its support for D. The Council had not completed its transition assessment, so D was left without care and support.
33. Mrs X complained to the Council in November 2022. She said:
- she had been chasing the Council for seven months about an outstanding issue with the direct payments from children's services. She said she owed the Personal Assistant a redundancy payment, and due to wrong information from the Council she did not have the funds for this; and
 - D still had no care and support in place and the family needed respite.
34. The Council responded to Mrs X's complaint at Stage 1 a month later. It said it was not responsible for the redundancy payment issues Mrs X described. It did

not mention the transition to adult services or respond to Mrs X's concern that D still had no care and support in place. Mrs X asked to escalate her complaint to Stage 2. The Council did not change its position about the redundancy issue.

35. In March 2023, the Council began providing direct payments via adult services, and Mrs X employed a new Personal Assistant for 4 hours a week. D had been without care and support for 8 months. Mrs X came to the Ombudsman in June 2023.
36. In August 2023, D was now 19 years old and had just finished a full-time school placement. The family started receiving overnight respite care, and care from a day service for 2 days a week, via adult services. This was in addition to the 4 hours a week of Personal Assistant support. In September 2023, D started attending 3 days a week at a new college.

My findings

Redundancy payment for D's personal assistant

37. Part of the direct payments provided to Mrs X was for her to spend on employer's liability insurance. The Council requires service users to take out this insurance where they use direct payments to employ a Personal Assistant. When the direct payments for D began, the Council's standard process was to arrange insurance for the service user. In 2019, it changed its procedures and instead included the cost of insurance in the direct payments, so people could arrange this themselves. When it wrote to Mrs X about this change, the Council said "the level of Public Liability Insurance you choose must include cover for redundancy, should this occur".
38. Mrs X used the services of Organisation B to help her manage the direct payments from children's services. Organisation B provided payroll support to ensure Mrs X paid Ms Y properly as a Personal Assistant, and met her tax obligations and complied with employment law.
39. When the direct payments for D began, the Council's standard process was to include the cost of payroll support in the direct payments, so people could choose their provider and manage this themselves. Organisation B was a provider it recommended. In 2021, it changed its procedures and set up direct contracts between the Council and five payroll support providers. Organisation B was not one of the contracted providers. The Council told Mrs X she could either move to one of its contracted providers and the Council would arrange the payroll support for her, or she could keep her own contract with Organisation B. It said, however, the Council would not take responsibility for the service provided by Organisation B if she stayed with them. Mrs X chose to remain with Organisation B.
40. The Council wrote to Mrs X in January and March 2022 to explain D's support from children's services would end in May. Both these letters said, "as you employ a Personal Assistant, you must ensure that you leave enough funds in the account for any Holiday Pay, Sick Pay or Redundancy Pay which they may be entitled to, your Payroll Company will advise."
41. Mrs X should have been aware it was possible a redundancy payment may be due to the Personal Assistant at some stage. However, the Council was at fault in how it handled the redundancy issue when Mrs X queried it.
42. Mrs X first queried the redundancy pay with Organisation B in April 2022. It told her a redundancy payment would be due to Ms Y. It said if she needed extra funding to pay the redundancy, she should ask the Council. It also said the

Council “may ask you to check with your employer’s liability insurer to see if it is covered by your policy”.

43. Mrs X was in touch with a member of staff from the Council’s children’s short breaks team about her redundancy queries. This Council officer, Officer F, consulted with staff in other teams about the issue and remained Mrs X’s point of contact. Officer F repeatedly told Mrs X not to worry about the redundancy and said she did not need to take any action because the Council would work with Organisation B to resolve the issue. In one email in early-August 2022, Officer F told Mrs X, “don’t panic it will be paid”. I consider it reasonable for Mrs X to have assumed this meant the Council would cover the cost.
44. In August 2022 Mrs X told the Council she planned to cancel her employer’s liability insurance soon. I consider it reasonable Mrs X cancelled the policy, because the Council had decided to stop making the direct payments which covered the policy’s cost. If Mrs X had waited until she received a definitive answer from the Council to cancel the policy, she would have had to fund this herself for five months after she stopped receiving direct payments. Also, the Council did not respond to Mrs X to tell her she should not cancel the policy.
45. In late-August 2022, the Council told Mrs X its view was no redundancy payment was due to Ms Y. It said it would contact Organisation B on Mrs X’s behalf to resolve the issue and would ask it to issue an amended final payslip for Ms Y to show no redundancy payment was due. Organisation B told the Council its view was a redundancy payment was due. The Council and Organisation B then agreed the correct route was for Mrs X to pursue this via her insurer. However, the Council failed to share this information with Mrs X. At that time, Mrs X still had insurance cover in place. She could have contacted the insurer had she known to do so, but the latest information she had received from the Council was that it was not her responsibility to resolve. The Council said it was the responsibility of Organisation B, not the Council, to update Mrs X about the discussions between the two organisations. I cannot comment on the actions of Organisation B. However, the Council specifically told Mrs X it would resolve things with Organisation B on her behalf. Therefore, it should have followed up with her directly to ensure she received the necessary information. It should not have relied on an independent organisation it had no contract or relationship with to resolve a query Mrs X had directed at the Council. Also, Mrs X continued to chase the Council about this, so it should have been clear to the Council she had not been told to contact her insurer by Organisation B either.
46. The Council took too long to give a clear definitive response to Mrs X about this. She first queried it with the Council in April 2022, after Organisation B told her to. Over the next eight months Mrs X had to repeatedly chase the Council, and eventually make a formal complaint, to get a response. By the time the Council responded to the complaint in December 2022 and told Mrs X for the first time to contact her insurer, this was three months after her insurance cover had ended. Mrs X also tried to pursue this with the insurer, but it told her it could not help as the cover had now ended.
47. The Council directed me to direct payment policies and guidance published on the adult social care section of its website. The issues with redundancy reported by Mrs X related to direct payments under children’s social care. Therefore, I do not consider it reasonable to expect Mrs X to have had sight of this information. Also, at the time of my decision the direct payments information published on the Council’s children’s social care webpages is out of date. It still refers to the

previous arrangements for insurance and payroll support services, which the Council told me it changed in 2019 and 2021. This is fault.

48. I accept Mrs X, not the Council, had responsibility to meet her legal obligations as Ms Y's employer. I also accept she had responsibility to provide accurate and timely information to Organisation B so it could correctly manage payroll. Had the Council not provided wrong or misleading information to Mrs X, I would not find fault with the Council. However, the Council repeatedly gave Mrs X wrong information, and failed to update her, which was fault. This fault caused Mrs X confusion, and meant she missed the opportunity to contact her insurer to make a claim to cover the redundancy payment. Had Mrs X had this opportunity, I am satisfied she would have taken it.
49. I cannot say, even on the balance of probabilities, whether Mrs X's insurer would have paid out if she had made a claim while still covered under the policy. However, based on the Council's internal staff guidance described at paragraph 30, I am satisfied that had the insurer refused the claim, the Council should have covered it if following its own policy.

D's transition from children's to adults social care

50. In 2021, D turned 17. D's school reviewed their EHC plan and decided to keep the plan the same. It was discussed that the following school year, 2021/2022, would be D's last year at the school. After this, they would be 18 and would no longer have a school place. Mrs X asked the Council to fund a place for Year 14 as well, so D could stay at the school until July 2023, when they would be 19.
51. In September 2021, 4 months after D turned 17, the Council's transition team received a referral to carry out a transition assessment. The Council told us for someone with D's level of support it would usually begin the assessment at this age. However, in D's case it decided to postpone until two months later, when they would be 17.5 years old. The Council could do this if it considered it appropriate in D's case. However, it did not properly record its consideration about this and why it decided to postpone. Therefore, I cannot be satisfied it considered this properly, which is fault in the Council's record keeping. However, there was no evidence this changed anything for D.
52. The Council also did not contact Mrs X to explain its decision and reasons or tell her when it planned to assess. This was also fault, which caused Mrs X distress and confusion. The Council should remedy the injustice caused.
53. In late-2021, when D was 17.5 years old, the Council allocated a transition worker, TW1, to D's case. Six weeks later, TW1 began the assessment and visited D and Mrs X at home. This conversation did not go into detail about D's needs and outcomes, or what support they would receive when they turned 18. This is because Mrs X was waiting to hear if D would remain on roll full-time at their school for another year, which would affect the hours of support needed. Mrs X told TW1 a month later the extra year at school had been approved at an EHC plan review, but they did not progress the assessment.
54. The day before D turned 18, the Council had not completed its transition assessment or decided whether D would receive care and support under adult services. Children's services therefore told Mrs X it had agreed to extend D's direct payments for a further three months to cover Personal Assistant hours for the transition period. Therefore, D continued to receive care and support via children's services until late-July 2022.

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55. However, the Council then did not make any progress in deciding what D's eligible needs were or arranging adult support, until after Mrs X chased several times, and made a formal complaint. It allocated a new transition worker, TW2, in December 2022, but by this time D had already been without support for five months. The delay was in part caused by staff sickness, but this only explained some of the delay. Either way, the Council should have suitable procedures in place to ensure people do not go without services due to staff sickness.
56. The Council's children's social care service knew D's transition assessment was incomplete, and no adult support had been arranged, when it ended D's three-month extension of support from children's services. This was fault. Children's and adult services should work together to ensure there is no gap in support while transition is ongoing. There was no evidence the two services communicated with each other properly about this.
57. After the Council allocated TW2 in December 2022 they completed a full transition assessment. However, an adult care and support plan was not finalised until March 2023, when the Council agreed to provide direct payments for a Personal Assistant. The Council should have worked to put care and support in place for D as soon as it decided they had eligible needs as an adult. Its failure to progress this in good time, especially when it was aware the family had no support in place, was fault. This meant D had no care and support in place at all for eight months.
58. When the Council completed D's care and support plan in March 2023, it decided they needed: 4 hours a week with a Personal Assistant; overnight respite breaks for 42 nights a year; and 2 days a week of day care from August 2023 when their full-time school placement finished. However, although the direct payments for a PA began straight away, D did not receive overnight respite care until August 2023, over a year after support from children's services ended. This was fault.
59. The Council's failure to progress the transition assessment in good time, and ensure a smooth transition with no gaps in support, was fault. This meant D went without care and support they needed, and Mrs X went without breaks from caring for D. This caused distress to both D and Mrs X. The Council should remedy the injustice caused.
60. The Council failed to communicate properly with Mrs X about the transition process after its transition service received the September 2021 referral. There was no evidence it properly explained to Mrs X what the process should be, or the likely timescales. She repeatedly had to chase the Council until it allocated TW2 in December 2022, who began providing regular updates. This was fault which caused Mrs X distress. The Council should remedy the injustice caused.

Complaint handling

61. The Council did not properly respond to all Mrs X's complaint. It did not address her concern that care and support was still not in place for D. It only responded to the redundancy issue. This was fault which added to the distress and frustration caused to Mrs X by the Council's failure to communicate with her properly. The Council should remedy the injustice caused.

Agreed action

62. Mrs X told me she had not yet made the redundancy payment to Ms Y, so at the time of my decision she had not suffered a financial loss. However, my view is if a redundancy payment is due to Ms Y, the Council should cover the cost of this. It is not the Ombudsman's role to decide whether a redundancy payment is due.

Based on the information available to it, Organisation B decided Ms Y should be paid redundancy, and so reflected this in her final payslip. Mrs X told me Ms Y is elderly and unable to carry out a Personal Assistant role for D anymore, so it was never the family's plan for her to continue in this role into D's adulthood. If the Council considers Ms Y resigned from her role and redundancy is not due for any reason, it may first try to help Mrs X to evidence this to Organisation B so it can amend Ms Y's final payslip. However, if Organisation B decides Mrs X needs to make a redundancy payment to Ms Y to cover her legal responsibilities as an employer, the Council should cover the cost of this.

63. Within one month of our final decision the Council will:
- a) apologise to Mrs X for faults identified and the impact those faults had on the family;
 - b) resolve the redundancy payment issue. If the Council considers Mrs X does not owe Ms Y a redundancy payment, it may first try to help Mrs X to evidence this to Organisation B. However, if Organisation B decides a redundancy payment is due, the Council should cover the cost of this;
 - c) in addition to covering the cost of the redundancy payment if needed, the Council should pay the family £2,300, comprising of:
 - i. £1,000 to recognise the distress caused to D because they went without care and support they needed;
 - ii. £1,000 to recognise the distress caused to Mrs X because she had no break in her caring responsibilities for D while no care and support was in place; and
 - iii. £300 to recognise the distress and confusion caused to Mrs X because of the Council's unreasonable delays and failure to communicate with her properly about these issues.
64. Within three months of our final decision the Council will:
- a) ensure all information published on its children's social care webpages about direct payments is up to date;
 - b) ensure staff with appropriate knowledge of direct payment issues respond to complex queries directly, and that all children's social care staff that may receive direct payment queries know where to direct these;
 - c) issue reminders to relevant children's social care staff that when a child is preparing for adulthood, care and support from children's services must not end until the Council's transition assessment is complete, and a decision made about adult services;
 - d) review its "Preparation for Adulthood" protocol for transition from children's to adult social care services, to ensure it sets out a clear process and procedure for how:
 - i. children's and adult services will work together to manage transitions and ensure no gaps in care and support; and
 - ii. its "Preparing for Adulthood" transition team will ensure it completes transition assessments in good time.
 - e) issue reminders to its transition team that:
 - i. all decisions and reasons should be properly recorded and communicated to the service user and/or their representative(s); and

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- ii. the service user and/or their representative(s) should be regularly updated and provided with an indicative timescale for completion of the assessment.
 - f) ensure procedures are in place within its transition team to ensure appropriate cover is in place where staff are absent due to sickness, and assessments progress in good time in their absence; and
 - g) issue reminders to the staff that dealt with Mrs X's complaint, that the Council should properly consider and respond to all issues raised in a complaint.
65. The Council will provide us with evidence it has complied with the above actions.

Final decision

66. I have completed my investigation. There was fault by the Council which caused avoidable distress to D and Mrs X. The Council agreed to our recommendations to remedy this injustice, review relevant policies and procedures, and issue guidance to its staff.

Investigator's decision on behalf of the Ombudsman