

The Ombudsman's final decision

Summary: The Ombudsman does not have grounds to investigate this complaint about the Council's refusal to accept an application to extinguish a public right of way. This is because there is no sign of fault in the way the Council dealt with the matter.

The complaint

1. The complainant, who I shall call Mr B, complained that the Council had unreasonably refused to accept his application to extinguish a public footpath on his land, or to refer the application to the courts for a decision. Mr B also said that, in doing so, the Council was failing to comply with a previous decision by the Ombudsman in his case.

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 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.
(Local Government Act 1974, section 24A(6), as amended)
3. 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

4. I considered the information Mr B provided with his complaint, and his comments in response to a draft of this decision. I also took account of relevant legislation and guidance regarding the extinguishing of public footpaths.

What I found

5. Mr B bought his property in the 1990's. There is a paved footway along the southern edge of Mr B's garden, which borders the road which serves the housing development where he lives. The Council installed the footway in the 1980's and adopted it as a public right of way.

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6. In the past few years Mr B discovered that the footpath was not included in the plans for the development which were granted planning permission in the 1980's. In the circumstances Mr X said the Council had wrongly appropriated part of the land he owned for use as a public footpath and, as a result, the footpath and the extent of his property title had been misrepresented in Land Registry and other official documents.
 7. Mr B complained to the Ombudsman about this matter. But after an investigation we found no fault by the Council in Mr B's case. In particular we concluded the Council had not taken Mr B's land for the footpath as the land was still within his title boundary. We also found no fault by the Council for not taking enforcement about any breach of the original planning permission given that the footpath had been in use for 30 years.
 8. However we also noted that it was open to Mr B to apply to the Council for the extinguishment of the public right of way on his land, if he wished to do so.
 9. Following our decision on his complaint Mr B asked the Council to extinguish the public footpath. But the Council declined to do this, or to refer the matter to the magistrates' court for a decision. Mr B then complained again to the Ombudsman.

Analysis

10. We have already investigated and decided Mr B's complaint about the Council's alleged misappropriation of his land and misrepresentation of official documents. Therefore I will not comment on these matters again.
11. As regards Mr B's new complaint, I consider we do not have grounds to start an investigation as there is no sign of fault by the Council.
12. The Highways Act 1980 ("the Act") provides for a landowner to apply to a council for a public path extinguishment order in relation to any footpath crossing their land. The council in question may then make an order if it appears expedient that the path should be stopped up on the basis it is not needed for public use.
13. The Act also allows councils to apply to the magistrates' court for an order to extinguish a public highway, although the Secretary of State has advised that councils generally should not use this power in respect of footpaths.
14. In its response to Mr B's application, the Council said it had considered the location of the footway in question but concluded that it was necessary to protect the safety of pedestrians.
15. Mr B evidently disagrees with the Council's view about this matter. However the Ombudsman may not question the merits of a council's decision if there is no fault in the way that decision was made. In Mr B's case I see no sign of fault in the process the Council followed in considering and deciding about his application.
16. It is clear that the Council had considerable discretion under the relevant legislation about whether or not to proceed with a public path order or refer matters to the magistrates' court. I consider the Council made a decision it was reasonably entitled to make in Mr B's case in the circumstances.
17. I also considered Mr B's complaint that the Council had not complied with our decision about his previous complaint. But I am not convinced we would find grounds to fault the Council on that basis.

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18. In particular I do not see that our previous decision made any recommendations about action the Council was to take in Mr B's case. Furthermore, our only reference to a public footpath extinguishment order was to say that it was open to Mr B to apply for one. We did not say how the Council should respond in that case and, in any event, we have no power to direct it to make an order.

Final decision

19. The Ombudsman does not have grounds to start an investigation of Mr B's complaint about the Council's refusal to accept his application to extinguish a public footpath on his land. This is because there is no sign of fault in the way the Council dealt with this matter.

Investigator's final decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The complainant says the Council failed to carry out reviews of his care and support plans without delay or properly assess his finances resulting in an avoidable increase in his contributions. The Council says it followed the correct procedures and waived contributions for two years to allow the complainant to improve his budgeting skills. The Ombudsman finds the Council acted without fault in deciding to end the contributions waiver but with fault in failing to complete a review in 2016.

The complaint

1. In brief, the complaint is when providing support to a client the Council failed to:
 - Properly carry out a care plan review without delay;
 - Properly carry out a financial assessment of the client's contribution to his care costs resulting in an avoidable increase.
2. The complainant, whom I shall refer to as Mr X, says he felt under pressure to accept the Council's view that he should increase his contribution which he says he cannot afford. Mr X says this may result in him reducing the hours of service he receives but which his care plan shows he needs. Having waived two years increases Mr X is concerned he will have to pay the current year (2017/2018).

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. If 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. In considering this complaint I have:
 - Spoken with Mr X and reviewed the information presented with his complaint;

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- Put enquiries to the Council and reviewed its response;
 - Researched the relevant law, guidance and policy
 - Shared with Mr X and the Council a draft of this decision and reflected on any comments received.

What I found

6. Direct Payments to cover care and support costs are governed by the Guidance on Direct Payments England 2009. The Guidance promotes the use of direct payments to help people take control of their care and support. It recognises the need for support for some people and encourages councils to fund or provide support to help people manage their direct payments. Anyone receiving direct payments will manage employing personal assistants and must account for the use of the money. Some find that difficult and need help in doing that.
7. Councils must assess a person's finances to decide what contribution he or she should make to a personal budget for care. The scheme must comply with the principles in law and guidance, including that charges should not reduce a person's income below Income Support plus 25%. The Council can take a person's capital and savings into account subject to certain conditions. If a person incurs expenses directly related to any disability he or she has, the Council should take that into account when assessing his or her finances. (*Care Act 2014 Department for Health, 'Fairer Charging Guidance' 2013, and 'Fairer Contributions Guidance' 2010*)

What happened

Assessment of need and contributions to care costs

8. People receiving services from the Council to help with social care are subject to a financial assessment to decide what, if any, contribution they can afford to make towards their social care costs. The Council assesses the contribution on affordability. So, contributions will not necessarily increase if the person receiving the service has those services increased. Increased contributions arise only where the service user's finances change for example where they receive more benefit because of government increases in benefit payments.
9. In December 2014, the Council assessed Mr X's social care needs. It issued a support plan under which Mr X received direct payments to help him fund personal care in the morning and evening, household tasks and access to the community. Mr X's care or support plan should be reviewed each year and the Council should tell him after the review if there is any increase or decrease to his care services and what contribution he must pay.
10. The Council reviewed the care and support plan in March 2015. It decided to increase Mr X's direct payment to cover increased hours of domestic support to help him to remain safe in his home.
11. In October 2016, the Council tried to complete a further annual review but unfortunately it says Mr X disagreed with the person supporting him in the review. That meant the review could not be completed. The care and support plan issued in March 2015 therefore continued to govern the services he received.
12. In May 2017, the Council successfully reviewed the care and support plan. This resulted in an increase in Mr X's direct payment to provide more hours of support to help him stay safe in his home.

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13. The Council says the increase in direct payments did not affect Mr X's contribution to his care costs. That assessment is based on his income. Mr X's income changed because the Department of Work and Pensions (DWP) transferred him to Employment and Support Allowance. Before that Mr X received Income Support and Incapacity benefit in 2015. Mr X also began receiving the middle rate Disability Living Allowance Care and Mobility components. This change increased Mr X's income and so the Council had to consider it as part of the financial assessment which decided Mr X's contribution to his social care costs. The Council has explained this does not mean a pound for pound change, but the overall increase in benefits may result in an increased contribution. The Council also considers increases in allowances too.
 14. To help Mr X understand the procedure the Council says Mr X received support from the Direct Payments Support Service. The Service provided someone to attend the reviews with Mr X and help him understand the procedure and decisions made. The Council offered to carry out reviews of the care and support plans at its offices, Mr X's home or his supporter's home. Alternatively, he could have the papers sent to him by post for completion by him and his supporter or personal assistant. Mr X chose this latter option.
 15. Mr X struggled to pay his contributions to care costs assessed in February 2015. At a meeting in October 2016 Mr X expressed concerns and anxiety about his contribution and disability related expenditure. At this meeting, the officer says Mr X agreed to work with his personal assistant to reduce expenditure. They agreed once Mr X and his personal assistant had completed this work a further financial assessment would take place. However, the Council says it did not hear from Mr X again about reducing his expenditure. The Council says Mr X did not express any concerns about his social care needs at the meeting, only concerns about his expenses and covering his contribution to his care costs. This meant Mr X's care and support plan was not reviewed in 2016.
 16. The Council contacted Mr X again in March 2017 and a new officer spoke with him on 26 April 2017. As requested, the Council sent Mr X the review paperwork for self-completion which he returned on 19 May 2017.
 17. During the 2017 review Mr X said his social care needs had increased. The Council assessed his personal budget as still meeting those needs. It referred Mr X to the Nottinghamshire Enabling Service for support in becoming more independent, helping him with budgeting and reducing his expenditure. Having met with the service twice the records show Mr X said he did not need this service. The service says he told officers he had worked with his personal assistant and Citizens Advice Bureau and did not need their services.
 18. Mr X transferred to Employment and Support Allowance in February 2015 which increased his income. As a result, he had to contribute towards his care and support. In April 2018 Mr X's contribution increased again due to increases in his income received through benefits paid by the DWP.

Waiver of contributions

19. Mr X appealed against the decision on his contribution to care costs in February 2015. In response, the Council decided to waive the contributions because of the financial hardship they would cause. In its letter confirming the waiver the Council said Mr X could ask for a further review on financial hardship grounds the following year. Officers met with Mr X and believed he needed some help and advice on how to reduce some of his disability related expenditure that would

make it easier for him to meet the contributions. The Council signposted Mr X to the Money Advice Service for further financial support.

20. The Council decided to waive contributions to allow Mr X time to access this advice and help and time for the advice to restore his finances. The Council waived contributions between February 2015 and April 2016. The Council again waived the contributions for a further year so Mr X became liable to contribute towards his care costs from 26 April 2017. Mr X is in arrears with those contributions.

Help with reviews

21. The Council says before arranging a review of Mr X's social care needs (and his financial assessment for a contribution towards the cost) it discusses with him what support he may need to contribute to the review. For the reviews in 2014 and 2015 the Council agreed to an officer from the Direct Payment Support Service attending and helping Mr X with the review. In 2016 the Council agreed to Mr X's request that he engage an independent supporter to help him. The Council did not complete that review. The Council also considered his needs as a wheelchair user in offering venues for the review including offering to complete it in Mr X's home. The Council agreed to Mr X having an independent supporter to help him present his views to the 2017 social care needs review.

Delivery of social care service

22. Mr X told me social workers told him if he did not pay his contributions he may lose the service or face a reduction in the services he receives. He says confusion over whether he should pay contributions added to his anxiety and other health problems. Mr X says he cannot afford to pay contributions and so may face losing services he needs to manage his degenerative conditions.
23. In recognising Mr X's need for services and his financial difficulties the Council says it has never suggested to him that if he did not pay his contributions he would lose services. Mr X has never been in danger of losing his support services. His contribution is not based on the number of hours support he receives. Therefore, officers have explained to him that simply reducing the hours for which he uses the direct payments will not lessen his contribution. The Council has explained to Mr X that failing to pay his contribution may mean it changes how the Council delivers his support. He may lose the right to manage the support directly through direct payments and receive a managed service where the Council delivers and arranges the services for him.
24. Mr X receives his direct payments net of his contribution. Mr X must then deposit his contribution into the bank account to cover his support costs. Mr X has found it difficult to manage and feels he is still experiencing financial hardship because of the Council's decision on how much he must contribute. He has appealed against his contribution and that has led to those contributions being waived but the Council believes its calculations are correct.

Mr X's view

25. In speaking with me Mr X says the Council's enabling team only met him once in 2016 and did not tell him he could make smaller contributions to pay off arrears on his contributions to his costs. Mr X says the loss of the Disability Living Allowance resulted in him having to pay contributions towards his costs and this is unfair. He needed time to adjust to this new expenditure. In commenting on my draft decision, the Council says Mr X still receives Disability Living Allowance he has not lost it. Mr X has changed energy supplier to reduce costs and changed

his local taxi firm to reduce travel costs for medical and other appointments. Mr X says his medical conditions have worsened and that he needs further help possibly up to one and a half hours per day to help him.

26. The case notes show in September 2017 Mr X reported to the Council he had taken advice from Citizens Advice Bureau and was putting a budgeting plan in place to help him with his food shopping and transportation costs. The notes say Mr X felt he would not benefit from a Personal Independence Worker's visit so the Council closed the case.

Analysis – has there been fault leading to injustice?

27. My role is to decide if the Council has acted without fault in its assessment and review of Mr X's social care needs and financial contributions to his social care costs. It is not to decide what those needs are, what services he should receive or how much he should make as a contribution. I must also consider if it offered him help with understanding the assessment procedure and in managing the direct payments.
28. The Council assessed Mr X's needs, and at reviews in March 2015 and May 2017 it decided he needed increased services. Therefore, it increased the direct payments so Mr X could pay for those services. It correctly assessed his financial contributions by including in its calculations any increase in income. Mr X's contributions did not increase because the services he received increased.
29. The Council recognised Mr X experienced difficulties in managing his finances. This resulted in the Council waiving contributions to his care costs for two years to enable him to seek help and advice on managing his budget. The objective was to help Mr X start contributing to his social care costs as he is liable to do, from April 2017. Staff in deciding to waive the contributions and in discussing the decision with Mr X explained the reasons for the waiver and what he needed to do. The Council wrote to him saying the waiver would last a year at a time and told him he could apply for further waivers on grounds of financial hardship.
30. Mr X suffers anxiety and the concerns about his contributions and general disability living costs have contributed to his anxiety. This led the Council to recognise his financial hardship and the difficulties he faced. To help him it referred him to these free services:
- The Nottinghamshire Enabling Service,
 - Citizens Advice Bureau;
 - The Money Advisory Service
31. To help with reviews the Council agreed to Mr X being supported at the review meetings and in completing review paperwork by an officer from the Direct Payments Support Service, and latterly an independent support worker.
32. Therefore, while Mr X found it difficult to manage his finances and budget, and experienced financial hardship the Council ensured he had advice and support during the two-year waiver period to improve his budgeting skills. When it decided in May 2017 Mr X's personal budget would still cover his increased service needs it also decided he should, as in the previous reviews, pay contributions to the service costs. It assessed his finances and told him the contribution he would need to pay.
33. Mr X knew that from April 2017 he may have to pay the contributions. He had time to prepare for that with the help of his support workers. The lack of a completed review in October 2016 raises the question of whether he missed any

services he was now assessed as needing in May 2017. We shall never know but the failure to complete the assessment cannot simply be left with Mr X. I recognise he did not report to the Council on the progress made with working on reducing his debt, or raising social care needs. However, the Council is responsible for managing and completing the review. The review should have been properly completed and the documentation issued. It was not. The failure to follow that up and complete the annual review may have led to Mr X missing services he later was found to need and some remedy should be provided for that.

34. I find no delay in the Council's review of Mr X's social care needs in 2017. It told him of its decision in May 2017 and confirmed he would need to make contributions for his care from 26 April 2017.
35. I find that but for the fault identified in the paragraph 33, the Council acted without fault in deciding to offer the waiver for two years and signposted Mr X or offered enough advice to help him deal with his budgeting concerns before deciding to collect contributions. The Council will need to offer help in managing the payment of arrears and current contributions.
36. Mr X says he cannot reduce his expenditure further and the contributions cause financial hardship. He can ask the Council to review those finances again. However, it can only agree to waive contributions if it believes they will cause Mr X unavoidable financial hardship.

Recommended and agreed action

37. To remedy the injustice arising from the failure to complete the October 2016 review I recommend and the Council agrees within six weeks of this decision to:
- Apologise to Mr X for the omission;
 - Offer Mr X a review of his financial circumstances and to consider if his contributions would result in financial hardship;
 - Pay Mr X £200 in recognition of the doubt over whether but for the delay his services may have been increased earlier;
 - Offer a repayment plan to help Mr X pay the current arrears.

Final decision

38. I find the Council acted without fault in deciding not to continue the waiver of financial contributions but acted with fault in not completing the review of social care needs and support in 2016.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr X complained about the Council's refusal to provide parking restrictions on his street to prevent access to his driveway being obstructed. The Ombudsman should not investigate this complaint. This is because there is insufficient evidence of fault by the Council which would warrant an investigation.

The complaint

1. The complainant, whom I shall call Mr X, complains about the Council refusing to paint parking restrictions on his street or to provide signs preventing parking opposite driveways. He says that his access from his property is often restricted by cars parked opposite and he wants the Council to take action to prevent this.

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
 - 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

3. I have considered all the information which Mr X submitted with his complaint. I have also considered the Council's response and Mr X has commented on the draft decision.

What I found

4. Mr X lives in a cul-de-sac which has a narrow entrance road. He says that sometime cars park opposite his driveway which makes it difficult for him to reverse out safely. He asked the Council to provide double yellow lines down one

side of the road to prevent this restriction. An alternative suggestion was that it provide signs instructing drivers not to park opposite driveways or to remove the footpath from one side and widen the road.

5. The Council told Mr X that his street had a low volume of traffic use and that it would be a low priority for its limited budget for traffic regulation orders. It told him that consultation with residents was likely to be unpopular as would removal of a footway. The Council prioritises its limited resources and this is aimed at higher volume, more dangerous traffic circumstances.
6. 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. In this case the Council considered Mr X's requests but did not believe that it was a significant traffic management problem. This is a matter for the Council as highway authority to decide.

Final decision

7. The Ombudsman should not investigate this complaint. This is because there is insufficient evidence of fault by the Council which would warrant an investigation.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: We will not investigate Mr X's complaint about the Council's failure to notify him about highways works along his road and its alleged delay in constructing a dropped kerb. This is because he has not suffered significant injustice.

The complaint

1. The complainant, who I have called Mr X, complained that Nottinghamshire County Council failed to notify him of planned highways works along his road, and did not give him an opportunity to get a dropped kerb. He also complained that the Council delayed in constructing the dropped kerb.

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 the injustice is not significant enough to justify our involvement. (*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

3. I considered the information provided by Mr X. I considered the complaint documents provided by the Council. And I invited Mr X to comment on a draft of this decision.

What I found

Key facts

4. In April 2018 the Council started planned maintenance works along Mr X's road. He complained to the Council as it had not told him about the works or given him an opportunity to ask for a dropped kerb.
5. A Highways Officer visited Mr X, accepted Mr X had not been told about the works, and agreed to delay them until he could get planning permission for a dropped kerb. The Officer said it could take six to eight weeks to get permission and expected the works could start in June.

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6. Mr X later emailed the Council to say he was unable to remove a hedge with nesting birds, so he could not construct his hardstanding until September.
 7. Mr X was granted planning permission for a dropped kerb in June. He thought the Council would construct it that month. That did not happen.
 8. Mr X telephoned the Council in June and twice in July. The Highways Officer visited Mr X again in July and explained that the job was not a priority. He later confirmed that the dropped kerb would be constructed in September. It has now been constructed.
 9. Mr X is unhappy that the Council did not construct the dropped kerb when it said it would. He said this caused him stress and inconvenience.

Analysis

10. We will not investigate this complaint.
11. The Council accepted it did not notify Mr X of the planned maintenance along his road. However, it agreed to delay the works while Mr X applied for planning permission for a dropped kerb. So he did not suffer significant injustice because of the Council's failure to notify him.
12. Mr X thought the Council would construct the dropped kerb in June. It should, perhaps, have told him sooner that it was unlikely to be constructed in June because it was not a priority. However, by this time, Mr X had told the Council he could not construct his hardstanding until September. Without the hardstanding Mr X could not use the dropped kerb. And in any event, the injustice Mr X suffered because of the Council's alleged delay and the time and trouble he experienced is not significant enough to justify an investigation.

Final decision

13. We will not investigate Mr X's complaint. This is because he has not suffered significant injustice.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs B complains the Council over-charged her late husband for residential care. We have ended our investigation. This is because Mrs B has not complained within 12 months and there are not good reasons to investigate the complaint now.

The complaint

1. The complainant, who I will refer to as Mrs B, complains that the Council did not correctly calculate her late husband's residential care costs in 2014 and 2015. Mrs B says the Council continued to charge her husband the full care costs even when his savings fell below the savings threshold. Mrs B says as a result she has been asked to pay a debt of £6,000, which she should not have to pay.

The Ombudsman's role and powers

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

How I considered this complaint

4. I have considered the information Mrs B has provided to the Ombudsman and the Council's responses to the complaint. I have also shared a draft version of this statement with Mrs B and the Council, and have invited their comments.

What I found

Background – charging for residential care

5. The charging rules for residential care are set out in the "*Care and Support (Charging and Assessment of Resources) Regulations 2014*", and the "*Care and Support Statutory Guidance 2014*". When the Council arranges a care home placement, it has to follow these rules when undertaking a financial assessment to decide how much a person has to pay towards the costs of their residential care.
6. The rules state that people who have over the upper capital limit (£23,250) are expected to pay for the full cost of their residential care home fees.

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7. However, once their capital has reduced to less than the upper capital limit, they only have to pay an assessed contribution towards their fees.
 8. The council must assess the means of people who have less than the upper capital limit, to decide how much they can contribute towards the cost of the care home fees.

What happened

9. After being discharged from hospital, Mrs B's late husband moved into a care home in December 2014. Mrs B says at this point her husband's savings were only just over the upper capital limit of £23,250.
10. During this period Mrs B paid the care costs herself. Mrs B was in the process of applying to the Court of Protection to be able to access her husband's finances due to his dementia.
11. By February 2015 Mrs B obtained permission from the Court of Protection to access her husband's bank account. This meant the Council wrote to Mrs B directly about her husband's care costs.
12. In March and April 2015 the Council sent Mrs B invoices for her husband's care costs totalling over £6000. Mrs B says she complained to the Council about this because by this point her husband's savings were well below the upper capital limit. Mrs B says she did not get a satisfactory response.
13. In response to our enquiries the Council said its records show Mrs B challenged the invoices in November 2014 but there is no record of a formal complaint to the Council during this period.
14. Mrs B's husband died in March 2018. Mrs B says after her husband died she considered the Council had in effect stolen from him which was not acceptable. During this period the Council sent Mrs B a final invoice for the unpaid care costs.
15. In April 2018 Mrs B wrote to the Council saying the Council had not charged her correctly in 2015. Mrs B also put in a complaint to the Council. The Council responded in May 2018. The Council explained how it calculated Mrs B's husband's care costs. The Council said it would revise the outstanding balance to reflect information provided by Mrs B about her husband's pension.
16. The Council responded to Mrs B's complaint by saying she had not complained within 12 months so the Council would not consider her complaint.
17. Mrs B then complained to the Ombudsman in July 2018.

Analysis

18. Mrs B was aware of the Council's assessment of her husband's care costs in April 2015. But, Mrs B did not complain to the Ombudsman until July 2018. So, Mrs B has not complained to the Ombudsman within 12 months of becoming aware of the issue she complains about.
19. As explained at paragraph 3 of this statement, the Ombudsman does not investigate late complaints unless there are good reasons to do so. My view is there are not good reasons to investigate Mrs B's late complaint.
20. I consider Mrs B could have complained before now. I understand it was a difficult and stressful time for Mrs B. But, Mrs B was able to contact the Council to challenge the care charges she had been asked to pay.
21. I consider Mrs B could have pursued a complaint to the Council, and then the Ombudsman, within the following 12 months.

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22. Also, because the events complained about took place around four years ago, it is unlikely we could make sound findings about what happened.

Final decision

23. Mrs B has not complained within 12 months and there are not good reasons to investigate now. So, I have ended my investigation.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr X complained about the poor quality of home care the Council arranged for his late father Mr Y. There was fault in the care provided to Mr Y causing injustice to him. This fault also caused Mr X distress, time and trouble because he had to complain about the problems and deal with their consequences between February and June 2017. The care provider did not carry out spot checks it had agreed to after then. The Council has agreed to apologise to Mr X, reduces the amount he owes for outstanding care fees by £500 and ensures care providers carry out and document agreed spot checks in future.

The complaint

1. Mr X complained about the poor quality of home care the Council arranged for his late father Mr Y. He says he complained several times about the quality of care provided. He says he should not have to pay the outstanding bill for this care.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. Where local councils arrange or commission care services from an adult social care provider we can treat the actions of the care provider as if they were the actions of the council. (*Local Government Act Part 3, section 25(6) and (7)*)
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*)
5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Care Quality Commission (CQC), we will share this decision with CQC.

How I considered this complaint

6. I spoke to Mr X about the complaint.

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7. I asked the Council questions and considered evidence it provided including:
 - Care records
 - Complaint correspondence
 8. I considered the Ombudsman's guidance on remedies before making my recommendations.
 9. I gave the Council, the care provider and Mr X the opportunity to comment on my draft decision. I considered their comments before making my final decision.

What I found

Background

10. Mr Y was an elderly gentleman living in his own home. He had a range of physical health problems and care needs. Mr X is Mr Y's son who lived nearby and was the Council's main contact in relation to his care.
11. The Council assessed Mr Y's care needs in January 2017 while he was briefly staying in hospital. It developed a care plan and arranged a package of home care so he could return to live at home when discharged at the end of the month. The care package included four care visits per day to help with personal care, house cleaning and medication.
12. The Council carried out a financial assessment which said Mr Y needed to pay towards some of his care. In discussion with Mr X the Council agreed it would manage Mr Y's care rather than use direct payments. It arranged for the care provider, Direct Health, to begin caring for Mr Y at the start of February.
13. Mr X first reported problems with the care package to the Council at the beginning of February. Its records show he said the carer did not arrive on the first day until 1100, missing the morning call. He said the carer did not seem to know anything about Mr Y's care package or needs. He said subsequent carers were not supervising Mr Y to eat his food. This meant he was spilling food on his clothes. He said carers were leaving Mr Y without continence pads or in dirty ones. They were preparing poor meals such as microwave chips which were not suitable or appropriate for a diabetic. They were not changing his bed sheets and were leaving dirty plates and rubbish on the floor.
14. Mr X continued to record problems to the Council during February and March 2017. He reported, in early March that carers were leaving Mr Y in soiled clothing, and that bags of dirty washing were piling up, Mr Y's bed linen was soiled and bed rails left down. He referred to problems with specific care workers. He wanted a different care provider. The Council told Mr X about the complaint procedure. Its record says Mr X decided not to formally complain at this stage to see because he wanted to see if things improved after raising concerns. The Council agreed to raise these issues with Direct Health. It arranged a meeting between Mr X and the care provider to discuss his concerns.
15. This meeting took place in mid March 2017. The Council's record of the meeting states all accepted there had been initial problems with the care package. This was partly because Mr Y's washing machine had not worked and there were limited cleaning materials. It had now been replaced. Care workers had been spoken to about the problems.
16. However the Council's record showed Mr X thought care had recently improved, a regular care team was now visiting and he was satisfied. The Council asked Mr X

to speak direct to Direct Health if he had future concerns so it could take prompt action.

17. A Council occupational therapist was working with Mr Y during this time to consider making his bath more accessible. A Council care record for 27 March shows Mr X told the therapist about continued problems with the care package. He said Mr Y was being left in dirty pyjamas, continence pads were not being positioned properly, wet washing was being left in the dryer, and carers were not properly supporting Mr X with personal washing leading to infection. These concerns were not passed on.
18. In May 2017 Mr X asked for a further meeting with the care provider about his continued concerns about his father's care. In its later response to Mr X's complaint the care provider recalled this meeting did not take place because Mr X told it care was improving again. Mr X does not agree that he said he was satisfied with care at this point.
19. After Mr Y spent a short stay in hospital in June, Mr X complained again to the Council about the care. The Council suggested a joint visit with the care provider. It says Mr X declined this offer, wanting to discuss the matter by phone. Mr X says he just suggested it would be easier to go through the issues by phone.
20. Records of the conversation in mid June 2017 show Mr X raised concerns about the poor condition of Mr Y's home, smelling of urine and faeces because Mr Y's commode was left unemptied by carers for long periods. He said carers were putting continence pads loose in the recycling bin causing smell and damage from effluent. He said carers were leaving Mr Y in vomit covered clothes.
21. The Council explained it could not change the care provider unless Mr X used direct payments which neither he or Mr Y wanted. It did not explain why this was not possible. It said as a result of Mr X's concerns it had asked the care provider to draw up an action plan to make improvements, including updating Mr Y's care plan. This included agreement to a minimum number of workers involved with Mr Y's care. It asked for the care provider to carry out monthly spot checks to ensure standards improved and were not slipping back again. The Care Provider did not arrange a meeting of Mr Y's care workers or carry out the spot checks as it had agreed to.
22. The Council has no record of subsequent concerns from Mr X. It says Direct Health also had no other contact from Mr X. Mr Y went into hospital in September and died later that month.

Mr X's complaint to the Council

23. Mr X complained to the Council in November 2017 having been sent an invoice for care charges. He referred to his previous complaints about the standard of care. He said Mr Y had been left in his own vomit, the property constantly smelt of faeces, carers had sometimes forgotten to give medication. He said since Mr Y had died he had found packets of medication dropped around the house. He said the care provider had not taken his concerns seriously despite committing to making improvements. The Council asked Direct Health to respond to Mr X's concerns.
24. The Care Provider replied in January 2018. It said initial problems were because Mr X did not have a working washing machine. This had been promptly sorted out. It had discussed Mr X's concerns at the meeting in March 2017 when he told it things had improved. He had asked for a meeting in May but said there were no new concerns so this had not happened. It offered a meeting in June which he

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- declined and discussed concerns over the phone. It said it had agreed with the Council to provide a core team of carers. It had no record of other concerns. It apologised if Mr X felt the service fell short of his expectations.
25. Mr X continued to complain to the Council. It responded to Mr X in April 2018. It accepted that after care started, and until March 2017, there had been issues with the care staff provided. It had put measures in place to try to ensure good and consistent care. When it met with Mr X in March he said there had been problems but then had no current concerns.
26. It said Mr X had raised concerns again in June 2017 but declined a meeting. The Council said it had agreed an action plan with Direct Health over the telephone, involving making spot checks and meeting with care workers.
27. It said Direct Health had no further record of concerns and that Mr X had said care had improved.
28. However it said there were clearly *“issues with the quality of care provided... that Direct Health addressed these issues... and put measures in place to effectively tackle the problems being experienced”*
29. It said further investigation was not warranted. It said it would not waive care fees but was prepared to reduce them by 10% (£200) to £1,808.46 in light of Mr Y’s experiences as a good will gesture. It referred Mr X to the Ombudsman.
30. When I spoke to Mr X as part of my investigation he told me that after reporting the initial problems in early 2017, Direct Health persuaded him it would take steps to improve things. He felt things did improve for a time, but problems quickly returned because of constant changes to the carers.
31. Mr X says he did not refuse to meet in June, he just thought it was easier to discuss the matter by phone. He wanted the Council to be involved in conversations because they were independent. He strongly feels that he should not have to pay for the inadequate care for his father.
32. When I asked Mr X for the carer log books he said there was nothing in the log book which he said had been left blank by his father’s carers.

My findings

33. The Council arranged the care provided to Mr Y by Direct Health. That means I can treat fault by the care provider as if it was fault by the Council.
34. I am satisfied the Council took appropriate action in March 2017 when Mr X raised his concerns with it. It contacted and raised concerns with Direct Health, then met Mr X and the provider to discuss them further. Records of that meeting shows it recognised there had been faults in the care provided to Mr X at the start of the package although this had improved by the time of the meeting.
35. Based on the outcome of that meeting with Mr X, the Council decided to take no further action at that time as the problems seemed to have been resolved. There was no fault in this decision.
36. However, the occupational therapist case record later in March shows Mr X still had serious concerns he had raised with the Council. There is no record it shared these with the care provider or required action. It had agreed that Mr X would raise concerns direct with Direct Health. However I would have expected it to have also raised Mr X’s concerns direct. This was fault.

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37. After Mr X's further report to it in June, the Council was sufficiently concerned about care quality to require the care provider to draw up an action plan and for it to carry out monthly spot checks on progress.
38. The care provider did not carry out the spot checks. This is fault. Even though Mr made no further reports this not reduce the impact of this fault. Mr X believed the agreed checks were being carried out.
39. In the absence of any detailed care records I cannot say what medication Mr Y received. I cannot make a finding on this matter.
40. I cannot remedy injustice caused to the late Mr Y by these faults. However they also caused Mr X injustice. He had to repeatedly raise concerns with the Council between January and June 2017 as well as dealing with the consequences for Mr Y. He was put to avoidable distress, time and trouble. Evidence suggests care improved after Mr X raised concerns and then declined again requiring the Council to require Direct Health to take further action.
41. The Council's goodwill gesture to reduce Mr Y's outstanding care fees by 10% is not enough to remedy injustice caused to Mr X. It should apologise to him for the faults identified and offer to reduce the care charges by £500 to remedy the distress, time and trouble caused.

Agreed action

42. Within one month of my final decision the Council has agreed to:
- Apologise to Mr X for the quality of care provided to Mr Y by Direct Health.
 - Reduce Mr X's outstanding balance of care charges by £500.
43. Within three months of my final decision the Council has agreed to put in place a procedure to ensure care providers carry out and document agreed spot checks. It will provide the Ombudsman with evidence of this.

Final decision

44. I have completed my investigation. I have found fault causing injustice and the Council has agreed action to remedy this. It has also agreed action to prevent reoccurrence of an identified fault.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint about the Council's response to consultation on a planning application. The complaint is late and it is unlikely we would find fault affecting the District Council's decision to grant planning permission.

The complaint

1. The complainant, Mr X, complains about the Council's response to consultation by the District Council on a planning application for development on his road. He also complains about the Council's handling of his complaint.

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 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. 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

5. I reviewed the information provided by Mr X, including the details of his complaint and the Council's response. I shared my draft decision with Mr X and considered his comments.

What I found

6. The District Council consulted the County Council on a planning application for residential development of a site on Mr X's road in early 2017. Mr X objected to the proposal but the County Council did not. The District Council considered the proposal and consultee responses and found no good reasons to refuse the application; it therefore granted planning permission.
7. Mr X is unhappy with the County Council's comments on the proposal. He says the Council's response contains an error and that it failed to consider the impact on a nearby road junction which itself is substandard. He complained to the Council but was not happy with its response.
8. The Ombudsman will not investigate this complaint. The Council commented on the planning application in early 2017 and Mr X did not bring his complaint to the Ombudsman until October 2018; his complaint is therefore late. The documents Mr X has provided shows he was aware of the Council's consultation response at the time and while the Council may have delayed at points in dealing with his complaint there are good reasons why we should not exercise our discretion to investigate this complaint.
9. The Council accepts there was a factual error in its response but says this does not affect the overall consultation response. The Council has no objection to the proposal and would not therefore have recommended refusal. The Council's recommendation is a matter of professional judgement and it did not make the decision to grant planning permission in any event. Mr X's injustice stems from the decision, which the District Council made, and not from the County Council's consultation response. It is therefore unlikely we could say any fault by the County Council affected the outcome or that we could achieve anything for Mr X by investigating his complaint about the County Council.
10. Where the Ombudsman decides not to investigate the substantive issue it is not a good use of public resources to investigate any complaint about the Council's handling of a complaint about it. Any concerns Mr X has about the way the Council dealt with his complaint are peripheral and have not caused him significant injustice.

Final decision

11. The Ombudsman will not investigate this complaint. This is because the complaint is late and it is unlikely we could say any fault by the Council wrongly affected the District Council's decision to grant planning permission.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Ms B complained about the behaviour of young people using a Council service near her home. She said this resulted in her experiencing abuse, unpleasant incidents and disturbance. We have not found grounds to fault the Council's approach to the situation during the period we have investigated.

The complaint

1. The complainant, whom I shall refer to as Ms B, complains The Council has failed to deal effectively with users of its mobile Youth Service causing antisocial behaviour. Miss B reports that, as a result, she has experienced verbal abuse, including racial abuse, attacks on her property, indecent exposure and intimidation from groups of young people congregating outside her home on days when the Youth Service vehicle is nearby.

What I have investigated

2. I investigated relevant events since March 2017. The final section of this statement contains my reasons for not investigating the rest of the complaint.

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 investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. 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

6. I considered the information Ms B provided and discussed the complaint with her. I made written enquiries of the Council and considered its response. I gave the Council and Ms B the opportunity to comment on my draft decision.

What I found

7. The Council's youth service has a bus in which it visits areas to work with young people. This bus visits a car park near Ms B's home on one evening each week to meet local young people. Ms B is unhappy with this location because she states young people cause trouble for her before and after visiting the Council's bus.
8. Ms B told me the problems were most serious in 2016. A note she has from June 2016 indicated the events involving indecent exposure and attacking her property had happened by then, among other points. For the reasons given in paragraphs 20 to 22 below, I have not investigated events that far back.
9. I investigated events since March 2017. Ms B told me since March 2017 there have been some problems when young people leave the session and sometimes during the sessions too. Ms B says she raised any problems with Council staff.
10. The Council says its actions in response to Ms B's complaints include: reminding young people to be responsible and not make too much noise when arriving and leaving; asking young people only to arrive when the session is due to start rather than congregating in the area earlier; staff checking the young people have left the area after each session; and talking to the service users about the situation and the importance of behaving in a way that reflects well on them and the Council's youth service. Ms B said that after her complaints, staff sometimes escorted young people to and from the bus but that this seemed not to have happened more recently.
11. The Council's records of the weekly sessions refer to involvement with Ms B at six of the sessions since March 2017. I have summarised the relevant records below:
 - 2 March 2017 – A verbal confrontation was underway between young people and Ms B when youth service staff arrived. Ms B called the police, who attended while the staff and young people were still there. The police viewed a telephone recording of the incident that a young person had made. The Council staff asked young people not to provoke or engage with Ms B.
 - 27 April 2017 – A staff member noted Ms B had approached the car park then turned back.
 - 4 May 2017 – When staff arrived, 'A couple of young people from [the area] were trying to get an argument going with [Ms B] but we addressed it straight away and it was very interesting to see some of the group turning on the trouble causers.'
 - 16 November 2017 – Ms B was at the entrance when staff arrived. She then left. There was no altercation between her and the young people. Staff told the police as they understood Ms B was not supposed to approach young people using the Youth Service.
 - 23 November 2017 – Ms B complained to staff about the young people's behaviour when they had passed her home when leaving the session. Staff noted they had asked the young people to keep the music level down when going home '...but they neglected to do this and [Ms B] was not happy about this. I repeatedly explained that I will speak to them next week...' Ms B said

she wanted the Youth Service to stop using this car park. The Council logged this incident with the police.

- 8 February 2018 – Staff stated Ms B had been verbally abusive towards them, which they reported to the police.
12. I appreciate there might well be disputed versions of what precisely happened on each of these occasions. I cannot resolve what actually happened each time. However, I consider it noteworthy that the records only show six contacts out of all the weekly visits in the period. On two occasions, 4 May and 23 November 2017, I consider the evidence shows Council staff became aware of possibly inappropriate behaviour by young people.
 13. On 4 May 2017, the incident appears to have started before staff arrived and they evidently helped end the confrontation. I do not see fault by the Council on this point.
 14. On 23 November 2017, evidently the young people had not followed the advice to avoid excessive noise when leaving. Apparently staff had not escorted the young people from the site on this occasion but I do not see the Council ever gave an undertaking this would always happen, even if Ms B saw it happening sometimes. The Council undertook to reiterate the need to leave quietly. This appears to be a single incident where the noise was problematic enough for Ms B to raise it with staff.
 15. In its letters replying to Ms B's complaints in November 2016 and early 2018, the Council advised Ms B to report further incidents to the police. From what the Council and Ms B have told me, Ms B then seems to have reported one incident in November 2016 and one, or perhaps two, in March 2017. Ms B told me she did not report anything to police in the period I am considering because she did not witness anything she thought was a crime.
 16. In February 2018, the Council advised Ms B to report further incidents to her local district council, which has some legal powers to deal with antisocial behaviour. Ms B has not done so.
 17. The Council says young people in this area need the Youth Service so its work here is important. It says it considers the current location for the weekly visits appropriate and it does not consider the current situation justifies moving the bus to a different place for its weekly visits.
 18. The Council has not ignored Ms B's concerns but appears to have taken some steps aimed at reducing problems. Overall, the impression is that there has not been a significant ongoing problem with these weekly visits in the period since March 2017. The Council was entitled to have regard to that as well as to the importance it attaches to its youth work in this area. In all the circumstances, I do not consider the Council was at fault for deciding it can currently continue its weekly visit to this location, as long as it continues the measures it has outlined to reduce the risk of problems.

Final decision

19. I have ended my investigation for the reasons given above.

Parts of the complaint that I did not investigate

20. Ms B complained about events dating back to 2016. The Council first told Ms B in November 2016 it would do no more than the measures it was already taking. Ms

B first complained to the Ombudsman in March 2018. So the restriction described in paragraph 4 applies.

21. Ms B told me she did not come to us sooner because of the deaths of a friend and a close relative in the last few months of 2016. I appreciate the circumstances would have been difficult and could have led Ms B to give less priority to pursuing a complaint for a while. However, I still consider that if Ms B was very concerned about what had happened in 2016, she could have pursued the matter, including by contacting us (which was not onerous), by November 2017.
22. It could also be difficult for me to reach a clear enough view now about the earlier events. Moreover, I consider it proportionate to concentrate on more recent events as they, and the ongoing situation, are what potentially affect Ms B currently. For these reasons, I am not persuaded to investigate events before March 2017.

Investigator's decision on behalf of the Ombudsman