

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

Summary: We found fault with the Council for a delay in Mr Y's financial assessment and failing to provide information to allow him to make an informed decision about his home care. The Council agreed actions to remedy the injustice to Mr Y.

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## **The complaint**

1. Mr X complained on behalf of his father Mr Y. Mr X complained about the Council's delay assessing his father's financial contribution for home care when he was discharged from hospital. He complained:
  - He was told the home care was free of charge.
  - The care plan was a condition of Mr Y being allowed to return home from rehabilitation.
  - The Council set up four visits a day and Mr Y wasn't given the option of less calls.
  - The care he received was substandard, incomplete and inconsistent, with greatly reduced visit times and many tasks not completed
  - They did not know the cost of the care so could not possibly have agreed to it.
  - The Council backdated the contributions for care that he had not been told he would have to pay for.
2. Mr X said this has caused a financial loss and they were denied the ability to make a properly informed choice about the care Mr Y was charged for. Mr X said Mr Y should not pay the backdated charge for home care.

## **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. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether a council followed the

relevant legislation, guidance and our published “Good Administrative Practice during the response to COVID-19”.

5. 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**

6. I considered the information Mr X provided with his complaint. I made enquiries with the Council and considered its response, along with relevant law and guidance.
7. Mr X, Mr Y and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

## **What I found**

### **Law and guidance**

8. The Care Act 2014 is the overarching legislation relating to council’s obligations in respect of people who have an assessed need for non-residential care services.
9. Relevant regulations are the Care and Support (Charging and Assessment of Resources) Regulations 2014.
10. The Care and Support Statutory Guidance set out in detail the application of the Care Act legislation in practice. Section 8 deals with charging and financial assessment, and annex B, C and E deal with the treatment of capital, treatment of income and deprivation of assets.
11. Councils have discretion to choose whether or not to charge for non-residential services. Where a council decides to charge it must do so in line with the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the Care and Support Statutory Guidance (CSSG).
12. Where the council has decided to charge, it must carry out a financial assessment of what a person can afford to pay. It has no power to assess couples according to their joint resources: each person must be treated individually. The council must not charge more than the cost it incurs in meeting the assessed needs of the individual, and it must regularly reassess a person’s ability to meet the cost of their care to take account of any changes in their resources.
13. Any capital threshold for the purpose of means-testing for non-residential care should not be lower than that for the residential care means test, and the value of the service-user’s home cannot be included in the means test for this type of care. Councils may exercise discretion to disregard some sources of income, set maximum charges or charge a percentage of the person’s disposable income. How such discretion is to be applied should be set out in the Council’s policy.
14. From 19 March to 31 August 2020 people discharged from hospital with a care package had up to six weeks of rehabilitation care paid for from an emergency COVID-19 fund. From 1 September 2020 Council’s returned to Care Act assessments for long term care.
15. The guidance set out how Council’s should have carried out this transition process. It said good local communication with individuals and families was key to ensuring they had clarity about possible future funding arrangements for long-term care.

## What happened

16. What follows is a brief chronology of key events. It does not contain all the information I reviewed during my investigation.
17. Mr Y was admitted to hospital in May 2020 after he fell at home. He was not able to be discharged home and spent some time in a rehabilitation facility. The cost was covered by emergency COVID funding in place at the time.
18. He was assessed in the rehabilitation unit and health staff decided he could be discharged home if he had home care visits four times a day. He was discharged home in July 2020 and the cost of the care visits was still covered by COVID emergency funding. Before Mr Y was discharged home a social worker visited him when Mr X was also present. They told them the home care cost would be covered by the COVID funding until they were told of the date they would need to make a contribution. The social worker also spoke to Mr Y about his savings and told them they would need to complete a financial assessment to find out how much contribution Mr Y would have to pay for his home care.
19. In August 2020 the social worker spoke to Mr X. He said someone would be in contact about the COVID funding. Mr X said he had posted the completed financial assessment form back.
20. In September 2020 the case was allocated to a social worker for a care and financial assessment because the COVID funding was due to end. A social worker called Mr Y and told him the COVID funding had ended and he would be liable for an assessed contribution.
21. In October 2020 Mr X complained to the Council. He said they were told the cost of the care would be covered by COVID funding. He did not understand why this ended despite parts of the country still being in lockdown. He also complained:
  - The financial assessment of Mr Y's savings was incorrect.
  - They were not given a choice of care companies or visit times.
  - Mr Y was not receiving the amount of care he was being charged for.
  - They were not given correct information about the assessed contribution.
  - They should not be charged the backdated amount for the care visits.
22. A social worker visited Mr Y in December 2020. Mr X's wife was also present. The social worker assessed Mr Y and worked out an indicative personal budget.
23. In January 2021 the Council wrote to Mr Y about his financial assessment and contribution. It told him he owed the backdated amount from when the COVID funding ended in September 2020.
24. In February 2021 the Council wrote to Mr X with its final response to his complaints. It said:
  - Mr Y would have received leaflets about the COVID funding before he was discharged from hospital.
  - The Council explained the COVID funding ended during a phone call with Mr Y on 18 September 2020.
  - It was difficult to find home care packages during COVID. Mr X was involved in discussions about which care provider would provide the support package.
  - An audit of the call records did not show any discrepancies between the call records and electronic monitoring of the length of care visits.

25. Mr X remained unhappy with the Council's response and complained to the Ombudsman.

### **My findings**

26. I found fault with the Council. It delayed carrying out Mr Y's financial assessment. The COVID emergency funding ended on 13 September 2020. Mr X sent back the financial assessment form in August 2020 but the Council did not complete the assessment until October 2020.
27. When the Council decided Mr Y's personal contribution to the cost of his care it backdated it to the 14 September 2020. This created an outstanding balance from the 14 September to the date of the financial assessment. During this time Mr Y had not been paying any contributions.
28. I also found fault with the Council for the way it communicated with Mr X and Mr Y about the financial assessment and contributions to Mr Y's care.
29. A social worker spoke to Mr Y on the phone on 18 September 2020. They told him the COVID funding had ended. Mr X was not present and there was no evidence the information was followed up in writing. Whilst Mr Y may have been able to make decisions about his care the Council had also recorded concerns about his memory.
30. The Council failed to carry out a Care Act assessment prior to the end of the COVID funding. It reassessed Mr Y's care need in December 2020. Following this assessment Mr Y decided to reduce the number of care visits from four to two per day.
31. On balance I think if Mr X and Mr Y had been given clearer information in a timelier manner, they would have reduced the number of visits earlier to reduce the cost to Mr Y.
32. I was concerned about the lack information the Council gave Mr X and Mr Y to enable them to make an informed choice about his care and the financial impact of the decisions. The Council agreed service improvement actions to address this.
33. In response to our investigation the Council acknowledged there was a delay assessing Mr Y's financial contributions and communicating the outcome to him. It offered to cancel the outstanding charge for home care for the period 14 September to 15 November 2020. This was a total of £1439.46.
34. We welcome the Council's financial remedy to acknowledge the injustice it caused Mr Y. The Council also agreed a payment to Mr X in recognition of the time and trouble he experienced because the complaint could have been resolved by the Council at an earlier stage.
35. I did not make a finding about Mr X's complaint that Mr Y did not receive the care he paid for. Mr X complained about the number, duration and time of the care visits the care company made to Mr Y. The Council investigated the complaints by reviewing the care logs and electronic call data. It did not find evidence to support Mr X's complaint and did not uphold this part of the complaint.
36. I did not investigate this further because it would be unlikely that it would lead to a different outcome. The Council agreed to remove the charge for some of the period. Therefore, I would be unlikely to offer a further remedy and it was not proportionate to investigate this part any further.

## **Agreed action**

37. Within one month of my final decision the Council agrees to:
  - Apologise to Mr X and Mr Y for the faults identified in this decision.
  - Pay Mr X £100 in recognition of the time and trouble it caused him.
  - Remove £1439.46 from Mr Y's account to recognise the charge for the period 14 September to 15 November 2020.
38. Within two months of my final decision the Council agrees to:
  - Review its procedure to ensure that any phone calls about financial assessments, contributions and personal budgets are confirmed in writing.
39. The Council should provide the Ombudsman with evidence it has completed the above actions.

## **Final decision**

40. I found fault with the Council causing injustice. I completed my investigation.

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