

The Ombudsman's final decision

Summary: The Council was at fault when it failed to provide Mr X with affordable options for his parents, Mr and Mrs P's, care placements. As a result, Mr X was denied the option to choose between a care home with no top up fee and a more affordable one. The Council has agreed to repay, or write off, the top ups Mr X has paid or owes and make service improvements. There was no fault in how the Council decided to take the value of the Mr and Mrs P's property into account when deciding what they could afford to pay for their care. There was also no fault in the support provided to Mrs P before she was admitted to the Care Home, its actions in relation to falls experienced by Mr and Mrs P or the information in their care plans about their mobility. However, the Care Home was at fault when it failed to update Mr and Mrs P's next of kin, Mr X, about these and other incidents. Although Mr X was not caused a significant injustice, the Council should make service improvements to prevent a reoccurrence.

The complaint

1. Mr X complained about the actions of the Council. Specifically, he said the Council:
 - a) failed to provide proper support to Mrs P before she was admitted to a care home in April 2020;
 - b) should have placed Mrs P in a nursing home because she needed nursing care;
 - c) failed to properly explain top-ups when Mr X agreed to Mr and Mrs P's residential placement; and
 - d) wrongly decided not to apply a discretionary property disregard to Mr and Mrs P's house which he states he has lived in since before they moved into care
2. Mr X also complains:
 - a) Mr and Mrs P experienced frequent falls and the Care Home failed to update the family following them; and
 - b) the Care Home did not hold appropriate information about his mother's mobility needs, or his father's need to have his food blended.

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3. Mr X said that as a result, Mr and Mrs P's health has been put at risk because they did not receive the care they needed, which also caused him distress. Mr X also says that if the Council refused to apply the property disregard, he would be made homeless.

The Ombudsman's role and powers

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 the council followed the relevant legislation, guidance and our published "Good Administrative Practice during the response to COVID-19".
5. 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*)
6. We cannot question whether an organisation'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*)
7. Part 3 and Part 3A of the Local Government Act 1974 give us our powers to investigate adult social care complaints. Part 3 is for complaints where local councils provide services themselves. It also applies where a council arranges or commissions care services from a provider, even if the council charges the person receiving the care. In these cases, we treat the provider's actions as if they were council actions. (*Part 3 and Part 3A Local Government Act 1974; section 25(6) & (7) of the Act*)
8. We may investigate complaints from the person affected by the complaint issues, or from someone they authorise in writing to act for them. If the person affected cannot give their authority, we may investigate a complaint from a person we consider to be a suitable representative. (*Section 26A or 34C, Local Government Act 1974*)
9. 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*)
10. 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

11. I considered information provided by the Council and Mr X.
12. I considered the Care Act 2014 (the Act) and Care and Support Statutory Guidance 2014 (the Guidance).
13. Mr X and the Council had an opportunity to comment on my draft decision. I considered their comments before making a final decision.

What I found

Paying for care

14. Where a council arranges care and support to meet a person's needs, it may charge the adult, except where the council must arrange care and support free of charge.
15. If the person lives in a care home and has over £23,250 capital, known as the upper capital limit, they must pay the full costs of their care.
16. Below this level, a person can seek means-tested support from the council. This means that the council will carry out a financial assessment of the person's assets and will make a charge based on what the person can afford to pay. Where a person's resources are below the lower capital limit of £14,250, they will not need to contribute to the cost of their care and support from their capital.

Top ups

17. The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 set out what people should expect from a council when it arranges a care home place for them. Where the care planning process has determined a person's needs are best met in a care home, the council must provide for the person's preferred choice of accommodation, subject to certain conditions. This also extends to shared lives, supported living and extra care housing settings.
18. The council must ensure:
 - the person has a genuine choice of accommodation;
 - at least one accommodation option is available and affordable within the person's personal budget; and
 - there is more than one of those options.
19. However, a person must also be able to choose alternative options, including a more expensive setting, where a third party or, in certain circumstances, the resident is willing and able to pay the additional cost. This is called a 'top-up'. But a top-up payment must always be optional and never the result of commissioning failures leading to a lack of choice.
20. In such circumstances, the council needs to ensure the person paying the top-up enters a written agreement with the council and can meet the extra costs for the likely duration of the agreement.

Discharge to assess under COVID-19

21. From 19 March 2020, there was a requirement to free up hospital beds for the anticipated wave of COVID-19 admissions. Government guidance at that time directed rapid discharge of all patients who were clinically ready to leave hospital, either home or to another place of care. Transfer from the wards should have been within one hour to a designated discharge area and then discharge from hospital as soon as possible, and within two hours wherever possible.
22. Where patients were discharged under this government guidance, the NHS fully funded the cost of new or extended out-of-hospital health and social care packages.
23. For patients who needed to be discharged to a rehabilitation bed or care home, the guidance stated they would not be able to remain in hospital until their first choice of care home had a vacancy. This meant some patients were discharged

to an alternative care home until they were able to move to their preferred choice. The guidance stated the NHS would pay for this support.

Deferred payments

24. Deferred payment agreements are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. Under a deferred payment agreement, the outstanding costs of a person's care and support are recouped when their property is sold.

Property disregard

25. A person's property must be disregarded by the council (ie not taken into account when calculating what they can afford to pay for their care) for 12 weeks under certain circumstances. These include when someone first enters a care home as a permanent resident.
26. A person's property will also be disregarded under other circumstances. These include where it is occupied by a relative who is aged 60 or over or is incapacitated. In these cases, it must be the relative's main residence and they must have lived there in the time prior to the person going into a care home. Under these circumstances, the property is disregarded completely unless or until something changes.

What happened

27. In November 2019, Mrs P was admitted to hospital.
28. In February 2020 discussions took place between the Council's hospital-based officer and Mr X about Mrs P's discharge from hospital. The officer explained it would be for the hospital to decide when Mrs P was well enough to be discharged. The officer discussed Mrs P's care package with Mr X.
29. The hospital-based officer carried out an assessment with Mrs P in March. This considered what eligible needs she had and how these could be met. The officer also spoke to Mr X around this time about the care Mrs P would need. The officer assessed Mrs P as needing two carers visiting four times a day.
30. NHS occupational therapists (OTs) also carried out a home visit around this time. They decided various assistive equipment would be put in place.
31. Mrs P was discharged home a few days later with an OT accompanying her home to further assess how she managed at home.
32. The care agencies providing Mr and Mrs P's package of care soon reported issues with the bathroom which was later deemed unsafe and concern about Mr and Mrs P's mental states. The district nurses also raised a safeguarding alert with the Council after finding Mrs P had three pressure sores.
33. The Council spoke to Mr X and it was agreed Mr and Mrs P needed to go into respite care whilst a decision was made about their long term care and whether the house could be adapted to meet their needs.
34. At the beginning of April, the care notes record a conversation with Mr X and the Council about respite and paying for care. The officer said they had found a care home which could take both Mr and Mrs P. They would have to contribute towards their care. The officer said there would also need to be a top up of £99 a week for each of them. The notes state Mr X "*confirmed this third party payment and said it wouldn't be a problem*". The officer emailed Mr X a copy of the third party agreement the same day. Mr X signed and returned the agreement.

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35. Mr and Mrs P went into the Care Home for respite in April 2020. The Care Home fell within the boundaries of the City Council. However, the County Council remained responsible for the Care Home's actions because it was the council responsible for placing them there. This investigation concerns the actions of the County Council.
 36. At this time, the government had introduced new charging arrangements because of the COVID-19 pandemic. This meant all Mr and Mrs P's care was paid for them by the NHS.
 37. The Care Home drew up care plans for Mr and Mrs P. These recorded they were both at high risk of falls. They detailed their levels of mobility and the support they required.
 38. In July, the Council held a meeting with Mr X to discuss whether Mr and Mrs P could return home. The notes record Mr X stated he had separated from his wife. He said he had moved into the property in November 2019 when Mrs P went into hospital and then moved out again when she was discharged. Mr X said he moved back in again when his parents went into respite care. Mr X raised concerns about where he would live if his parents came home.
 39. The notes also recorded discussions around the third party top ups and the Council setting up a deferred payment.
 40. In mid-2020, Mr P had an infection which caused him some trouble with eating and drinking. A speech and language therapist assessed him in September 2020 and said the infection had cleared and Mr P could have a normal diet and fluids. There was no record he needed his food blending.
 41. In September, the NHS funding came to an end.
 42. In October, Mr and Mrs P become permanent residents at the Care Home.
 43. In December, the Council sent Mr X a debt recovery letter for non-payment of the top ups. Mr X responded to say he could not afford to pay them. He said he thought the top ups would be taken from Mr and Mrs P's pension. He stated the Council had failed to give him any affordable care home options.
 44. When the following events occurred, Mr and Mrs P were self-isolating in their rooms, in line with other residents, because of the COVID-19 pandemic.
 45. On 12 February 2021, Mr P had a fall. The Care Home called the paramedics and Mr P was admitted to hospital where he had a scan and then returned to the Care Home.
 46. On 13 February, Mr P had a second fall. The paramedics attended again and considered he was safe to stay in the Care Home. Whilst they were still there, the hospital phoned to say the scan from the day before showed Mr X had a small bleed on the brain. He was admitted to hospital again and discharged later that day.
 47. The Care Home updated Mr P's care plan to reflect what had happened and the steps it had taken to prevent a reoccurrence.
 48. The Care Home raised a safeguarding alert with the City Council (as it was located within its geographical area – see paragraph 35 above). It concluded there was no evidence of abuse or neglect, and the fall could not have been prevented given the recommendation for residents to isolate because of the pandemic. It was satisfied with the actions taken by the Care Home and, therefore, the referral did not meet the threshold for an enquiry and was closed.

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49. Mrs P also had two falls in February. One was unwitnessed. The Care Home called the emergency services and paramedics attended. They recommended Mrs P stay at the Care Home with 15 minute checks. Later that day Mrs P became unwell and the emergency services were called again and Mrs P was admitted to hospital. She returned the following day after a scan showed no concerns. The Care Home amended the way they supported her when mobilising to reduce the risk of a reoccurrence.
50. The Care Home raised another safeguarding alert with the City Council. After investigating it came to same conclusion as it did with Mr P in paragraph 47 and the incident was closed.
51. In March 2021, Mr X complained to the Care Home about the issues in paragraphs 1 and 2 of this decision statement. With regard to the Council's intention to apply a discretionary property disregard, Mr X said he said he moved into the property's annex in June 2019 and into the house in April 2020 when Mr and Mrs P went into the Care Home. Mr X said the property was on one level which made it easier for him to manage as he had a disability.
52. Also in March, the Council informed Mr X that the Care Home had agreed to waive the top up fees from 17 February 2021. This meant Mr X only owned the top up fees from 10 September 2020 to 17 February 2021.
53. The Council responded in April 2021. It made the following points:
- Mr P had two falls on 12 and 13 February. Because they were close together, the Care Home forwarded a urine sample to Mr P's GP who confirmed he had an infection. The GP prescribed antibiotics and the family was informed. Mr P experienced no other falls subsequently;
 - Mrs P also had two falls in February. The first was in her room and was due to a combination of her leaning forward to get into her wheelchair and a member of staff not following the Care Home's policies on use of equipment. The Care Home had amended Mrs P's care plan so two members of staff now assisted her in getting into her wheelchair. The second fall was unwitnessed, and the Council was unsure how it happened although Mrs P said she had tried to get up and walk;
 - a number of safeguards were in place including call bells, sensor mats and motion sensors to prevent or alert staff to falls. Risk assessments were carried out for both Mr and Mrs P and updated, together with their care plans, when necessary. The Care Home raised safeguarding alerts which had found no evidence of abuse;
 - no family member had power of attorney which meant the Care Home would not share sensitive information unless it was necessary. Furthermore the Care Home only informed the family of incidents if they led to a safeguarding investigation which found fault. However, the Care Home did notify the family about both of Mr P's falls and the bleed on his brain. The Council offered to notify the family of all incidents if they wished; and
 - the family did not advise the social worker or Care Home that Mr P needed a special diet. He was observed being able to eat solid food. A speech and language therapist assessment in September 2020 identified no issues with swallowing and did not recommend a liquid diet.
54. In relation to the funding for Mr and Mrs P's care, the Council said it would only consider a property disregard if the house had been Mr X's only or main

residence before Mr and Mrs P went into the Care Home. The documents already sent in by Mr X were not sufficient to demonstrate this. The Council asked for a utility bill, council tax bill or bank statement dating from before April 2020 to prove he had lived there since that date.

55. The Council said it had applied the 12 week property disregard from when the COVID-19 funding stopped at the end of September 2020. This ran until mid-January 2021.
56. Mr X submitted a council tax discount letter. The Council acknowledged this but said the date Mr X occupied the property, according to the Department of Works and Pensions (DWP), was February 2021, nearly a year after Mr and Mrs P had gone into care. The Council agreed to provide a temporary discretionary disregard for a period of three months from January to April 2021.
57. The Council declined to allow a disregard after that date. It said this was because Mr X had not proved he lived in Mr and Mrs P's property before April 2020. The Council said that as he owned a 50% share in his own home and there was no intention to sell the property he currently resided in, he would not be made homeless.
58. Mr X denied having any ownership in his own home. The Council sent him a copy of the Land Registry deeds showing he owned the property with his wife.
59. The Council went on to say it would award a 12 month property disregard to January 2022 to enable Mr X to arrange his affairs.
60. Mr X remained unhappy and complained to the Ombudsman.

My findings

Complaint 1a) support provided to Mrs P before she was admitted to a care home in April 2020

61. The Council properly assessed Mrs P prior to her discharge from hospital and drew up a care and support plan to meet her eligible needs. OTs carried out home visits and ensured the appropriate assistive technology and equipment were in place. Mrs P's case notes record care workers acted promptly to inform the Council when they identified issues when providing care, relating to both Mr and Mrs P's mental states and home safety. The district nurses also reported matters to the Council. The Council acted appropriately to these reports and considered there was a risk to Mr and Mrs P remaining at home. As a result, the Council arranged for respite care in a residential setting whilst decisions about their future care were considered. Its case notes for Mrs P record Mr X agreed with these decisions. There was no fault in the Council's actions.

Complaint 1b) placement of Mrs P in a residential and not a nursing home

62. There is nothing in Mrs P's records that indicate a need for a nursing home placement. The Council was not at fault for placing her in a residential home.

Complaint 1c) top-ups for Mr and Mrs P's residential placements

63. When arranging residential care placements, councils must ensure at least one accommodation option is available and affordable. This means that there must be a suitable placement available that does not require top ups.
64. When Mr and Mrs P were placed in the Care Home, the emergency COVID-19 legislation was in place. Hospitals were urgently discharging all patients without a medical need and placements were scarcer than usual. As a result the Council

had very limited choices when finding a care home which could take both Mr and Mrs P.

65. The case notes record the Council provided Mr X with financial information about top ups and Mr X subsequently signed a form to say he would pay a top up for each of his parents. However, the Council failed to provide Mr X with care home options which were affordable and did not need a top up. Although this may not have been possible at the time Mr and Mrs P first went into a care home, the Council should have done so later, when the NHS funding came to an end. This was fault.
66. As a result, Mr X was caused an injustice because he was not given the information he needed to make an informed decision about his parents' care or given a choice of placement that did not require a top up.

Complaint 1d) property disregard

67. In investigating this part of Mr X's complaint, I have considered the relevant legislation and information from the Council. This includes records from Council Tax which stated Mr X has never been registered as living at Mr and Mrs P's property and the Land Registry which state Mr X owns another property with his wife. I have also considered the Council's case notes which recorded Mr X stating he did not move in until Mr and Mrs P went into respite care in April 2020.
68. The Act and Guidance lay out what a council must take into account when considering whether to award a property disregard. This includes issues such as when the relative moved into the property, their age and disabilities and whether selling the house would make them homeless.
69. The Council decided Mr X did not meet the requirements to award a permanent property disregard. He did not provide proof he was living in Mr and Mrs P's property before they went into the Care Home and it was not his only or main residence. He owned 50% of his matrimonial house and because the Council did not intend to sell his parents' property, he would not be made homeless if he chose to move in there. The Council exercised its discretion to apply a disregard for 12 months to enable Mr X to consider his options. There was no fault in the way the Council made its decision.

Complaints 2a) frequent falls and informing the family and 2b) Mrs P's mobility needs and blending Mr P's food

70. The Care Home drew up comprehensive care plans for Mr and Mrs P. These recorded their eligible needs, including their levels of mobility, and the support required to meet their needs. Following the falls, the Care Home updated both plans detailing the additional support.
71. It also took appropriate action by calling for an ambulance, following medical advice and raised safeguarding alerts with the Council. The Home updated Mr and Mrs P's plans and put additional support in place. The Council investigated and found the falls to be unavoidable and the support in place to be adequate.
72. Mr X was unhappy because the Care Home did not inform him of all of the falls and other incidents, such as Mr P's infection diagnosis. The Council said this was because he did not have power of attorney for Mr and Mrs P and so it was inappropriate to share sensitive information.
73. The Council has not sent me details of any formal communication plan in place between Mr X and the Care Home. This would have allowed processes to be in place specifying in what situations Mr X would be contacted. However, even

without such a plan, Mr X was involved in the planning and arrangement of Mr and Mrs P's care and he was their next of kin. The Care Home was aware of this and should have informed him without delay when either of his parents fell, were diagnosed with any medical condition, needed an ambulance calling or were admitted to hospital. The failure to do so was fault.

74. However, I do not consider Mr X was caused an injustice. He became aware of these incidents shortly after they occurred, and the Council addressed his concerns in its complaint response. It also updated Mr and Mrs P's care plans to ensure he would be informed in the future.
75. In relation to Mr P's diet, the records specify Mr P was able to eat a normal diet and did not need to have his food blended. There was no fault in the Council's actions.

Agreed actions

76. Within one month of the date of the final decision, the Council has agreed to:
- repay or write off the top ups paid or owed by Mr X in relation to Mr and Mrs P's care home fees for the period 10 September 2020 to 17 February 2021.
 - remind relevant officers of the statutory requirement to offer at least one available and affordable care home placement; and
 - remind staff at the Care Home of the need to have communication plans in place for residents to ensure next of kin and families are updated appropriately.

Final decision

77. There was fault leading to injustice. The Council has agreed to my recommendations and so I have completed my investigation.

Investigator's decision on behalf of the Ombudsman