

**Report by the Local Government and Social
Care Ombudsman**

**Investigation into a complaint against
London Borough of Bromley
(reference number: 16 005 445)**

28 February 2018

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Investigation into complaint number 16 005 445 against London Borough of Bromley

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms M – the complainant

Mr N – the complainant's son

Report summary

Adult services

The Council failed to ensure Ms M's son, Mr N, could receive the level of care that he was entitled to. Mr N has lost out on provision and Ms M, who wanted to support him, has been caused distress and time and trouble. This has been made worse because although Ms M complained to the Council, it failed to deal with this complaint.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend that, within three months of our final decision, the Council:

- pays £2,865 to reflect the time, trouble and distress it caused to Ms M and Mr N; and,
- apologises for the fault identified in this report.

And, to improve services for others in the future, it should also:

- ensure care and support is reviewed at least on an annual basis;
- ensure that money paid periodically for a fixed period of care is paid at specific times and in specific amounts;
- review its use of 'holding accounts' so emergency money sent to individuals is immediately accessible; and
- train officers so parts of complaints are not missed from responses.

The Council accepts these recommendations.

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members, and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

Introduction

1. Ms M complains the direct payments and services agreed for the care of her disabled son, Mr N, were cut without any clear justification in 2015. Mr N was not reassessed and no explanation for the reduction in his care was given. When Ms M moved out of the Council's area, she says it refused to continue funding Mr N's care while the new council conducted an assessment of need. She also says the Council failed to address her complaint.

Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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. Councils have a duty to assess an individual's care needs. The process for doing this is set out in the Care Act 2014. People who have 'eligible needs', and who need the council's help to meet them, have support plans that set out how those needs will be met. The Care and Support Statutory Guidance 2014 says, at Section 13.32, that 'it is the expectation that authorities should conduct a review of the plan no later than every 12 months'.
4. The Care and Support (Direct Payments) Regulations 2014 was the statutory guidance in place until the Care Act came into force on 1 April 2015. This stated that once a council decided on a person's eligible needs, it could either provide or commission the services for the person, or give them a cash payment (a direct payment) so they could organise their own care. The requirements under the Care Act are similar. The Care and Support Statutory Guidance 2014, says councils should use the first review after April 2015 to establish a personal budget and thereafter use this as the basis for the direct payment. Once eligible needs have been identified, they should be met until another assessment or review says otherwise.
5. The Guidance also requires a council to provide or fund support to help people to manage their direct payment. This is because there is an administrative burden on recipients in terms of accounting for the funds, employing people, arranging insurance etc. Councils should audit a person's direct payment and may claw back any significant under spend. Councils can also ask for money back if the person has spent money improperly.
6. Section 20.40 of the Care and Support Statutory Guidance 2014 says; 'Where (a) full assessment has not taken place prior to (a) move, the second authority must put in place arrangements that meet the adult's or carer's needs for care and support as identified by the first authority. These arrangements must be in place on the day of the move and continue until the second authority has carried out its own assessment and put in place a care and support plan, which has been developed with the person'.

7. We expect councils to have complaints policies and to respond properly to all complaints in line with those policies.

How we considered this complaint

8. We produced this report after examining relevant files and documents and speaking to the complainant. We also made enquiries with the Council and considered its responses. The Council cancelled our visit to its offices at very short notice. It failed to arrange interviews with appropriate officers (when it had agreed to do so following the cancellation of our visit).
9. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

Investigation

Background

10. Ms M's son, Mr N, has autism as well as other needs. At the time of the matters complained of, Mr N was 22 years of age and had a specialist placement at a residential college in another council's area.
11. Mr N was in a residential college placement; his care package, established following an assessment in 2013, was based on 14 weeks of holiday care during which he was looked after at home and attended a day care facility. These needs were assessed as 28.5 hours of one to one support at £11.78 per hour (£335.73 for each of the 14 weeks) and three days each week of specialist day care at £156 per day (£468 for each of the 14 weeks). Although the payment is for 14 weeks of care, the Council calculated this as a weekly (52 week) payment of £216.39. In addition, because Mr N was placed outside the Council's area, it agreed to provide Ms M with travel assistance so she could pick up and take Mr N home for holidays. It also made a small additional payment so she could have insurance on her home to employ carers.
12. The package of support was in place from 22 July 2013. Support is subject to annual review.

One to one support

13. From 23 October 2015, although there had been no reassessment or review of Mr N's needs since his care package was agreed in 2013, the Council began paying for 25 hours of one to one support, rather than the agreed 28.5 hours. The Council says the hours were reduced with Ms M's agreement. However, changes in care should be based on needs and Mr N's needs were not assessed at this time. Ms M says she had not been given any notice about the reduction before it happened. She says she chased this up with the Council, on a number of occasions, so she could understand why support had been reduced. No reason was given.
14. Ms M had to provide the rest of the one to one care herself.

Specialist care

15. At the same time as the one to one support was reduced to 25 hours, the care centre he attended for the three days of 'specialist care' closed and no alternative was identified by the Council. The Council did not pay Mr N the equivalent of this care so Ms M could source provision that was broadly similar.
16. Not having the specialist care meant more of the burden of Mr N's care falling to Ms M. It also meant Mr N was not able to take advantage of stimulating activities outside the home.

Funding

17. Although the Council decided to divide the costs of the 14 weeks of care into a weekly amount of £216.39, it did not pay Ms M fixed amounts at fixed times. There are only two payments that are identical between October 2013 and March 2016 and they were paid on 8 January 2014 and 30 March 2014 (£849.24). All other amounts are different and range from a payment of £3,690.51 to a payment of £212.57.
18. The Council stopped payments between July 2014 and December 2015 because it says Ms M had not provided invoices for how the money was spent. Ms M says she was never asked for invoices before this happened; she only understood the Council's concerns when it asked for monies in the account. The Council gave Ms M information about its accounting policies, Ms M did not ask for any additional support at the time. She should have expected to account for the spending.
19. Although it suspended payments, the Council accepted (in March 2016) that backdated payments should be made from 23 October 2015. Once it accepted this, it made a payment to Ms M but placed the money in a 'holding account' so Ms M could not use it at the time. The Council says this was done in error.
20. By the time Mr N needed support in October 2015, Christmas 2015, February half term in 2016 and Easter 2016, there was not enough money in the account to pay for the care he needed.

Travel assistance and insurance

21. Travel assistance was not paid in October 2015 for half term despite Ms M chasing this. This formed part of Mr N's care package.
22. Ms M could not pay her insurance premium, which allowed her to employ carers, as the policy expired in July. She could not reinstate the insurance until the end of October 2015, which was too late for her to arrange care from a provider for the half term. She reminded the Council the payment was due but it did not pay her for this. The Council says this was not the sole issue that prevented Ms M from getting a carer for October half-term and it could have reimbursed her had she made the payment.

When Mr N moved out of the Council's area

23. When Ms M and Mr N moved out of the Council's area in December 2015, Ms M expected it would support Mr N until the other council took over funding responsibilities. Statutory Guidance is clear there should not be any gaps in care and transition from one council's area to another should be seamless. The Council had assured Ms M that Mr N would 'not be without care'. However, it decided not to continue to fund his care after 7 March 2016 (although it did say she would have enough money for the Easter holidays) on the grounds the other council had enough time to have conducted an assessment. The other Council has confirmed it did not begin funding until May 2016.

Complaints handling

24. Ms M made an online complaint to the Council on 2 November 2015 covering two issues. The complaint was logged on 18 November. Ms M did not receive a response to this complaint.

Conclusions

25. The Council has not provided any evidence to justify the reduction in the payments for 28.5 hours of one to one support. Failure to provide this support, in line with the care plan, is fault. Ms M was caused time, trouble and distress in providing additional care to Mr N and trying to resolve the matter with the Council. Mr N was caused distress as he wanted to take advantage of opportunities outside the home.
26. The Council has no evidence to show why the sum agreed for specialist care was not paid from 23 October 2015 to 7 March 2016 even though the centre Mr N had attended had closed. This is fault. The Council suggested it put in place 25 hours of one to one support instead. However, Mr N's care plan is clear he should receive specialist care as well as one to one support. The Council says Mr N 'attending another day service was not ever mentioned to the case worker' although it has also said that alternatives were suggested to Ms M but 'not accepted'. The Council should have made equivalent payments to give Ms M and Mr N options of how to meet Mr N's care needs. This is fault causing time and trouble for Ms M in chasing up provision for Mr N.
27. The Council should have carried out a review a year after July 2013 to establish whether Mr N's needs had changed. Its failure to do so is fault. As Mr N was happy with the care he was receiving (up until October 2015) there is no injustice to him. However, the Council should ensure it reviews care plans at least annually, in accordance with guidance and legislation.
28. The Council should pay £1,500 for Mr N's distress resulting from the lack of services, as outlined in the paragraphs above, and pay Ms M £500 for time and trouble and £200 for distress for having to provide services to him.
29. Given the Council decided to divide the 14 weeks of care it was providing Mr N into weekly amounts throughout a calendar year, it should have paid Ms M the same amount regularly each month. The Council should change its procedures to ensure equal

amounts are paid on a regular basis. This will enable users of services, and their carers, to adequately plan and budget.

30. There is no evidence of fault by the Council in checking money is used to meet care needs and asking for Ms M's accounts. Ms M knew she would have to provide an account of her spending given this is one of the conditions for receiving payments from the Council. However, when the Council took money from Ms M's account, it should have considered what additional money she would need to care for Mr N in the upcoming October half term holiday and onwards. This is fault and it should apologise for this. The Council says it paid £1,500 in February and an additional £300 to provide care for February half term and two weeks of Easter. However, the level of care agreed would have required payments totalling £2,411 to cover this period of time. Further, given the timing of the first payment, it would have been difficult for Ms M to have had time to arrange care.
31. The Council accepted, in October 2015, it should make a quick emergency payment to Ms M. It paid this into a 'holding account'. The payment could not be accessed until February 2016, which the Council admitted was a mistake. Although we understand this was an administrative error, the Council should review its use of 'holding accounts' so money is swiftly accessible once it is sent. The Council should also apologise for making the insurance payment late and for failing to provide transport assistance so she struggled to afford to pick Mr N up from college. Ms M was caused time and trouble and distress. It should make a payment to her of £300 for this and apologise. It should pay her £65 as a reimbursement for the missed travel payment.
32. The Council acknowledged on 7 March 2016 the other council had asked it to continue funding Mr N's care. The Council told Ms M 'this has not been authorised as the Director feels (the other council has) had enough time (to decide how best to meet Mr N's needs)'. The other council was responsible for meeting Mr N's needs from the day Ms M and Mr N moved in. Statutory guidance says it should take over providing the package of care agreed by the Council until it had conducted its own assessment. The Council continued to pay Mr N until 7 March 2016 (and also told me it paid for his care over the Easter holidays). There is no evidence of fault by this Council.
33. The Council should ensure it answers complaints it receives in line with its policy. Its failure to respond to Ms M's complaint has caused time and trouble for Ms M. She had no alternative but to come to us. The Council should apologise and make a payment of £300 for this.

Decision

Fault leading to injustice and a remedy has been recommended.

Recommendations

34. To remedy the injustice caused, we recommend that, within three months of our final decision, the Council:

- pays £2,865 to reflect the time, trouble and distress it caused to Ms M and Mr N;
- apologises for the fault identified in this report.

And, to improve services for others in the future, it should also:

- ensure care and support is reviewed at least on an annual basis;
- ensure that money paid periodically for a fixed period of care is paid at specific times and in specific amounts;
- review its use of 'holding accounts' so emergency money sent to individuals is immediately accessible; and
- train officers so parts of complaints are not missed from responses.

35. We welcome the fact the Council has agreed to our recommendations and is putting them in place.

36. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members, and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)