

Support plan breakdowns

Breakdowns due to failure to meet needs

- 4.160 Where a support plan is not meeting a disabled person's needs, the authority is under a duty to address the problem – the urgency of the remedial action depending in part on the severity of the situation. Where complex support packages are involved, authorities may have difficulty in making rapid and effective changes to restore the position; nevertheless a failure to take prompt and, if necessary, urgent action in such cases may amount to maladministration.¹ Where a support package is breaking down, this may be explicable in terms of the authority failing to provide appropriate services to meet the disabled person's needs, or of having failed to build in a suitable contingency arrangement.² This may reflect the inadequacy of the assessment on which the service provision is based or a failure in service provision.

Breakdown due to service unavailability

- 4.161 Not infrequently, a support plan breakdown can occur because an existing service ceases to be available. This problem is illustrated by a 2002 local government ombudsman's report³ concerning the care plan for a young adult with multiple and profound mental and physical disabilities. Her needs were assessed and provision made for her to have one weekend per month respite care in a residential unit, paid by the local authority, but provided by a charitable organisation. Several years later the family were notified that owing to funding problems the unit was closed at weekends, and the local authority, having no record of the assessment, asserted that respite at weekends was not needed. The ombudsman upheld the complaint, stating:

The council says that because it was not responsible for the closure of [the respite facility] it cannot be held responsible for the withdrawal of [the complainant's] provision. I do not accept this. It is the council, not [the charitable provider] which has statutory responsibility for providing for [the complainant's] needs. If [the respite facility] could not, for whatever reason, meet those needs, the council had a duty to find, in the locality, somewhere else where [the complainant] would feel equally settled and in which her parents would have confidence.

- 4.162 A further ombudsman's report⁴ on the question of service delivery difficulties concerned a severely disabled man and his main carer, both aged over 90. He was assessed as needing help getting up and going to bed; the weekend and evening cover being provided by an agency. Because of recruitment problems, the agency gave notice to the council that it proposed to withdraw its service and the council was unable to find another agency willing to provide this service unless the council would pay travel costs to the staff, above the flat rate fee for the service, and the council refused as this was against its policy. In finding a fettering of discretion and maladministration the ombudsman commented:

It cannot be easy to arrange for home care in the rural parts of the county's area, and even the best contractual agreements must fail from time to time. But it seems to me that when a service failure occurs, the council might well have to seize any realistic opportunity to make the service good. Here it had such an opportunity. Another home care contractor offered to provide the ... service but only if the council would pay its staff travel costs over and above the flat rate fee for providing home care. Doubtless there are many tussles between the council and its providers over such arrangements and I can understand why the council might

¹ See eg report on complaint no 04/C/12489 against Oldham MBC, 7 September 2006.

² See eg para 4.129 above.

³ Complaint no 01/C/03521 against North Yorkshire CC, 19 August 2002.

⁴ Complaint no 99/B/00799 against Essex CC, 29 March 2001.

have considered this a precedent and the thin end of the wedge, but what was that to Mr and Mrs Derwent? It seems to me that Mr Derwent's home care was entirely sacrificed to maintain the purity of the council's contractual arrangements ... This was a classic case of the council fettering its discretion, and was maladministration.

- 4.163 A service may cease to be available, because the local authority has taken a strategic decision not to commission it (for example, a respite care centre⁵). It may well be unlawful to do so without consulting those affected. The local government ombudsman has found maladministration in such cases.⁶

Breakdowns in care packages due to service user behaviour

- 4.164 Many service users will have behavioural difficulties which are an inextricable part of their condition. Their care plan should therefore take into account these characteristics and in general it would be inappropriate to withdraw a service from such person because of his or her behaviour. Accordingly, the local government ombudsman has criticised a council for withdrawing respite care services from a young adult with severe learning disabilities because of a challenging outburst.⁷ Although she accepted that 'sometimes brief withdrawal of provision is unavoidable in situations like this', she found that the prolonged exclusion was primarily the consequence of inadequate respite care provision services – and accordingly a failure to meet his assessed need. She recommended 'the council to adopt as a top priority the provision of a new local facility or facilities for [this client group]'.⁸
- 4.165 Where, for example, a disabled person behaves offensively to home care assistants or refuses to comply with the reasonable requirements of a day centre etc, it might reach a point where the local authority cannot continue to provide a service and considers that it has discharged its duty. In deciding whether to withdraw the service, the applicant's mental health and its treatability may be relevant factors,⁸ as indeed will be the authority's duties under EqA 2010 s15 (the 'less favourable treatment arising from disability' ground). The impact on carers in this situation is significant. The 2001 white paper, *Valuing people*, gave the following advice:⁹

Excluding people with learning disabilities from services if they are found to be difficult to handle or present with challenging behaviour represents a major cause of stress for carers, who may be left unsupported to cope with their son or daughter at home. This practice is unacceptable and families must not be left to cope unaided. No service should be withdrawn on these grounds without identifying alternative options and putting a suitable alternative service in place where possible. Decisions to exclude a person with learning disabilities from a service should always be referred to the Learning Disability Partnership Board, which will be responsible for the provision of alternative services in such cases, provided the person meets the eligibility criteria.

⁵ See also para 4.161 above.

⁶ Complaint 11 017 875 against Suffolk CC, 11 October 2012.

⁷ Complaint no 03/C/16371 against Stockton-on-Tees BC, 18 January 2005.

⁸ See *Croydon LBC v Moody* (1999) 2 CCLR 92, CA.

⁹ Department of Health, *Valuing people: a new strategy for learning disability for the 21st century* Cm 5086, The Stationery Office 2001, para 5.7.