

Report

on an investigation into
complaint numbers 12 012 268 and
12 005 756 against
Thurrock Council

10 October 2013

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Table of Contents	Page
Report summary	1
Introduction	2
Legal and administrative background	2
The Council's obligations to children in need	3
The Children Act 1989 complaints procedure	3
The Council's obligations	3
The Council's guidance for resources panels	4
Investigation	4
Conclusion	6
Ms J's assessment	6
The direct payments for Ms J's care provision	7
Ms J's entitlement based on eligible need	7
Ms J's formal complaint about her daughter's care	7
Ms J's daughter's care provision	8
The direct payments for Ms J's daughter	8
Recommendation	8

The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The personal names used in this report are therefore not the real names.

Key to names used

Ms J – the complainant

Child J – the complainant's daughter

Report summary

Subject

Ms J complained that the Council failed to properly assess her adult social care needs. She also said she was assessed as needing 10 hours of assistance each week but the Council reduced this to six hours with no explanation. Ms J said there was no provision in place while the Council wanted her to arrange direct payments.

Ms J also complained on behalf of her daughter, Child J. She said the Council consistently failed to provide care for Child J. When the care was arranged, Ms J said, it was of a poor standard. Ms J also complained she was pressured into accepting direct payments for Child J's care and the Council failed to respond to her concerns about these issues.

Finding

Fault causing injustice.

Recommendation

I recommend, and the Council has agreed to take the following steps to remedy the injustice caused to Ms J and Child J as a result of the faults identified.

- a. Pay Ms J £500 to acknowledge that between June 2011 and January 2012 she received no services despite being assessed as having an eligible need.
- b. Pay Ms J £1000 to acknowledge that the Council, on several occasions, did not provide care for Child J.
- c. Pay Ms J £250 for the time and trouble she has spent pursuing the matter because the Council failed to respond to her complaint.

Introduction

1. Ms J, who suffers from chronic fatigue syndrome and back pain along with other physical disabilities, moved to the Council's area in 2011. It commissioned and put in place a care plan for 70 hours assistance each week for her 11 year old daughter, Child J, who has been diagnosed with autism and various communication difficulties and who also has epilepsy and other physical conditions affecting her mobility. Ms J then asked for an assessment of her own needs which the Council completed in May 2011.
2. Ms J complained that the Council failed to carry out its assessment of her needs properly. She was also concerned that the Council decided she required fewer hours of support than were identified in the assessment and the Council had not explained why. In relation to her eligible needs, she said the Council pressured her to arrange the care herself and it failed to put provision in place in the interim.
3. In November 2011 Ms J raised concerns about the standard of care provided for Child J by an agency, and that the provision was erratic. The Council did not reply.
4. In July 2012, Ms J approached the Ombudsman as she was not satisfied with the action the Council had taken in response to her concerns. Part of the complaint related to assistance for her daughter. I am satisfied Ms J is a suitable person to bring this part of the complaint on her daughter's behalf.
5. One of my investigators has discussed the complaint with Ms J and made enquiries of the Council. She sent the Council her provisional views, which found fault by the Council causing injustice to Ms J. The Council failed to respond to the issues relating to Ms J's adult social care needs and did not accept the provisional conclusions in relation to how it had provided for her daughter's care needs. The Council and Ms J have since provided further comments.

Legal and administrative background

6. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this report, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
7. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider

whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)

The Council's obligations to children in need

8. Section 17 of the Children Act 1989 (the Act) places an obligation on local authorities to provide a range and level of services appropriate for 'children in need'. 'Children in need' are defined in section 17(10) (c) of the Act as including disabled children. The way local authorities determine the appropriate services is by carrying out an assessment of the child's needs under schedule II of the Act.

The Children Act 1989 complaints procedure

9. The Act contains a mechanism^[1] for service users to raise complaints about children's social care. It is a three stage process, which involves:
 - a) a response by the manager of the team complained about;
 - b) an independent investigation adjudicated by a senior council officer; and
 - c) a review of the investigation by a panel of independent persons, followed by a final decision by the director for children's social care.

The Council's obligations

10. Under section 47 of the NHS and Community Care Act 1990, councils must assess the care needs of a range of adults with disabilities who may qualify for community care services. If a council identifies that a person needs community care services and that person meets any eligibility criteria which the council has set, then it must provide those services, subject to any charging provisions. A care plan agreed with the service user should include a statement of the needs identified, the services to be provided and the objectives of providing the services.
11. The Department for Health has issued guidance on direct payments in the Children's Services setting – Guidance on Direct Payments: For Community Care, Services for Carers and Children's Services (the Guidance).
12. Paragraphs 52 and 53 of the Guidance outline council responsibilities when offering direct payments. Paragraph 52 says the council should be satisfied there is an understanding of what is involved in managing direct payments. Paragraph 53 says councils should make it clear that a person does not have

^[1] *The Children Act 1989 Representations Procedure (England) Regulations 2006* (the regulations)

to accept direct payments. The council should discuss with recipients what to do if they no longer wish to receive direct payments.

13. Paragraph 72 of the Guidance says, where someone deciding whether to accept direct payments does not already have provision in place, the council may need to provide services in the interim. Paragraph 74 says councils may wish to explore ways of assisting individuals in managing direct payments. Paragraph 77 says the council should make suitable arrangements to ensure direct payments do not continue if the person becomes incapable of managing the payments.

The Council's guidance for resources panels

14. The Council has provided a copy of a document called '*Adult Social Care: Managing Our Resources Effectively*' (the Resources Guidance). The Resources Guidance sets out the principles panels should follow when considering assessments and says:

The panel decision report will be signed by the chair at the time of panel (sic) with the decision and full details of the decision will be recorded ... with the reasons behind the decision making.

Investigation

15. Ms J contacted the Council on 4 April 2011 and requested an assessment to help her with household chores in caring for her daughter. She was not assessed until 25 May. The Council says this was partly because Ms J wanted to arrange for an advocate to be present during the assessment, but the reason for the delay recorded on the assessment form is lack of assessor availability.
16. The Council officer conducting the assessment completed a detailed background description of Ms J and her daughter and outlined the areas where it was considered she needed support. Ms J was assessed as having 'substantial' needs requiring 10.5 hours of support each week because of her parenting responsibilities.
17. A proposal, for 10 hours support for Ms J, was considered by the relevant Council's panel. Officers were told to liaise with the Children's Services team to see whether the cost of providing services to Ms J and her daughter could be reduced by joint provision. The departments met on 13 June to discuss the possibility of providing support to Ms J as a carer in the context of her daughter's support package. There is no record of any decision, or rationale for any decision.

18. On 16 June, Ms J complained to the Council she had not received a copy of her assessment. She wanted some of her daughter's care hours to be reallocated to help her in her carer's role.
19. The Council says that, based on the departmental discussions, it decided to provide six hours of support to Ms J, through direct payments managed by an agency. Ms J felt she needed more help with domestic tasks, which she set out in some detail to the Council and said that, in her view, she needed at least 16 hours. The Council said it considered six hours were sufficient but it would review the matter after three months if necessary.
20. Ms J asked why she was not receiving at least the 10.5 hours' support she had been assessed as needing. She also said the way the Council proposed to deliver the care (i.e. in two, three-hour sessions a week) was unworkable.
21. Ms J's assessment said the provision was to be made by direct payments, but she said she was too ill to put in place care for her daughter via direct payments, she had not received any care from Adult Care Services, and nobody had been in contact.
22. The Council says it referred Ms J to an agency which helps service users to manage direct payments. Ms J denies being referred to the support agency, but emails and file notes show she was in contact with it from August 2011. She was then encouraged to complete a job description for a personal assistant, but a file note from September says Ms J wanted to get support for her daughter arranged first before addressing her own direct payments. In December the Council reminded her that she could access the support.
23. In November, Ms J wrote to the Council about the care provided by the care agency for her daughter. She said that carers had failed to attend regularly, the Council had an obligation to provide the care package and the care agency had simply told her there were no carers available. The Council replied that it had no influence over the management of the care agency's staff and service provision, and she should address issues directly with the agency. Ms J said she did not wish to make a formal complaint, but her previous communications had been a request that the Council intervene. She also said the care agency continued to fail to provide care for her daughter and, when it was provided, it was of a poor standard. For example, Ms J complained that one carer did not engage with Child J adequately.
24. Ms J wrote to the Council in January 2012, again saying the care agency had failed to provide care and that there was no care booked for her daughter for the following week. She asked the Council to treat the letter as a formal complaint in the following terms.
 - a) The Council had failed to provide her daughter's care package.

- b) The care that was being provided was inadequate.
 - c) Her daughter had no social worker support.
25. The Council offered to meet with Ms J and said it hoped to respond formally to the complaint by 6 February. Meantime, Ms J wrote again, saying the care agency continued to fail to provide care for her daughter. She also said she felt she was being forced to accept direct payments as a result of the agency's failings. The Council responded the same day, offering emergency respite care and explained it was trying to identify an alternative agency to provide care for her daughter.
26. On 7 February, Ms J wrote outlining the care her daughter would need for the following week. She wrote again the following week to say the carer had failed to attend. She said she had called the care agency but there was no answer. Ms J sent similar emails on 19 March and 30 April. The Council has provided evidence that on some occasions Ms J cancelled the care provision because she did not consider the standard of care to be adequate.
27. In May, Ms J asked the Council why it had not completed its investigation into her complaint. The Council was unaware of an outstanding complaint. It explained it had closed the complaint in January, following a meeting between Ms J and the allocated social worker. It invited her to raise any concerns again as a separate complaint. Ms J approached me on 1 July, as she was not satisfied with the Council's response. She said she no longer wished to complain about the lack of social worker support but the other two points from her January complaint to the Council remained unresolved.
28. Ms J has managed her daughter's care package since June 2012 by way of direct payments. The Council has provided funds backdated to June 2011. She says that she is not able to cope managing the payments, but she wants the payments to continue, with adequate support. The Council says Ms J is not spending the allocated funds and will not increase the direct payments while they remain unspent. Ms J is clear she needs help in managing her payments.

Conclusion

Ms J's assessment

29. There was some delay in carrying out the assessment, but it is unclear to what extent this was affected by Ms J's wish to have an advocate present and the arrangements around this. Nevertheless, the delay was not substantial and I do not consider delay which may be attributable to the Council caused an injustice which would warrant a remedy.

30. I have seen no evidence of fault in the way the assessment was carried out. The Council officer conducting the assessment appears to have made judgements based on Ms J's needs. I do not, therefore, find fault here.

The direct payments for Ms J's care provision

31. While Ms J denies being given information about the agency which helps service users to manage direct payments, I have concluded the information was provided and she was in touch with the agency.
32. The Council knew Ms J was not using the direct payments and it is clear that by September 2011 it knew she was having difficulty accessing them. I consider from that point the Council should have been proactive and commissioned the care for Ms J rather than waiting for her to arrange it and use the payments herself. Meanwhile, she did not receive the care to which she was entitled and which she needed. I consider this was fault causing injustice. It is not appropriate for a council to identify an eligible need then fail to put the provision in place because the service user is not insistent it does so. This is especially the case given the context, that the Council is meeting the needs of vulnerable clients.
33. The Council says Ms J now arranges the support she needs via direct payments but she is not using the full entitlement she has been assessed as needing.

Ms J's entitlement based on eligible need

34. I am concerned about the decision to reduce Ms J's assessed provision from the 10.5 hours, outlined in the assessment, to six hours. The Council has a policy that full details of the decisions of resource panels are recorded. It says the chair made the decision to reduce Ms J's entitlement based on other cases and the funding provided by Children's Services. However, it is unclear how the Council is able to make this statement when no record of the decision exists. I cannot say why it decided it was appropriate to reduce the provision by almost half. I consider this lack of evidence for the decision making is fault. The only evidence available for the number of hours Ms J needed is the assessment. I therefore conclude the Council's decision was fault which resulted in an injustice to Ms J, in that she has not been able to access the level of the help she was assessed as needing.

Ms J's formal complaint about her daughter's care

35. I have seen no evidence the Council has responded to Ms J's complaint about its failure to provide services for her daughter and Ms J has therefore had to contact the Council on numerous occasions and, finally, complain to this office. It was inappropriate for it to say it had no influence over the management of

the care agency's staff and its service provision. The Council is responsible for ensuring the support it commissions is provided. It cannot renege on this because it is meeting its obligations through a contractor. I consider this is evidence of fault, without which Ms J would have been saved significant time and trouble.

Ms J's daughter's care provision

36. The Council determined Ms J's daughter was entitled to significant levels of care services and was under an obligation to provide them. As I have said, it cannot pass this responsibility over to the care agency. Ms J repeatedly reported failures in the provision of care for her daughter. On some occasions Ms J cancelled the care provision because she did not consider the standard to be adequate. The Council is responsible for the failings of the agency to meet the assessed need, which is fault, but cannot be held responsible for failing to provide services where they were offered, but refused.
37. In relation to the standard of care, different carers will provide care in different ways, with which Ms J may not always agree. The care agency was under an obligation to vet its carers properly to ensure they had the requisite qualifications and training. I have seen nothing to question these matters and consider the Council's offer of direct payments was a suitable resolution to this aspect of the complaint as they allow Ms J to select her own carers.

The direct payments for Ms J's daughter

38. Ms J said the Council pressured her into accepting direct payments. As Ms J was not satisfied with the standard of care the Council was providing for her daughter, I consider it was reasonable for the Council to offer direct payments.

Recommendation

39. I recommend, and the Council has agreed to take, the following steps to remedy the injustice caused to Ms J and her daughter as a result of the faults identified.
 - a) Pay Ms J £500 to acknowledge that between June 2011 and January 2012 she received no services despite being assessed as having an eligible need.
 - b) Pay Ms J £1000 to acknowledge that the Council, on several occasions, did not provide care for Child J.
 - c) Pay Ms J £250 for the time and trouble she has spent pursuing the matter because the Council failed to respond to her complaint.

J. Martin

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