



The Commission for  
Local Administration in England

# Report

on an Investigation into  
Complaint Nos 99/C/02509 &  
99/C/02624 against  
Gateshead Metropolitan Borough  
Council

28 February 2001

"You acknowledge that day care services are essential to [Mr Cullingford's] health yet are not prepared to allocate £21.50 each week to contribute to the cost of 5 days per week care plus transport. Nevertheless, £6.50 per week is spent on clubs and £10 for transport (over and above that covered by the £37.00 per week mobility allowance.)

"To my mind it is a matter of prioritising services to [Mr Cullingford] and deciding what is essential to meet his needs and what is desirable."

96. On 16 March 2000 the Council wrote to Mrs Cullingford informing her that her son's arrears stood at £1,350 and the debt would be passed to the Council's Finance Department for recovery.

## **Conclusion**

97. The thrust of the legislation and the available advice thereon is that service users must be given a reasonable opportunity to make a case that it is not "reasonably practicable" for them to pay charges for day care. The AMA/LGIU commentary goes further and suggests that, if there is evidence that users are finding it difficult to pay, the Council should itself initiate enquiries. The advice also suggests that there is a duty upon the Council to inform all users of the possibility of charges being waived or reduced. This would, in my view, be good practice anyway.
98. The inference of all this advice is that all efforts must be made to give those who do not find it easy to meet the charges a full opportunity to make their case and to have it considered sympathetically and fairly. The procedure used should be simple to follow and understand and should be transparent. Clear reasons for decisions should be given. This is particularly important because the reality is that in many cases the carers of people who are in receipt of higher level DLA will already be under financial and emotional stress and should not have to bear an additional unnecessary burden.
99. I consider that these are the basic principles which should be adopted by any council which adopts or increases charges under section 17 of the Act. The question is how far the Council's policy for dealing with disputed charges accords with these principles and how this is reflected in the day to day working of the policy.

100. The complainants say that the policy of increasing charges was adopted without consulting service users and without adequate notice. There is no requirement for the Council to consult and I have some sympathy with its view that consultation would be a wasted exercise as it was fully aware that users would object to increased charges. Its decisions were made in the light of this. Therefore, I consider that there is no maladministration in the failure to consult. Similarly, I am satisfied that the month's notice given about the increase in charges, if all the relevant procedures were in place, would have been satisfactory.
101. However, in my view, all the procedures were not in place. I consider that, as the HSSSSAA 1983 lays as much emphasis on the rights of a service user to challenge the charges as it does on the right of the Council to levy reasonable charges, information about how to apply for charges to be waived and criteria against which such applications could be assessed should have been in place at the point at which the new charges were introduced. After all, the new charges could account for as much as a quarter of a service users' DLA, not an inconsiderable proportion, and the Council must have been aware of the potential this could have for creating anxiety if nothing else.
102. In fact, although outline criteria were drawn up in August (already four and a half months after the introduction of the charges), they were not formally adopted until the end of October. What this meant was that those people such as Mrs Cullingford who asked for charges to be abated before that time were not given reasonable information upon which to base their request and had no idea of the factors which would support their case or should be taken into account.
103. In fact, even when the criteria were established, they seem not to have been widely publicised to people who might be having difficulty paying the charges. Mrs Bell says that she did not know about them until March 1998, a full year after the new charges came into operation. This is in spite of the fact that Miss Bell had not paid the new charges for a year. In my view, this fact alone should have prompted the Council to ask whether it was, in this case, reasonably practicable for the service user to meet the charge.
104. Throughout its policy documents and in the information made available to service users, the Council refers to "hardship" as being one of the key determining factors. Information was requested from those asking for a charge reduction on the basis that they had to demonstrate financial hardship. This is not the test demanded by the legislation.

105. The Council says that, notwithstanding the terminology the procedure used was in fact to determine whether or not it was reasonably practicable (as required by the Act) for the individual to pay. I am not satisfied that, on the basis of the information provided by the complainants, the Council could have made a satisfactory analysis of whether Mr Cullingford and Miss Bell could reasonably have paid the charges. The breakdowns provided by their parents provide figures which show that their expenditure exceeded their income from all sources but, beyond expressing scepticism about some of the figures, the Council does not seem to have provided any rationale for concluding that it would be reasonable for the complainants to pay the charges and it would be a matter only of the applicants reprioritising their expenditure.
106. The Council seems not to have had particular regard to the information provided, for example, by Mr Cullingford's health workers. As those taking the decision did not know the specific care needs of the individuals concerned, they seem to me to have reached the decisions in an arbitrary way.
107. Whatever the procedure used by the Council, it did not convey the outcome of its decisions properly. It did not give sufficient reasons to allow Mrs Cullingford and Mrs Bell to know in more than general terms why their request was being turned down and therefore they were not able properly to challenge the decision. I do not consider that merely to tell people, in effect, that they could prioritise their spending, is very helpful.
108. I see no reasons why Mrs Cullingford should not have had her complaint considered from the outset under the statutory complaints procedure. I accept that the issue became complicated as the possibility of legal proceedings came to the fore but this was not until after she had been denied access. I am concerned that it would seem that the Council holds to the view that it would not be appropriate for the Complaints Officer to seek information about how they have reached decisions from the Director of Social Services and Members. Does this mean that people with specific complaints against these individuals could never have them addressed and that such senior officers and Members are incapable of making mistakes?
109. I have some concerns that the Complaints Officer investigated the complaint about the failure to access the complaints procedure. Technically, the decision not to proceed with the original complaint was hers and she might be seen therefore to have had a conflict of interest.



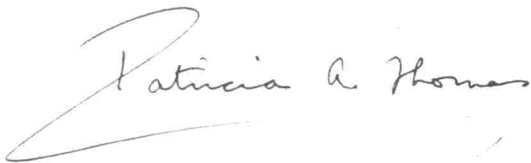
110. I do not consider that Mrs Bell's complaint was addressed wrongly by the Council in the sense that she entered the Complaints Procedure very quickly after having sought information about how to complain. I have no doubt that had she asked for more time to seek legal or other advice she would have been given it as indeed was Mrs Cullingford later.
111. However, the initial investigation into her complaint seems again to have missed the point that the Council should have responded to Mrs Bell's request for the charges to be waived by determining whether or not it was reasonably practicable for the charges to be paid, not whether there was severe hardship caused as a consequence of paying them. However, as Mrs Bell's complaint was then considered by a Review Panel, the injustice caused by this is limited.
112. Mrs Cullingford and Mrs Bell allege that the Council took irrelevant information into account when dealing with them. It is unfortunate that members of the Review Panel considering Mrs Bell's complaint asked her about her own financial position but this seems to have had no bearing on the outcome of the complaint. There are indications that the Council assumed that the complainants' request for charges to be waived was motivated by an opposition to the principle of charging, perhaps stemming from their involvement in a lobby group. Whilst this perhaps contributed to the delay in Mrs Cullingford accessing the Complaints Procedure I have seen no evidence to suggest that it had any direct impact on the determination of her initial claim.
113. I have to conclude that the process of dealing with the applications from Mrs Cullingford and Mrs Bell to have the charges waived has been affected by maladministration. What then has been the consequences for Mrs Cullingford and Mrs Bell? In my view, a process which should have taken perhaps weeks has dragged on for years. This does seem to me to be a consequence of the Council's failure to establish proper procedures for dealing with these issues from the outset. In Mrs Cullingford's case, a "final" decision not to allow charges to be waived came only about 9 months after she first applied and it took more than a year after that before the end of the investigation under the complaints procedure. Some of this delay was outside the Council's control but could perhaps have been avoided altogether if Mrs Cullingford's initial request could have been dealt with in a reasonable manner.
114. In Mrs Bell's case, her initial application for fees to be waived did not reach the Council for a year because she was not aware that there was any possibility of charges being waived.

115. Both complainants were, in my view, left to flounder with their applications for the charges to be waived in a manner which seems to me to be contrary to the spirit of the Act. Both complainants already have stressful lives. It is my view that the Council's procedures did nothing to alleviate this.

### **Local Settlement**

116. I am pleased to say that the Council has recognised the shortcomings of its system and the fact that Mrs Cullingford and Mrs Bell have suffered additional and unnecessary stress and anxiety in pursuing their appeals on behalf of their son and daughter. The Council has agreed to:-
- (a) establish a proper procedure for dealing with claims for charges to be waived. This will use the proper terminology, will establish a test for judging whether or not payment is reasonably practicable, and will establish proper criteria against which claims can be assessed and a proper procedure for investigating any such claims;
  - (b) inform all service users that there is a possibility of having charges waived and explain the criteria against which such applications will be assessed;
  - (c) provide help where necessary for service users to formulate an application for fees to be reduced;
  - (d) undertake to provide full reasons for each decision made;
  - (e) allow one formal appeal against the decision not to waive fees to be heard by someone different from the person who made the original decision; and
  - (f) allow anyone aggrieved by a decision (either the merits of the decision or the process) access to the statutory complaints procedure.
117. Once this new procedure has been established, Mrs Cullingford and Mrs Bell will be given the opportunity of having their cases considered once more under it.
118. Subject to full Council agreement, Mrs Bell and Mrs Cullingford will also receive £500 each in recognition of the delay, stress and anxiety they have been caused.

119. In my view, this action when carried out will provide a satisfactory settlement of the complaint.
120. I would not normally issue a formal report where a Council has agreed to take appropriate action. In this case, however, I consider that the subject of the investigation is a matter of public interest which should be made more widely known and which may be of interest to other Councils.



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