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## Norfolk County Council (17 013 291)

Category : **Adult care services > Direct payments**

Decision : **Upheld**

Decision date : **24 Apr 2018**

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### The Ombudsman's final decision:

**Summary:** Ms and Mx D complain the Council has not supported them to correctly use direct payments and is asking them to repay some of this. The Council is entitled to ask for repayment of money not spent in accordance with Mx D's care plan. However it took too long to identify the problem and gave no clear advice about what they could spend

**payments on. It has agreed to apologise and write off the £388 it says Mx D owes to remedy injustice caused by this fault.**

## The complaint

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1. Ms and Mx D complain the Council has not supported them to correctly use direct payments on authorised items. They say it has not properly monitored their use of the budget. They sent it monitoring forms but the Council took three years to ask for return of some payments. This caused them stress and affected Mx D's health. They want the Council to reduce the amount it says they must pay back.

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## The Ombudsman's role and powers

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2. 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)
3. If we are satisfied with a council'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)

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## How I considered this complaint

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4. I spoke to the complainants about the complaint.
5. I asked the Council questions and considered correspondence and guidance it provided.
6. I considered the Care and Support Act Statutory Guidance.
7. I gave the Council and Ms and Mx D the opportunity to comment on my draft decision.

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## What I found

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8. Councils should assess the needs of anyone who appears to need care and support. They must write a care and support plan that explains how to meet the person's eligible care needs. The care and support plan may include a personal budget. This is the money the council says it will cost to cover the person's eligible needs.
9. People can choose to have direct payments from councils to help to cover eligible care costs. Direct payments should give them independence, choice and control by letting people arrange their own care and support to meet eligible needs.
10. Care and support plans must explain which care needs could be met by direct payments.
11. Councils must provide people with relevant and timely information about direct payments so they can choose whether to use them. Councils should support the person to use and manage their direct payments properly. The person has to send the council proof of what they are spending payments on.
12. Councils must check people are using direct payments correctly. They must review them after the first six months and then every twelve months. Reviews should check people are comfortable with the arrangements and understand how to use them. Councils usually combine direct payment and care plan reviews.
13. This Council's guidance on direct payments says, "do not use your direct payments for anything that is not listed in your personal care and support plan. If you believe your care needs have changed or you would like to agree an alternative use for your direct payments please discuss this with your care advisor."
14. The council's terms and conditions state it can decide to ask the person to repay some or all of their direct payments if they have not been spent in line with the care and support plan.

## Background

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15. The Council assessed Mx D as having a number of eligible care and support needs. Mx D's partner Ms D provided most of the support. The Council reviewed Mx D's care and support plan in 2014.
16. Mx D's 2014 care plan said that they could use direct payments to pay for a personal assistant (Ms D) and to meet two eligible care needs:

- Developing and maintaining family or other personal relationships: "Direct payment for a short break will enable [Ms D] to have a break [from her caring role]"
- Making use of necessary facilities or services in the local community including public transport and recreational facilities and services: "Direct payment to enable me [Mx D] to access community activities".

The plan later also referred to this second payment as being "for social activities".

17. The plan said the Council would pay direct payments into Mx D's self-managed account. Mx D signed a personal budget agreement to this effect in March 2014. The Council says it sent Mx D its guidance on using direct payments and standard terms and conditions.
18. In April 2014 the Council wrote to Mx D confirming it had made its first direct payment following the review. This was as a weekly sum to cover "supported activities" and a lump sum "for short breaks".
19. The Council made quarterly checks asking for receipts showing spend. It had to chase this up sometimes to get all the information it needed. It later explained these quarterly checks were only on whether receipts agreed with spend. They were not detailed checks about whether spend was in accordance with the care plan.
20. In May 2015 the Council carried out an annual review of Mx D's care plan. The review record shows there was discussion about Mx D's birdwatching. Ms D later told the Council the social worker said it was ok to use the direct payments this way because it helped Mx D's wellbeing. The Council said there was no record of this.
21. The annual review report also records discussion under the heading of "Making use of necessary facilities or community services". This records Mx D had been using "the direct payment to purchase... crafting materials that will enable [Mx D] to undertake independent activities". The annual review notes record that the social worker alerted Mx D and Ms D to changes in payment rules that meant direct payments could not be used to meet transport costs. They do not record the worker expressing any concerns about Mx D's use of direct payments to buy crafting materials.
22. Following the review the Council issued a revised care and support plan in September 2015. This again said direct payments would continue to cover Ms D's costs and as:
  - A lump sum on request for a short break to help Ms D as carer.
  - Monthly payments to "access community activities". This was because Mx D was struggling to access community activities.
23. The Council continued to make quarterly checks on financial information. It continued to

have to chase information up because of difficulty for Ms and Mx D completing the returns.

24. Ms and Mx D wrote to the Council in November 2016 to say they wanted to cancel the direct payment arrangements because of problems completing the forms. The Council asked for monitoring information covering June to November 2016 to work out what, if anything was owed. It wrote again in December to ask for some more information to cover the period from March 2014 to November 2016. It only had full information including bank statements from July to September 2014 in December 2016.
25. In January 2017 the Council wrote to Mx D to ask for return of some direct payments. It said this was for spend from March 2014 until June 2015 on gardening equipment, bird-feed and bird watching equipment. It said this spend was not in accordance with Mx D's support plan. It later calculated the amount owed was just over £388. It also asked for other repayments not covered by this complaint which were paid back.
26. Mx and Ms D wrote to the Council in February 2017 asking it to reconsider the repayment of £388. They said the Council had taken over three years to pick this issue up. They said they had discussed spending some of the direct payments on gardening and birdwatching equipment with the social worker at the annual review who said it was acceptable.
27. They later complained to the Council about this matter. The Council considered this through its complaint procedure and replied in June 2017 to say the spend on gardening and birdwatching equipment was not in accordance with the care and support plan. It asked them for details of who had said the spend was acceptable.
28. Mx and Ms D replied in July 2017 naming the officer. They asked the Council why it had not spotted the issue through the quarterly reviews of receipts. They said the Council had told them they could spend some of the money on hobbies to try and occupy Mx D. The Council had taken three years to identify the problem.
29. The Council replied in August 2017 to say it had to check money was spent in accordance with the support plan. Its quarterly checks had just looked at whether receipts covered spend. It had only looked at what money was used for at the annual review. It said there was no evidence the officer told them they could spend money on gardening hobbies and birdwatching equipment.
30. Mx and Ms D wrote back later in August. They again asked why the Council had not picked the problem up at the annual review in 2015. They said the care plan was open to wide interpretation. They wanted to do what was right and had immediately stopped claiming travel expenses when told clearly by the Council the rules had changed.
31. The Council then referred Mx and Ms D to the Ombudsman.

## My findings

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32. The Council had to check Mx D was using direct payments correctly. Mx D's care and support plan said to only use payments to "access community activities" apart from covering Ms D's costs and the lump sum for short breaks.
  33. This is a very broad description. It allowed for a wide range of appropriate spend. Councils are encouraged to give people choice and flexibility about how to spend payments. However they must also make sure care plans are a clear enough for people to make decisions about what to spend and use annual reviews to keep this under review.
  34. Birdwatching and gardening equipment could be "community activities" in some circumstances. Mx D was, however, using the money to pay for items that supported her mental wellbeing at home.
  35. The only record of the Council giving any advice on how Mx D could spend this part of her direct payments is from its record of the 2015 annual review. This shows Mx D told the social worker they were using direct payments to buy "crafting materials" for use at home "independently". The Council did not challenge this spend or ask for repayment. It did not pick this, or other spend up through quarterly reviews or through the 2015 annual review as its policy required it to.
  36. There is no difference between using direct payments on crafting materials and using them on birdwatching or gardening materials for use independently. The Council's lack of clear advice about how Mx D could spend payments is fault. It meant Mx D was entitled to believe it was appropriate to spend some direct payments on similar items that benefited health and wellbeing.
  37. The Council should write off the £388 it says Mx D owes as a remedy for injustice caused by this fault.

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## Agreed action

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38. Within one month of my decision the Council has agreed to:
  - Apologise to Mx D for not giving clear advice about how to spend Direct Payments
  - Write off the £388 it says Mx D owes.

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## Final decision

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39. I have completed my investigation. I have found fault causing injustice.

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### Investigator's decision on behalf of the Ombudsman

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