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[Home](#) [Decisions](#) [Adult care services](#) [Assessment and care p...](#) 17 006 568

## London Borough of Redbridge (17 006 568)

Category : [Adult care services](#) > [Assessment and care plan](#)

Decision : **Upheld**

Decision date : **10 Apr 2018**

<a href="#">The complaint</a>
<a href="#">The Ombudsman's role and powers</a>
<a href="#">How I considered this complaint</a>
<a href="#">What I found</a>
<a href="#">Agreed action</a>
<a href="#">Final decision</a>

### The Ombudsman's final decision:

**Summary:** there was fault in the way the Council suspended Direct Payments to Mr X and carried out a review of his mother's care and support needs. This caused injustice to Mr X who is his mother's main carer. The Council has agreed to provide a suitable remedy.

## The complaint

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1. Mr X complains on behalf of his elderly mother, Mrs Y, who has dementia and other medical conditions. She lacks capacity to make the complaint herself. Mrs Y lives with Mr X and his brother.
2. Mr X complains that:
  - a. the Council decided to suspend Direct Payments in January 2017 without putting in place other arrangements to ensure Mrs Y's care needs were met. He also complains about the way in which an officer in the Direct Payments team handled his call;
  - b. there was a delay in completing the review of his mother's needs following a social worker's visit on 11 April 2017 and a failure to respond to his request for a copy of the needs assessment.

[Back to top](#)

## The Ombudsman's role and powers

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3. 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)
4. We may investigate complaints from a person affected by the matter in the complaint, or from someone the person has authorised in writing to act for him or her. If the person has died or cannot authorise someone to act, we may investigate a complaint from a personal representative or from someone we consider suitable to represent the person affected. (section 26A or 34C, Local Government Act 1974)
5. 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)

[Back to top](#)

## How I considered this complaint

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6. I have discussed the complaint with Mr X and considered the evidence he sent us. I considered the Council's reply to my enquiries and the relevant adult social care records.
7. I gave Mr X and the Council an opportunity to comment on my draft decision, and a revised draft decision, and considered their comments.

[Back to top](#)

## What I found

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8. Sections 9 and 10 of the Care Act 2014 require local authorities to carry out an assessment for any adult who appears to need care and support. They must provide an assessment to all people regardless of their finances or whether the local authority thinks an individual has eligible needs. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. They must involve the individual and, where suitable, their carer or any other person they might want involved.
9. The Council must carry out the assessment over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Local authorities should tell the individual when their assessment will take place and keep them informed throughout the assessment.
10. The statutory Care Act 2014 guidance says:  
  
"to help the adult with needs for care and support, or the carer, prepare for the assessment the local authority should provide in advance, and in an accessible format, the list of questions to be covered in the assessment. This will help the individual or carer prepare for their assessment and think through what their needs are and the outcomes they want to achieve".
11. The Care Act 2014 gives local authorities a legal responsibility to provide a care and

support plan (or a support plan for a carer). The care and support plan should consider what the person has, what they want to achieve, what they can do by themselves or with existing support and what care and support may be available in the local area. When preparing a care and support plan the local authority must involve any carer the adult has. The support plan may include a personal budget which is the money the council has worked out it will cost to arrange the necessary care and support.

12. Section 27 of the Care Act 2014 says local authorities should conduct a review of a care and support plan at least every 12 months. As well as the duty to keep plans under review generally, the local authority must conduct a review if the adult, or a person acting on the adult's behalf, asks for one.

## Direct payments

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13. Direct payments are made to individuals who ask for one to meet some, or all, of their eligible care and support needs. They provide independence, choice and control by enabling people to commission their own care and support to meet their eligible needs. The local authority has a key role in ensuring that people have relevant and timely information about direct payments so they can decide whether to request them. If they do so, the Council should support them to use and manage the payment properly.
14. The local authority must be satisfied that the direct payment is used to meet eligible care and support needs, and should therefore have systems in place to monitor the use of direct payments. The Care and Support (Direct Payments) Regulations 2014 says the local authority must review the making of direct payments initially within six months, and thereafter every 12 months, but must not design systems that place a disproportionate reporting burden upon the individual.
15. The local authority may decide to discontinue direct payments if it has sufficient reason to believe that conditions imposed under regulations on the authorised person are not being met. In such cases, the local authority should discuss with individuals, their carers and any person managing the direct payments if it is considering discontinuing direct payments to them, to explore all available options before it makes the final decision to terminate the direct payments.
16. For example, if the ability to manage the direct payments is an issue, the individual should be given an opportunity to demonstrate they can continue to manage direct payments, albeit with greater support if appropriate. The local authority should not automatically assume the only solution is to discontinue or end direct payments when problems arise.
17. If the local authority does decide to withdraw direct payments, it must arrange the relevant care and support provision instead, unless the withdrawal was following a

review after which the local authority concluded that the services were no longer needed. A minimum period of notice should be established that will normally be given before direct payments are discontinued. This should be included in the information given to people who are considering receiving direct payments

## Carers' Budgets and Respite

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18. The Care Act 2014 makes clear the local authority may meet the carer's needs by providing a service directly to the adult needing care. In these cases, the carer must still receive a support plan which covers their needs, and how the Council will meet them. The carer's personal budget must be an amount that enables the carer to meet their needs to continue to fulfil their caring role. It must also consider what the carer wishes to achieve in their day to day life. Part of the planning process should be to agree the manner in which the carer will use the personal budget to meet his or her needs. (Care and Support Statutory Guidance 2014)

## The key facts

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19. Mrs Y is in her nineties. She has advanced dementia and other chronic medical conditions. She lives at home with her two sons. One of her sons, Mr X, gave up work some years ago to be Mrs Y's carer. He has lasting power of attorney and manages her finances and health and welfare. Her other son works full-time.

## Complaint a)

20. The Council has paid Direct Payments to meet Mrs Y's personal care needs for about ten years. Mr X uses Mrs Y's Direct Payment to employ personal assistants to help him care for her. Mr X manages the Direct Payment for his mother because she lacks capacity.
21. Mr X also received a Carer's Direct Payment for the past ten years to meet his need for support and respite. The Direct Payments for Mrs Y and Mr X are paid quarterly in advance into two separate bank accounts. Mr X says the Direct Payment for his mother is currently £2,092.28 per month for 33 hours care per week. His Carer's Direct Payment was £696 for 4 weeks but has now increased to £711 every 4 weeks. This is intended to give him 15 hours of respite a week to do voluntary work, continue with professional training and have a break from his caring responsibilities.
22. Mr X signed a contract when the Direct Payments started. One of the terms in the contract says:

"The service user must also send a quarterly income and expenditure account to the Council

for the purposes of reconciliation.

23. The contract also says the Council may terminate the contract by giving 28 days' written notice to the service-user. The Council says the company it contracted to provide an advisory service on Direct Payments went into liquidation so it has no records of its early contact with Mr X.
24. Mr X says he regularly submitted quarterly returns to show how he had spent the money when the Direct Payments first started. He says at some point a Council officer told him he did not need to continue sending returns because the Council was satisfied with his pattern of expenditure. In response to my enquiries, the Council says Mr X last submitted a reconciliation form in December 2009.
25. The Council wrote to Mr X on 11 September 2015 to ask him to complete and return a reconciliation form. Mr X says he spoke to an officer in the Direct Payments team at the time to explain he had previously been told there was no need to complete the forms. He says she agreed to check and let him know if he needed to send in further evidence.
26. Mr X says he heard nothing more and the Council did not contact him again until November 2016.
27. On 17 November 2016 sent separate letters to Mr X and Mrs Y asking them to complete and return a reconciliation form by 19 December 2016. The form asked for evidence of spending for the period from 1 September 2015 to 30 September 2016. It also included a contact number for the Self Directed Support team if Mr X needed any help. The letter warned:

"Failure to return the reconciliation by the due date will result in your Direct Payment being suspended and your case referred to the Locality Social Work team to be reviewed".

28. Mr X did not reply to this letter or contact the Direct Payments team before the 19 December deadline. He says he is fully occupied caring for his mother and he did not have time to deal with this correspondence.
29. On 10 January 2017 a senior officer in the Direct Payments team wrote to tell Mr X the Direct Payments had been suspended until further notice. The Council makes Direct Payments four weeks in advance and the next payment was due on 16 January. The officer said:

"I have referred your case to the Locality Social Work team and someone should be in touch to discuss the matter with you".

30. Mr X contacted the team on 23 January to ask for the Direct Payments to be reinstated.

He was told he had to submit a completed reconciliation form first. The Council says he did not ask for more time to send in the reconciliation or ask for support in managing the Direct Payment accounts. He was advised he could use the complaints procedure.

31. On 30 January Mr X made an online complaint about the Council's decision to suspend Direct Payments before the Social Work team had made alternative arrangements to meet his mother's care needs. He said the Council had handled this in an insensitive and thoughtless way without any regard to his mother's vulnerability. He also complained that he had found it difficult to speak to the officer who wrote the letter when he called to discuss it.
32. A manager in the Adult Care service replied on 27 February. He said the decision to suspend Direct Payments was taken as a last resort. He said the Council had given Mr X notice it would suspend the payments if he did not provide evidence of spending by 19 December. He explained the Council had a duty to ensure public funds were being spent appropriately to meet the outcomes identified in Mrs Y's Care & Support Plan and Mr X's Support Plan. The manager did not address Mr X's point that the Council had not considered how Mrs Y's needs would be met when the Direct Payments were suspended. He said the Social Work team had been consulted. He advised Mr X to refer his complaint to the Ombudsman if he was dissatisfied.
33. On 7 March the manager who investigated Mr X's complaint asked the Social Work team to visit Mr X and Mrs Y to review their care packages and let him know if the suspension was causing them any hardship. He contacted Mr X the same day to ask him to send bank statements for the past year as evidence of how he had spent the Direct Payments. He provided reconciliation forms for him to record future spending.
34. Mr X sent the bank statements to the manager on 23 March 2017. He said the Social Work team had not contacted him and his mother's care was compromised.
35. On 29 March the manager authorised reinstatement of the Direct Payments after examining the bank statements for both accounts. Direct Payments resumed for Mr X and his mother from 7 April 2017. They were backdated to cover the suspension period.
36. Mr X says he continued to pay Mrs Y's personal assistants during the three month suspension period. His brother arranged a loan and one of the personal assistants was prepared to accept late payment because she had another source of income.
37. Mr X says his mother did not notice any change because her carers continued to attend. But the suspension caused Mr X some stress, anxiety and uncertainty. He says the stress may have affected his behaviour at times and he may have been more short-tempered and less patient with Mrs Y. He did his best to protect his mother and ensure continuity of care.
38. A social worker did not visit Mrs Y and Mr X until 11 April 2017 to start reviewing their care plans. Mr X says his mother's needs had not been reviewed since early 2015.

## Complaint b)

39. In April 2017 Mr X requested an increase in Mrs Y's care package because it was taking him a long time to coax his mother to eat at mealtimes. She was not swallowing food and sometimes she did not co-operate. On 11 May Mr X sent an email to the social worker to chase up a response.
40. On 18 May a manager asked the social worker to explain what action she had taken in response to Mr X's request for increased hours. The social worker replied on 22 May. She said she did not consider there was a need for an increase in the care package when she had visited in April. But when she spoke to Mr X on 22 May, he told her he was using 5 hours of his respite time to support his mother. She agreed it was taking Mr X a very long time to feed Mrs Y because she sometimes spat out food. According to her note Mr X said he was using five hours of his respite time to support his mother every week.
41. Later on 22 May the social worker asked Mr X to send her a summary of the tasks that he, his brother and the personal assistant were carrying out so she could justify an increase when she presented his case to the funding panel. She told the manager she now supported an increase of 5 hours per week in Mrs Y's care package.
42. Mr X sent an email to the social worker on 23 May. He described the tasks he and the personal assistants were carrying out with Mrs Y. The social worker acknowledged it.
43. The social worker asked to meet Mr X again on 30 May or 1 June 2017 to complete her assessment. Mr X asked the Council to explain what further information the social worker needed. Mr X did not get a reply.
44. Mr X made a further complaint on 19 June 2017 about the social worker's failure to notify him of the outcome of the review. He also complained about difficulties in making contact with other officers to discuss his concerns.
45. On 21 June a team manager advised the social worker to offer Mr X another assessment at home. He said the Council could not consider a change in the support until there was a reassessment.
46. An Assistant Director replied on 30 June. He said the social worker had not been able to clarify the intended use of the extra hours Mr X had requested for his mother's care. He said the social worker had offered to meet Mr X on 30 May or 1 June to complete her assessment but he had declined. He asked Mr X if he would agree to a meeting.
47. Mr X continued to correspond with the Assistant Director. He said the review visit on 11 April 2017 had covered all the key issues. He asked for an explanation of the reasons for a further meeting.
48. On 1 August 2017 the Council transferred Mrs Y's case to a new social worker. Mr X says



he did not ask for a change of social worker and this decision was made by a manager following his complaint.

49. On 27 September the new social worker visited Mrs Y and Mr X. He noted Mr X was spending some of his respite time helping Mrs Y's personal assistants. Mr X was finding this increasingly difficult because of his own health issues.
50. On 28 September the new social worker told Mr X the panel had agreed to increase Mrs Y's care package by 10½ hours a week to enable two personal assistants to visit her in the afternoons (which relieved Mr X of the need to provide assistance).
51. In early October 2017 a further review of Mrs Y's care package led to an extra 3½ hours being added. So from early October Mrs Y had 33 hours a week of personal care support and her Direct Payment increased to £391.05. Mr X then requested extra hours to take Mrs Y to a place of worship and provide extra stimulation activities. The social worker asked Mr X to provide a more detailed breakdown of how the existing 33 hour care package was being used.

## Analysis

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### Suspension of direct payments

52. The Council has a duty to ensure public funds are used properly for their intended purpose. It was entitled to ask Mr X for regular quarterly returns to show how he was spending the Direct Payments. The Direct Payment contract Mr X signed also imposed this requirement. Mr X was employing Personal Assistants to help him care for his mother and the Council had to ensure Mr X was complying with his obligations as an employer.
53. In the past the Council had not always asked Mr X to submit this evidence on a regular basis. It had not always followed up the non-return of the reconciliation forms. But that does not mean it was wrong to take a more rigorous approach from 2015. The Council gave Mr X notice it would suspend payments if he did not provide evidence by the deadline.
54. However, it was fault for the Council to suspend the Direct Payments without first establishing how Mrs Y's assessed care and support needs would be met when payments stopped, and whether it needed to make direct provision.
55. Fortunately, the suspension of Direct Payments did not have an adverse impact on Mrs Y. She continued to receive the personal care and support she needed and she was unaware of the suspension. Mr X's brother borrowed money to pay the personal assistants. Mr X says one agreed to accept deferred payments. But, in other circumstances, the suspension may have resulted in the loss of vital care and this could

have caused safeguarding issues.

56. The Council reinstated and backdated the Direct Payments so Mr X was able to repay his brother. However, the suspension caused Mr X some stress and anxiety for three months.

## **Review of Mrs Y's care and support needs**

57. The Council did not carry out regular annual reviews of Mrs Y's care package as the statutory guidance requires. That was fault. When Mr X asked for an increase in the hours, the social worker visited in April 2017 to review Mrs Y's needs. That was the first time Mrs Y's needs had been reviewed since 2015. It then took six months to complete the assessment and put the case to the panel to consider the need for extra funding. That was far too long. Mr X had to chase up the outcome of the assessment.
58. It was not unreasonable for Mr X to ask the Council to explain why the social worker needed to meet him and Mrs Y again. The statutory guidance quoted in paragraph 10 is clear that the service-user, and the carer, is entitled to information in advance from the Council about the assessment. The social worker had visited and carried out a comprehensive assessment on 11 April. On 23 May Mr X sent her the additional information she had requested on 22 May. The Council should have explained what further information it required, and why a further meeting was necessary. If it had done this, it seems likely the care plan would have been changed much sooner. When a new social worker was allocated in September 2017, the Council agreed to increase the hours in the care package within one day of his first visit to Mr X and Mrs Y. I see no reason why that outcome could not have been achieved months earlier.
59. For these reasons, I find there was avoidable delay in completing the review between April and September 2017. I do not accept the Council's view that Mr X caused this delay. He made a reasonable request for information about the purpose and need for a further meeting. It was wrong for the Council to treat this as a refusal to co-operate and engage in the review process. This stalled progress. When the new social worker completed the review, Mrs Y's support was increased from 19 hours to 33 hours per week. Between April and October 2017, Mr X gave up his respite hours to provide the extra support his mother needed. This caused Mr X injustice because he did not get a proper break from his caring responsibilities until the support in Mrs Y's care package increased in October.

[Back to top](#)

## Agreed action

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60. The Council has agreed to provide the following remedy for the injustice caused by the faults identified in this statement:

- send Mr X a letter of apology;
- pay Mr X £1,500 to acknowledge the impact the loss of respite time had on his wellbeing between April and October 2017;
- review its procedures to ensure Direct Payments are not suspended until the Council is satisfied alternative arrangements are in place to meet the needs of the service-user;
- ensure it carries out regular annual reviews of Mrs Y's needs, and Mr X's needs as her carer, in future.

61. The Council should confirm it has taken the agreed action within one month.

[Back to top](#)

## Final decision

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62. I have completed the investigation and found the Council's faults caused injustice to Mr X. The Council has agreed to provide a suitable remedy.

[Back to top](#)

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

[Print this page](#)

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[Working for  
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