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# Local Government & Social Care OMBUDSMAN

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## Wiltshire Council (18 002 026)

Category : **Adult care services > Assessment and care plan**

Decision : **Upheld**

Decision date : **26 Oct 2018**

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## The Ombudsman's final decision:

**Summary:** There was fault in the way the Council considered the assessments and care plans of Mr C in its decision that he should move to a different care home. The Council has carried out a further assessment and has agreed that Mr C can remain at the care home.

## The complaint

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1. Mrs B complains on behalf of her father Mr C, who lacks capacity to make decisions about his care. She says the Council has not properly considered Mr C's needs and the risk of a move in its decision that Mr C should move to a different care home.

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## The Ombudsman's role and powers

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2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3), 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 have discussed the complaint with Mrs B and I have considered the documents that she and the Council have sent, the relevant law and guidance and both sides' comments on the draft decision.

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## What I found

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5. The Care Act 2014, the Care and Support Statutory Guidance 2014 (updated 2017) and the Care and Support (Charging and Assessment of Resources) Regulations 2014 set out the Council's duties towards adults who require care and support and its powers to charge.
6. The council has a duty to assess adults who have a need for care and support. If the needs assessment identifies eligible needs, the council will provide a support plan which outlines what services are required to meet the needs and a personal budget which calculates the costs of those services.
7. The Act says that, if a person needs residential care and their capital falls below the threshold of £23,250, they will be eligible for council funding to pay for the residential care. However, a top-up fee may still need to be paid, in certain circumstances.
8. When it has been decided that a person's needs are best met in a care home, the council must ensure that at least one accommodation option is available within the person's personal budget and it should ensure that there is more than one of those options.
9. However, a person is able to choose alternative options, including a more expensive setting, if a third party or in certain circumstances the resident is willing and able to pay the additional cost (the top-up fee).
10. In determining how to meet needs, the council may also take into reasonable consideration its own finances and budgetary position, and must comply with its related public law duties. The local authority may reasonably consider how to balance that requirement with the duty to meet the eligible needs of an individual in determining how an individual's needs should be met (but not whether those needs are met).

## What happened

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11. Mr C started to live at nursing home K around two years ago. He has metastatic cancer which is terminal and suffers from Lewy body dementia. His wife, Mrs C sold the family home to fund the care home fees. Mr C lacks mental capacity to make decisions about his long-term care and his daughters have a lasting power of attorney to make decisions about his health and welfare and his property and financial affairs.
12. Mrs B contacted the Council in July 2017 and said her parents had almost run out of money and their capital was close to the threshold of eligibility for council funding (£23,250).
13. The social worker assessed Mr C's needs on 27 July 2017 and prepared a support plan. This recommended Mr C stays at home K and that the Council pays the weekly fee of £816.
14. The Head of Service reviewed the plan on 22 August 2018. He said there was no evidence that Mr C could not be cared for in a standard bed at the Council's usual rate

nor was there evidence that the top-up fee had been discussed with the family. He said the social worker should carry out a risk assessment (presumably to assess whether Mr C could move and what the risks would be). He said the rate at home K was too high and the Council should try to negotiate a reduced rate.

15. The social worker carried out a specialist social worker report dated 30 August 2017. This recommended Mr C should remain in home K. It said:

- Mr C's illness was terminal and he would need nursing care soon. Home K was a nursing home. If he were moved to a care home at this stage, he would need to move again to a nursing home very soon.
- Mr C had medical needs which were picked up quickly at the nursing home. There was a risk his health would deteriorate if he was not in a nursing home.
- A move to an unfamiliar home would increase his risk of falls.
- Mr C had challenging behaviours because of his dementia. A change in home would be likely to increase these behaviours as he would be unsettled by the move.
- Mr C had made friends over the last two years and the home was close to where his wife lived. A move would increase his anxiety, social isolation and loneliness.

16. The social worker carried out a risk assessment which was completed on 30 November 2017 and said:

- Mr C was at a high risk of falls and this would be made worse if he moved because of the unfamiliarity of his surroundings.
- He was at higher risk of injury and bleeding and needed immediate medical staff around him, particularly if the risk of falls was increased.
- Although his cancer treatment was still working, this was not indefinite and then his health would decline rapidly needing a high level of nursing care.
- Mr C's health was weak and the nursing staff's quick reaction to any illnesses was vital. A care home would not be able to respond as quickly.
- A break in his routine would increase his aggressive behaviours. He needed the high staff ratio at home K to manage his behaviours.
- He had a settled relationship with staff. There was a risk of decline in his personal care if he moved.
- He had made friendships at home K and would be withdrawn and isolated if he had to move.

17. The report concluded that a move to a different care home would be detrimental to his immediate and long-term health and well-being.

18. Mr C's GP provided a report to the Council dated 27 November 2017. He said a move

would have a significant impact on Mr C 's mental wellbeing and would increase the confusion caused by his dementia. The GP also questioned whether a care home that did not offer nursing care would be able to care in the future when Mr C's health deteriorated

19. Mr C was also assessed by a psychiatrist. His report dated 5 December 2017 said Mr C's current needs could be met in residential care, but he had the following concerns about the move:
  - Mr C's dementia would decline because of the exposure to a new environment.
  - The move would cause emotional distress.
  - The risk of falls would increase.
  - The care home would need the same expertise in picking up chest infections as the current nursing home has.
  - The GP should be asked to report as he knew more about his medical care.
20. The Council holds weekly Quality Assurance Meetings (QAM) where senior management reviews the assessments and makes decisions on the care plans and funding. The QAM rejected the social worker's assessments and recommendations. The date of the QAM is not entirely clear. One of the documents says the QAM took place on 2 November 2017 and the risk assessment was completed on 30 October 2017. Another document says the QAM took place on 7 December 2017. This would correspond with the date on the risk assessment which was 30 November 2017.
21. Either way, the QAM said there was no evidence that Mr C should not consider a move. The only reason the QAM gave was that Mr C did not have nursing needs currently and his medical condition did not appear to be changing rapidly. The Council had identified an alternative care home nearby where Mr C could move to and his wife would still be able to visit regularly.
22. The care home the Council identified was then closed for new admissions because of an infection.
23. Mrs B complained to the Council in November 2017. She said the social worker went to the nursing home to assess Mr C without letting the family members know. Mr C had been very upset by the assessment. She said Mr C 's health had deteriorated massively since he arrived at the nursing home and he had complex needs which could only be met at the nursing home. She said she had a power of attorney for her father, but had not been made aware of the assessment or the outcome of the assessment.
24. The Council replied in January 2018. It apologised for not contacting any family members before starting the assessment but said it was not aware of the powers of attorney. It said Mr C did not have nursing needs and referred to the assessment of July

2017 and the fact that Mr C was not eligible for NHS funded nursing care. It said the Council was therefore unable to fund nursing care.

25. Mrs B appealed the decision in March 2018, but her appeal was rejected in May 2018.
26. Mrs B has now come to the Ombudsman. She says the Council has not properly considered Mr C's needs or the risks associated with the move in its decision that Mr C can move to another care home.
27. The Council wrote to the Ombudsman on 7 September 2018 in its response to the Ombudsman's enquiries. It said a senior manager had reviewed Mr C's case. The Council said it had identified faults in the assessments, in particular the risk assessment. It said the assessments had been undertaken by an inexperienced social worker. It said the senior manager apologised to Mrs B for the faults and said the Council would undertake a full review of the support and care arrangements which would include a review of the needs assessment and risk assessments.
28. The Council carried out a further assessment of Mr C in October 2018. It decided that he should remain at home K. It has agreed that it is responsible for the fees from September 2017.

## Analysis

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29. I have considered the evidence. I cannot, of course, say what the care plan for Mr C should be. I can only consider whether the Council has properly carried out the assessments and met Mr C's needs based on the assessments in line with the law and regulations.
30. I note that Mrs B approached the Council in July 2017 but the assessments were not completed until November 2017. The Council has admitted that there was fault in the way the assessments were carried out and that the whole process needs to be done again.
31. I have also looked at the decision made in November or December 2017 at the QAM. There is only a short note of the meeting. It does not explain fully how the Council considered the reasons set out in the assessment that Mr C's needs could only be met in the current placement nor how it considered the risks identified by a move.
32. I appreciate that the meeting could reject the social worker's recommendations and could take into account wider funding considerations, but when it does so, it should provide full reasons for its decisions, which did not happen in this case. I have therefore found fault in the way the Council considered the assessments and recorded its considerations.
33. In addition, the Council says there is fault as it has not properly assessed Mr C's needs
34. Mr C and his family have suffered an injustice because of the fault. They have suffered

distress as they had to live with the uncertainty of whether Mr C would have to move to a different care home or not. This process should have been properly completed soon after July 2017. The failure to carry out the process correctly has caused a long and unacceptable delay.

35. I asked Mrs B what payments the family had been making while this delay continued. She said Mr C became eligible for Council funding for his care in September 2017 as his assets fell below the threshold level.
36. Mrs B continued to pay the full fee to care home K from September 2017 until the end of the year. Mrs B has paid the top-up fee only from January 2018. The Council has not paid anything to care home K, as far as Mrs B is aware.

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## Agreed action

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37. The Council has verbally apologised to Mrs B and Mr C.
38. The Council has agreed to take the following actions within one month of the final decision:
- Apologise to Mr C and his family in writing.
  - Repay Mrs B the fees she has paid since September 2017.
  - Ensure it provides full reasons for its decisions at the QAM, particularly in cases where it does not follow the recommendations from the assessments.

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## Final decision

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39. I have completed my investigation and found fault by the Council. The Council has agreed the remedy to address the injustice.

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## Investigator's decision on behalf of the Ombudsman

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