

Report

on an investigation into
complaint no 12 015 328 against
Calderdale Council

20 November 2013

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

Key to names used

Mr and Mrs A - the complainants

B - Mr and Mrs A's daughter

Report summary

Children's Services: Disabled Child

Mr and Mrs A complain about the support the Council provides to care for their disabled daughter, B. Specifically, Mr and Mrs A complain the Council:

- a. has not properly assessed B's needs;
- b. does not provide enough support;
- c. has not properly considered their needs as carers; and
- d. has decided that it will no longer pay Mr A as B's carer.

Conclusion

The Council failed to assess B's needs and the needs of Mr and Mrs A as her carers in line with its statutory duties and government guidance. The Council failed to produce a care plan to identify B's needs, what is to be done about them, by whom and when.

Agreed remedy

The Council has agreed to:

- a. appoint an independent social worker to assess B's needs, and the needs of her parents as carers, and produce a care plan that complies with statutory guidance within 35 days;
- b. review its decision not to pay Mr A to provide care for B;
- c. make a payment of £5,000 to Mr and Mrs A in recognition of the significant distress, time and trouble they have experienced;
- d. make an additional payment at a level to be agreed with the Ombudsman if, following assessment, the Council identifies services they were entitled to but have not received; and
- e. review its practices so that its assessments of disabled children fulfil the Council's statutory duties and meet the requirements of government guidance.

The complaint

1. Mr and Mrs A complain about the support the Council provides to care for their disabled daughter, B.
2. Specifically, Mr and Mrs A complain the Council:
 - a. has not properly assessed B's needs;
 - b. does not provide enough support;
 - c. has not properly considered Mr and Mrs A's needs as carers; and
 - d. has decided that it will no longer pay Mr A as B's carer.

Legal and administrative background

3. Local authorities have a duty to assess the needs of disabled children and their families. The Government has issued statutory guidance which sets out the assessment process in detail¹.
4. Following the assessment, the local authority must produce a care plan which sets out the nature and extent of the services to be provided². The care plan must clearly identify the child's needs, what is to be done about them, by whom and when³. Assessments must address foreseeable future needs as well as present needs⁴.
5. There is an expectation in the law and guidance that where a disabled child is assessed as having substantial needs, those needs will be met through the provision of services. The local authority must follow a rational process for deciding which children are eligible for services and which are not. The criteria must be clear, transparent and take account of the impact of disability on children and their families.
6. Most services needed by disabled children and their families are provided under the Chronically Sick and Disabled Persons Act 1970⁵. They include practical assistance in the home such as help with bathing, using the toilet, moving, feeding and routine household chores. Recreation activities, educational facilities, travel, home adaptations, holidays and home-based respite care can also be

¹ Framework for the assessment of children in need and their families, Department of Health, Department for Education and Employment, Home Office, 2000. This guidance was replaced by *Working together to safeguard children* in 2013

² *op cit*, paragraphs 4.32 – 4.37, 'Plans for children in need'. This guidance was replaced by *Working together to safeguard children* in 2013

³ R(AB and SB) v Nottingham CC [2001]EWHC 235 (Admin)

⁴ R(K) v Manchester CC [2006]EWHC 3164 (Admin)

⁵ Chronically Sick and Disabled Persons Act 1970, s2

provided under this Act. The Council must provide services listed in the Act if it decides they are necessary to meet a child's assessed needs.

7. Other services, such as residential short breaks, can be provided under the Children Act 1989⁶.
8. A local authority that is not providing a service to meet a need must be able to demonstrate that it has complied in all material respects with the relevant guidance.
9. Parents have a right to request support by way of 'direct payment' from the local authority which they can use to buy services themselves. Provision of support by direct payments is subject to regulations⁷ and guidance⁸.
10. The regulations restrict the use of direct payments to pay a relative who lives in the same household as the disabled child, 'unless the local authority is satisfied that securing the service from a family member is necessary for promoting the welfare of the child'. The threshold for reversing the presumption against paying a relative is a relatively low one.

Investigation

11. My investigator has discussed the complaint with Mr and Mrs A. He has considered information in the Council's files and the Council's response to his enquiries. He has considered comments from both Mr and Mrs A and the Council on a draft of this report.

What the investigation found

Background

12. Mr and Mrs A have three children. Their eldest child, B, aged 14, is disabled. B has a degenerative condition. She is blind, profoundly deaf and has severe physical and learning disabilities. B requires constant supervision and is dependent on her parents to meet all her needs.
13. Mr and Mrs A receive direct payments to meet B's social care needs. The Council decided that it would pay Mr A to provide care for B to enable the family to spend as much time with her as possible, and also because B, who is deaf and blind, can communicate with Mr A.

⁶ Children Act 1989, Part III

⁷ Community Care, Services for Carers and Children's Services (Direct Payments)(England) Regulations 2009

⁸ *Guidance on direct payments for community care, services for carers and children's services England*, 2009, Department of Health

14. In May 2011 Mr and Mrs A asked for an increase in the direct payments to fund an additional six hours care per week. The Council decided to complete a new core assessment and make a decision on the basis of the new assessment. The Council refused Mr and Mrs A's request for additional direct payments on 14 November 2011. Mr and Mrs A complained to the Council and then to the Ombudsman.

How the Council assessed B's needs

15. Mr and Mrs A first requested practical help at home and respite care in May 2003. As a result of B's physical deterioration she was no longer able to sign and needed a wheelchair. The Council's Sensory Support Service referred B's case to the Council's Children with Disabilities Team in May 2003.
16. The Council began an Initial Assessment on 16 June 2003. On 17 July 2003, the Council arranged for a local company to provide six hours of flexible care each week for B for the summer holidays until a care package could be put in place.
17. The Council began a Core Assessment on 28 July 2003. The Core Assessment is incomplete and the Council did not produce a care plan to identify B's needs, what is to be done about them, by whom and when.
18. The Council's Disabled Children's Short Breaks Panel reviewed the arrangements on 23 September 2003 and agreed that B should have two hours support each week during term time and six hours during school holidays from the same company. This increased to four hours each week during term time on 17 February 2004.
19. The Council's Disabled Children's Short Breaks Panel reviewed the arrangements again on 14 December 2004. The minutes note that B's health needs had increased and the Panel agreed that she should receive 11 hours each week during term time and 13 hours each week during school holidays.
20. Mr and Mrs A chose to receive direct payments in April 2005. The level of support remained the same. In May 2006 the level of support increased to 13 hours each week during term time and 16 hours each week during holidays.
21. In June 2007, the Council agreed the direct payments could be used to pay Mr A to provide care for B. By paying Mr A, the Council kept to a minimum the number of people involved in B's care which caused less stress for B and the family.
22. Mr and Mrs A asked for additional support in 2009. The Council began a new Core Assessment on 10 August 2009. B's needs had changed significantly since the last Core Assessment in 2003. The new Core Assessment noted that B was now completely dependent on adult support, and Mr and Mrs A have to get up during the night to change and turn her. The Council refused additional support and B's care package remained the same. There is no care plan on B's file, but

an undated Needs Assessment Matrix summarises B's needs as both 'high' and 'exceptional'. It describes B as a child in extreme need and at risk of family breakdown. It recommends urgent discussion with the team manager to determine service provision. There is no evidence that this was done.

23. The Council began a further Core Assessment on 18 August 2011 when Mr and Mrs A again asked for additional support. The Council rejected Mr and Mrs A's request. The Core Assessment says that the situation they find themselves in is one of their own choosing as they do not want outside help to care for B. The Council recommended no additional support on this basis. The Core Assessment is incomplete and does not include a care plan.
24. Mr and Mrs A complained to the Council about the Core Assessment and the Council's decision not to offer additional support.
25. Mr and Mrs A's complaint was upheld. The Council agreed to carry out a full assessment of the family's needs, including carers and siblings. In September 2012, following the assessment, the Council confirmed that it would not increase B's care package. Mr and Mrs A remain dissatisfied and complained to the Ombudsman.
26. The Council began a further Core Assessment on 10 December 2012 in response to Mr and Mrs A's complaint about the previous assessment.
27. This Core Assessment describes B's complex needs. It says she is fully dependent on others for all her needs, including feeding, washing, toileting, and maintaining her posture. It describes how her needs are increasing as she enters puberty. The Assessment says nothing about how her needs are to be met, other than by her parents. The Assessment describes the impact on Mr and Mrs A of caring for B, but says nothing about their needs as carers. The Assessment acknowledges that Mr and Mrs A are best placed to care for B and meet her needs given her disability and communication difficulties, but ends by saying it will no longer pay Mr A to care for B and gives him an ultimatum of 3 months to find an alternative carer. The Assessment says that all parents are expected to care for their children, but Mr and Mrs A should employ a carer so that they can fulfil their roles as parents.
28. B's file does not record how the Council calculated the level of support offered or what the Council intended the support to be used for.

The Council's response to my investigator's enquiries

29. My investigator asked the Council to explain how it had assessed B's needs, and the needs of her family, and how it decided that the level of direct payments she received was sufficient to meet her needs. The Council sent him a copy of B's latest Core Assessment and a Care Plan. The objective of B's Care Plan is to

maintain the current care package of 16 hours each week and review as necessary.

30. My investigator asked the Council to explain how it decided 16 hours of care each week would meet B's needs as this was not recorded in the file. He asked for evidence that the Council had clearly and specifically identified B's needs, what needs to be done about them, by whom and when.
31. The Council says that it initially provided short-term, flexible and responsive support to Mr and Mrs A following their request for help in 2003. The Council acknowledges that it failed to carry out a satisfactory assessment and as a result the support package provided was never appropriately reviewed.

Conclusions

Failure to assess B's needs

32. The Council has failed to assess B's needs in line with its statutory duties.
33. There is no evidence that the Council has attempted to involve B in the assessments⁹.
34. The assessments do not record what help and support B needs, or which agencies might be best placed to provide it. The Council has no basis for its decision that the payments it makes to Mr A are sufficient to meet B's needs.
35. Equally, when the Council decided that Mr A can no longer use the direct payments to pay himself to provide care for B, it did so without regard to B's assessed needs.

Failure to produce a care plan

36. The Council has failed to produce a care plan to identify B's needs, what is to be done about them, by whom and when.
37. The Council's assessments are essentially descriptive documents rather than assessments. They lack detail about B's needs and the necessary service provision.

Failure to assess Mr and Mrs A's needs

38. The Council has failed to assess Mr and Mrs A's needs as carers in line with its statutory duties.

⁹ The Government has issued statutory guidance to Local Authorities, *Social Care for Deafblind Children and Adults*, LAC(DH)(2009)6 which requires assessments to be carried out by specially trained people able to assess the needs of a deafblind person.

39. The Council initially made direct payments to enable Mr and Mrs A to have respite from caring for B. Respite care is a highly valued service regarded by many families as one of the most important support services that can be provided.
40. In June 2007 the Council agreed that Mr A could use the direct payments to pay himself as B's carer instead. This left Mr and Mrs A without respite.

The injustice

41. Mr and Mrs A have never had an adequate assessment of B's needs, or their needs as her carers, since they first asked the Council for help ten years ago. They complained to the Council in 2011, but despite upholding their complaint the Council did not put things right. Following their complaint, the Council unfairly blamed Mr and Mrs A for their problems.
42. Mr and Mrs A say that the lack of support to care for B has placed considerable strain on them and their health has suffered as a result. They are particularly upset by recent Core Assessments which portrayed them as the cause of the family's problems without any justification.
43. B is now completely dependent on Mr and Mrs A to meet all of her considerable needs. The Council has failed to provide evidence that it knows what B's needs are, what the impact of her disability is on her family, or how her needs are being met and at what cost.

Agreed remedy

44. The Council has accepted my findings and agreed to:
 - a. appoint an independent social worker to assess B's needs, and the needs of her parents as carers, and produce a care plan that complies with statutory guidance within 35 days;
 - b. review its decision not to pay Mr A to provide care for B;
 - c. make a payment of £5,000 to Mr and Mrs A in recognition of the significant distress, time and trouble they have experienced;
 - d. make an additional payment at a level to be agreed with the Ombudsman if, following assessment, the Council identifies services they were entitled to but have not received; and
 - e. review its practices so that its assessments of disabled children fulfil the Council's statutory duties and meet the requirements of government guidance.

45. I welcome the Council's response to my report and its agreement to provide a remedy for Mr and Mrs A.

Handwritten signature of Jane Martin, consisting of the letters 'J Martin' in a cursive script, with a horizontal line underneath.

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20 November 2013