

Report

on an investigation into
complaint no 12 015 730 against
Cambridgeshire County Council

12 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 S, the complainant

N, his son

Report summary

Education and children's services

The Council delayed carrying out a core assessment of needs for N, the son of Mr S, and there were faults in the assessment process. The Council also failed to progress Mr S's complaint to Stage 2 of the statutory complaints process. This caused the family injustice in the form of failure to fully meet N's needs for a period of 17 months, uncertainty about whether greater needs would have been identified earlier and frustration at the Council's failure to deal effectively with the complaint.

Finding

Maladministration causing injustice, remedy agreed.

Agreed remedy

To remedy the injustice identified, the Council has agreed to:

1. apologise to Mr S for the faults identified;
2. pay Mr S £800 to reflect the period of almost three months when he received no payment to meet N's needs, based on the sum of £3200 assessed at the end of June 2012;
3. review N's needs and provide the resources necessary to meet them. If the review concludes N's assessed needs are greater than £3200 per year, pay Mr S the difference between the amount assessed and the payments he has already received, allowing for the £800 already paid. This payment and the £800 should not be subject to being spent on items agreed by the Council;
4. pay Mr S £250 for his time and trouble in having to approach the Ombudsman rather than progress to Stage 2 of the statutory process; and
5. ensure complaints involving children are dealt with in accordance with statutory guidance and without delay.

I am pleased to note that the Council has now carried out the review referred to in point 3 above and concluded N's needs equate to £6539.90 per annum.

Introduction

1. Mr S complains that Cambridgeshire County Council:
 - at first failed to carry out a core assessment and delayed providing care for his son, N;
 - failed to tell him of the choices for children's social care available to him; and
 - refused to move the complaint to Stage 2 of its complaints process.
2. Mr S wanted the Council to explain what had happened, admit it was at fault and to apologise.

Legal and administrative background

3. The Ombudsman investigates complaints of maladministration causing injustice. In this report, I have used the word fault to refer to this. When I find maladministration causing injustice, I can ask the Council to take action to remedy that injustice.
4. The Chronically Sick and Disabled Persons Act 1970 requires councils to provide practical assistance to meet the needs of disabled persons.¹
5. The Children Act 1989 requires councils to provide services for children in need who are unlikely to achieve or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of services; or a child who is disabled.² Where a Council carries out an assessment of needs, it has to complete this within 45 working days, which is 10 days for the initial assessment and 35 days for the core assessment.
6. The Community Care (Direct Payments) Act 1996 provides that service users may receive direct payments from a council in order to purchase care.³ Service users may choose to do so, or to receive services directly.
7. Statutory guidance "Getting the Best from Complaints" sets out a three stage process for dealing with social care complaints. The first stage involves a response from a social care manager. The second stage is an investigation carried out by an officer who may be from within the council's staff, but must not line manage social care staff or anyone who is complained about. This is

¹ The Chronically Sick and Disabled Persons Act 1970, s.2

² The Children Act 1989, s.17

³ The Community Care (Direct Payments) Act 1996, s.1

overseen by an independent person. Finally, a review panel forms the third stage of the process.⁴

8. This guidance provides that the only exemptions to the complaints procedure are where the person bringing the complaint is not entitled to complain, the complaint is not made against the Council or its agents, or the same complaint has already been dealt with at all stages of the procedure. The guidance lists those entitled to complain.⁵
9. The same guidance states that “Stage 2 commences either when the complainant requests it or when the complainant and the local authority have agreed that Stage 1 is not appropriate”.⁶
10. This guidance continues that “If the complaint has been submitted orally, the Complaints Manager must ensure that the details of the complaint and the complainant’s desired outcomes are recorded in writing and agreed with the complainant. This may be achieved either by correspondence or by meeting the complainant to discuss, followed by a written record of what was agreed. He may wish to do this in conjunction with the Investigating Officer and Independent Person appointed to conduct Stage 2. Should the complainant amend the written record of his complaint, the Stage 2 timescale will start from the date the complaint is finalised”.⁷ This timescale does not apply when the complaint is submitted in writing.
11. Finally, “Getting the Best from Complaints” states the Stage 2 investigation should take place “without delay”.⁸

Investigation

Background

12. N is aged six, has autism and relies on his parents to wash, change and dress him. The family has two other young children.

The assessment process

13. Mr S asked the Council for help in January 2012. The Council carried out an initial assessment in February 2012 that said there was no need for a core assessment of needs. Mr S objected to this.

⁴ Getting the Best from Complaints: Social Care Complaints and Representations for Children, Young People and Others, paras. 3.5.3, 3.6.4, 3.6.5 and 3.9.1.

⁵ Getting the Best from Complaints: Social Care Complaints and Representations for Children, Young People and Others, paras 2.5.1 and 2.6.1

⁶ para 3.6.1

⁷ para 3.6.2

⁸ para 3.6.3

14. Mr S said the social worker who carried out the initial assessment said the family's difficulties were no worse than those of other families with three young children and he found this offensive. The Council's records show there was a telephone conversation in February 2012 about Mr S's difficulties in having to take his other children with him when transporting N to clubs. Mr S wanted the Council to provide transport.
15. The note of the call shows the social worker told Mr S that other parents had the same difficulty.
16. Following Mr S's objection, the Council decided to carry out a core assessment. The social worker tasked with doing this visited the family home on 24 April 2012. Mr S's account and the Council's account of the visit are broadly the same. The social worker decided not to carry out the core assessment. This decision is dealt with in paragraph 24.
17. After Mr S complained, the social worker returned on 1 June 2012 to carry out the core assessment.
18. My investigator interviewed an officer of the Council (Officer A). She said part of the reason for the delay was because Mr S disagreed with the wording of the core assessment after June 2012. Officer A said there was an organisational change in the Council in the spring of 2012 and also that the social worker was inexperienced. She said both had caused problems in his case. This was before Mr S questioned the wording of the text.
19. The social worker completed the core assessment on 26 June 2012.
20. The social worker then carried out a resources assessment with Mr S. This was a new process being used by the Council for the first time in the summer of 2012. Officer A said she thought Mr S's resources assessment was the first one the Council had carried out.
21. Mr S stated N had severe learning disabilities. The Council said it needed to see the paediatrician's diagnosis to better assess N's needs, but Mr S had not consented to this check. Mr S denied refusing permission. Officer A said a more up-to-date paediatrician's diagnosis might also show N's needs had changed or he had new needs as the existing one was dated. The Council has offered to carry out a fresh resources assessment. Mr S felt the Council's motive in wanting to see the paediatrician's diagnosis was to reduce the level of N's assessed need.
22. The Council assessed N's needs in the summer of 2012 as requiring direct payments of £3200 per year.

23. Officer A confirmed at interview there was no doubt N had and would continue to have care needs. She also said the Council had re-run the resources assessment

and reviewed N's care plan after a social worker visited the family in the autumn of 2012 to produce a notional result. She said the Council's current view was N's notional needs were equivalent to £5200, but a fresh assessment might vary this either up or down. Officer A said N's care plan would be due for review in June 2013 and the Council would carry this out anyway.

Failure to inform

24. When the social worker visited the family home on 24 April 2012, she decided not to carry out the core assessment. She felt the fact the family received a Disability Living Allowance (DLA) payment meant the Council would make a standard offer of a £2000 direct payment for care per year. She did not tell Mr S he did not have to accept this.

Complaint handling

25. In its response to my investigator's enquiries, the Council said it had not refused to escalate Mr S's complaint. It said it had not been able to establish outcomes that could be achieved by doing this. An undated text of a final response from the Council supplied by Mr S referred him to the Ombudsman. This text is identical to that in an email of 8 November 2012 from the Council to Mr S.
26. In this case, the correspondence supplied by the Council showed Mr S emailed it on 27 July 2012 to say he wished to make a complaint. Officer A responded to eight points of complaint by letter on 8 August 2012. An internal email showed Mr S telephoned the Council on 14 August 2012 to say his email of 27 July 2012 was not his complaint. Mr S then emailed the Council on 16 August 2012 to make his complaint.
27. Internal emails showed the Council considered whether a further response from Officer A was appropriate, as she had written the letter of 8 August 2012. The Council then acknowledged Mr S's email and said a Stage 1 response would be sent by 3 September 2012.
28. The Council issued a further response on 31 August 2012, written by Officer B.
29. Mr S was unhappy with the response. He emailed Officer B on 3 September 2012 to ask for a meeting. When she offered to meet on 12 September 2012, he said this was too long a delay. He contacted both Officer B and another officer responsible for complaints (Officer C). He asked whether he could email his request for his complaint to be escalated to Stage 2. He sent the email requesting the right to email his Stage 2 request at 12.49 on 3 September 2012.

30. At 13.10 on 3 September 2012, an internal email from Officer C to Officer B questioned the logic of holding a meeting before Mr S had requested Stage 2. She stated that the Council would usually offer to meet with a complainant once he or she had requested a Stage 2 investigation.
31. Officer C emailed Mr S at 17.49 on 3 September 2012 to say he was entitled to request Stage 2, but offered him a meeting in the first week of October 2012 and suggested actions he could take that might move matters forward.
32. Mr S met officers of the Council on 3 October 2012. This meeting did not resolve the complaint.
33. Notes of a phone call of 4 October 2012 between Mr S and Officer C suggest Mr S asked why the same people were always investigating themselves. These notes also suggest Officer C repeatedly tried to find out what Mr S wanted from a Stage 2. Mr S told my investigator he had wondered whether there was a particular form of words that would have allowed him to access the next stage of the complaints process. He said this led him to make different points in the hope the Council would escalate his complaint.
34. An internal email of 4 October 2012 showed Officer B was “exasperated” by Mr S. A further letter of 9 October 2012 from Officer C to Mr S stated he still had a right to Stage 2, but the Council needed to clarify what outcomes he wanted. It listed five points of complaint and asked him to suggest how Stage 2 could help to resolve them and said some of them were unachievable. The letter referred Mr S to the Ombudsman rather than agreeing to his request for a Stage 2 investigation. The Council’s view was it did not refuse a Stage 2 investigation and Mr S prevented it doing so.
35. Mr S made three further requests for the Council to arrange a Stage 2 investigation on 15, 24 and 29 October 2012.
36. The Council took the view Mr S had been aggressive at times. He had the same view of Council officers. My investigator saw one email from Mr S dated 7 March 2013 to Officer A that was inappropriate. All other communications from the Council to Mr S and in return were courteous.

Conclusion

The assessment process

37. Mr S objected to the conclusion of the initial assessment that no core assessment was required. He was correct to do so, as the Council confirmed in its response to my investigator’s enquiries.
38. Regarding the telephone conversation in February 2012, which is referred to in paragraphs 14 and 15, I have seen no evidence that suggests the officer used

the words Mr S alleges. However, I can appreciate Mr S's frustration at the comment recorded in the context of the Council's then recent failure to carry out the core assessment. The comment as noted appears to have been factually accurate. I cannot therefore say the officer was at fault.

39. The Council took the view Mr S caused delay after June 2012 by disagreeing with the core assessment's wording. However, given the difficulties he had already experienced in the assessment process, I can understand Mr S's questioning of the core assessment's wording. Moreover, the Council did not start the core assessment until 1 June 2012 or complete it until 26 June 2012. The statutory timescales for the initial and core assessments show that, even allowing for the changed decision about whether to carry out the core assessment, these matters should have been completed by early April 2012 at the latest.
40. I therefore consider Mr S's questioning of the core assessment's wording after June 2012 irrelevant to the previous delay by the Council. This delay amounted to almost three months and was fault on the Council's part, causing injustice in the form of N's unmet needs during the same period.
41. All parties agree N will have continuing care needs. The best way to confirm this now would be for the Council to carry out a fresh core assessment and resources assessment. Mr S is not obliged to provide a copy of N's diagnosis or to seek an updated one. However, the Council would only be required to assess the needs apparent in the information available to it.
42. The Council took the view N's needs might equate to £5200 per year by carrying out a notional assessment that came up with that sum. This suggests its earlier offer in June 2012 may have been inadequate to meet N's needs.
43. To remedy the situation it would not be right to consider the payment of £3200 per year to be correct from April 2012 if a fresh assessment within three months suggested N's needs required £2000 more. I therefore consider the Council should backdate any new assessed sum to April 2012, less any payments already made.

Failure to inform

44. When the social worker visited on 24 April 2012, she did not carry out the core assessment as she believed the DLA payment would lead to a standard offer. The Council accepted this was wrong as the core assessment might have assessed a higher level of need. The failure to tell Mr S he did not have to accept the offer was fault and contributed to the delay in assessment and the consequent injustice in the form of N's unmet needs.

Complaint handling

Statutory guidance, "Getting the Best from Complaints", requires councils to progress complaints without delay. It also states Stage 2 begins where a complainant requests it. There are cases where the statutory guidance states a Council is entitled to refuse to progress a complaint, usually where the person bringing the complaint has no authority to do so. Clearly, it would also be a waste of public money to progress a complaint that was frivolous, where all the points of complaint had been upheld and a suitable remedy already offered, or where the desired outcome was beyond the council's ability to provide.

45. However, in cases of doubt, the requirement of statutory guidance is clear. It would be fault not to progress the complaint without delay.
46. Although it later became clear the email of 27 July 2012 was not Mr S's formal complaint, the Council was not at fault in responding to it as if it was. The Council was correct to treat his email of 16 August 2012 following his telephone call of 14 August 2012 as a Stage 1 complaint.
47. Allowing for the confusion about the email of 27 July 2012, Mr S had made his first complaint at Stage 1 on 16 August 2012. By 31 August 2012, he had already received two responses, one before he confirmed the content of his complaint. Mr S wanted to escalate the complaint.
48. Statutory guidance provides that meetings or correspondence to establish details are only relevant where a complaint is submitted orally. Mr S had made his original complaint in writing and wished to escalate it. The officer should have confirmed the Council would accept his complaint at Stage 2 on 3 September 2012 on the basis that he put it in writing.
49. Instead, the officer's email at 17.49 on 3 September 2012 required Mr S to make a further request for Stage 2 when he had already done so that day. Both it and the internal email of 13.10 on 3 September 2012 implied the usual route for complaints was via a meeting, when this is not a requirement of statutory guidance. Furthermore, the email to Mr S confirmed he would have to wait a further month for the meeting.
50. Given the circumstances, it is perhaps not surprising the meeting of 3 October 2012 was not productive. Mr S had experienced faults in the assessment process and more than four weeks had gone by where the Council had not moved his complaint to Stage 2.
51. By 4 October 2012 Mr S had tried to pursue his complaint for seven weeks without success. He asked the Council to move his complaint to Stage 2 of the process four times between 3 September and 29 October 2012. The Council's failure to escalate his complaint was fault, causing him additional injustice to the original failures by the service area in the form of unnecessary frustration that he had been unable to gain redress.

52. Whether Mr S or Council officers were aggressive in meetings or on the telephone is a question of one person's word against that of another as I have seen no proof either way. However, given the Council's repeated failures and Mr S's understandable frustration, it is very likely the meetings and telephone calls were tense, as reflected in the email Mr S sent.
53. In summary, I consider the Council was at fault in:
- the way the core assessment was conducted by at first failing to carry it out, then by failing to tell Mr S of his options;
 - delaying the core assessment;
 - failing to backdate direct payments; and
 - not escalating the complaint to Stage 2 of the complaints process.
54. The Council's failures caused the family injustice in the form of failure to fully meet N's needs for a period of 17 months between April 2012 and September 2013, uncertainty whether greater needs would have been identified earlier and frustration at the Council's failure to deal effectively with the complaint.

Agreed remedy

55. To remedy the injustice identified, the Council has agreed to:
1. apologise to Mr S for the faults identified;
 2. pay Mr S £800 to reflect the period of almost three months when he received no payment to meet N's needs, based on the sum of £3200 assessed at the end of June 2012;
 3. review N's needs and provide the resources necessary to meet them. If the review concludes N's assessed needs are greater than £3200 per year, pay Mr S the difference between the amount assessed and the payments he has already received, allowing for the £800 already paid. This payment and the £800 should not be subject to being spent on items agreed by the Council;
 4. pay Mr S £250 for his time and trouble in having to approach the Ombudsman when the Council should have escalated his complaint to Stage 2 of its process; and
 5. ensure complaints involving children are dealt with in accordance with statutory guidance and without delay.

I am pleased to note that the Council has now carried out the review referred to in point 3 above and concluded N's needs equate to £6539.90 per annum.

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

**Dr Jane Martin
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12 November 2013