

Report

on an investigation into
complaint no 10 012 742 about
Kent County Council

23 July 2012

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S30(3) Local Government Act 1974 requires that I 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

Mrs B	Complainant
Miss B	Complainant's daughter

Report summary

Subject

Miss B has learning disabilities. She attended a college and, by her parents' choice, did not have services from the Council's children's team. Her mother contacted the Council in September 2009 to begin planning what services Miss B would have once she was 18. Miss B became 18 in January 2010 and planned to leave college in July 2010. A care manager should have been involved as soon as Miss B was 17 and a half. This did not happen until March 2010 when Miss B was over 18. The care manager assessed Miss B's needs as including opportunities to socialise during evenings and weekends. She also assessed these needs as being serious enough to be eligible for services. The care manager referred Miss B to a pilot project that worked with adults with learning disabilities and their families to design support programmes.

From May 2010 the care manager and Miss B's mother exchanged many emails about possible services. Miss B's mother became increasingly frustrated. In July 2010 Miss B decided to go back to college for another year. In August, Miss B was given a support plan to sign. It said her needs were '*socialising, developing independence, keeping motivated and learning new skills*'. It had an estimated budget of £70 a week to cover Miss B attending a local facility or project for 3 days a fortnight. It did not provide for her assessed and eligible needs of socialising at weekends or evenings. Miss B's mother questioned the support plan and was told that her daughter would not get more funding than £70 a week because of budget pressures. She complained to the Council and the Ombudsman.

In response to her complaint, the Council said it would fund: specialist employment advice; 4 hours a week for support to Miss B to socialise; 2 days a week of activities during college holidays and 28 days a year respite care. The Council would only fund respite care in one of its own residential homes and would not give Miss B a direct payment for respite, although this was what she and her mother wanted.

Finding

The Ombudsman found the Council acted with maladministration in:

- not assessing Miss B until 4 months after she was 18
- not producing a support plan for another four months
- not including Miss B's assessed needs that were eligible for services in that support plan
- poor and confusing communication with Miss B and her family
- not offering Miss B's mother a carer's assessment
- not offering Miss B direct payments so she could arrange her own care
- restricting respite care for Miss B to its own residential care homes.

Remedy

The Council's officers have agreed that it will remedy the injustice caused to Miss B and her family. It will pay the value of the services Miss B lost between becoming 18 and them eventually being provided and £250 to reflect her mother's time and trouble in pursuing the complaint. It will also amend the form it uses for support plans and tell everyone entitled to respite care of their right to have direct payments.

In 2009 the Ombudsman issued a report finding maladministration by the Council in having a policy of restricting respite care for disabled children to its own residential homes. I am surprised and disappointed to find the maladministration recurring in services for adults with a learning disability. I have recently issued a report finding maladministration by the Council when it tried to limit temporary residential care for an elderly woman to its own homes or 'pre-purchased' beds in private homes. I appreciate the Council's need to use its resources as effectively as possible but that cannot be at the expense of peoples' right to the choice and flexibility that direct payments give.

Introduction

1. Mrs B's daughter, Miss B has learning disabilities. Mrs B complains on her daughter's behalf that Kent County Council:
 - delayed in assessing Miss B's needs and in approving a support plan for her;
 - agreed to pay £70 a week for day care for Miss B, then said this funding was only available during college holidays;
 - agreed Miss B needed respite care but would only pay for her to stay in one of the respite units it runs;
 - refused Mrs B a direct payment to make her own respite care arrangements for Miss B; and
 - delayed in providing other services set out in Miss B's support plan, including a service to provide support during the evenings and weekends to enable Miss B to socialise.

Legal and administrative background

2. A council must assess the social care needs of anyone over the age of 18 who appears to need community care services.¹ An assessment should identify needs and put them in one of four bands: critical, substantial, moderate or low. Statutory guidance² tells councils how to decide which band a need should be in. Each council can decide, as a matter of policy, which band of needs it will meet by providing services or direct payments. Assessed needs in the bands that will be funded are known as 'eligible' needs. Kent County Council's policy is to provide or fund services to meet needs that have been assessed as being in the critical, substantial or moderate bands.
3. Unpaid carers who provide substantial care to a disabled person on a regular basis, are entitled to an assessment of their own needs as carers.³ Even if a person declines a carer's assessment, a council should regularly consider the carer's ability to continue to provide care on a regular basis⁴.
4. Once a council has decided to provide services to meet assessed needs, it should produce a care plan, also known as a support plan. Statutory guidance says that support plans should contain as a minimum⁵:
 - (i) a note of the eligible needs and associated risks;
 - (ii) desired outcomes for the service user;

1 S 47 NHS and Community Care Act 1990

2 Prioritising Need in the Context of Putting People First – a whole system approach to eligibility for adult social care (Department of Health, 2010)

3 S1 Carers (Recognition and Services) Act 1995/S1 Carers and Disabled Children Act 2000

4 S8 Disabled Persons (Services, Consultation and Representation) Act 1986 and LAC 87(6)

5 Prioritising Need in the Context of Putting People First – a whole system approach to eligibility for adult social care, Para 121

- (iii) contingency plans;
 - (iv) details of services to be provided with costs (or if direct payments have been agreed, a record of the amount);
 - (v) financial contributions by the service user;
 - (vi) review date.
5. A support plan should follow an assessment without delay and a copy should be sent to the service user.
 6. Councils can take their resources into account when deciding how to meet someone's eligible care needs. Recent case law has confirmed that councils can select the cheaper of two available options to meet eligible needs.⁶ Non-specialist services that are generally available to the public can be included in a support plan if considered appropriate for the individual. For example, attending a college can be included in a support plan if it would be a reasonable way of meeting a particular eligible need. A council should provide services promptly once it has agreed to do so. If waiting is unavoidable, it should find an alternative way of meeting the eligible need.
 7. The duty to arrange community care services to meet an eligible need can be enforced through the courts. The courts have held that a council cannot use a lack of resources as a reason for not providing services⁷.
 8. Since 2003, councils have been able to make payments to people eligible for care services so that they can arrange their own care. These care payments are known as direct payments. The Department of Health said in a white paper⁸ that it intended:

'Direct payments arrangements should empower people and help maximise choice and control. They should be an integral part of the way in which needs are met by local councils and partnership agencies across all care groups and service areas.'

9. In 2006 this power became a duty. The white paper explained:

"We have changed the law so that where there was a power, there is now a duty so that councils must make a direct payment to people who can consent to have them. This means that direct payments should be discussed as a first option with everyone, at each assessment and each review."⁹

6 R (oao) McDonald v Kensington & Chelsea RLB [2011] UKSC 33
7 R v Gloucestershire CC ex p Mahfood and ors (1995) 1 CCLR 7
8 Our Health, Our Care, Our Say (CM6737)
9 Supra

10. Government guidance on direct payments¹⁰ specifies that a direct payment:
 - (i) Can be used for respite care for a maximum of four consecutive weeks per year¹¹
 - (ii) Should be made if the service user wants one – unless they are a member of a disqualified group¹²

11. In 2009, the Ombudsman published a report about Kent County Council's failure to provide a direct payment for overnight respite care for a disabled child.¹³ The Council's policy for respite care said that children must use one of the Council's own residential homes. The Council agreed to the Ombudsman's recommendation that it should amend its policy on children's respite care to comply with the law and the Council agreed to amend it. Guidance on direct payments applies equally to social care services for adults.

12. People who do not want direct payments are entitled to have their services organised or provided by the council. It is also possible to have a mixed care package, with some services provided directly and a direct payment for others.

13. Kent County Council has a Transition Policy for young people who have a Statement of Special Educational Needs or who are disabled. The policy says that:
 - (i) When a young person turns 16, a professional working with the young person should inform adult social services that they may need adult social care services when they become 18;
 - (ii) As soon as possible after the young person's 17th birthday, there should be a formal referral to social services to arrange an assessment;
 - (iii) A care manager will become involved once the young person is 17 and a half;
 - (iv) Direct payments will be offered to young people eligible for adult care services.

Investigation

14. My Investigator obtained copies of relevant social care records from the Council's adults' and children's social services teams. She interviewed Mrs B, the care manager who assessed Miss B, her manager, two heads of service and the

10 **Guidance on Direct Payments for community care, services for carers and children's services (England 2009)**

11 **Paras 101-105, supra**

12 **Excluded are those offenders who have conditions imposed on them by the courts in relation to drug and alcohol treatment.**

13 **08 005 202 v Kent County Council**

officer responsible for policies and procedures in adult social services. All those involved have seen and commented on a draft of this report and where appropriate, I have incorporated their comments.

Background

15. Miss B has learning disabilities arising from a rare chromosomal abnormality. She lives at home with her parents. From September 2008 until July 2011, Miss B attended a local further education college for three days a week. Before she was at college, Miss B attended a secondary school. She had a statement of special educational needs which entitled her to additional support at school. This support ended when she went to college. The children's social services team was aware of Miss B as a disabled child, but they did not provide any services for her, as her parents did not consider this necessary.

Mrs B contacted children's social services at the end of September 2009 to explore what services and funding might be available to Miss B once she turned 18. The children's services contact assessment in September 2009 noted that Mrs B wanted day care services for her daughter once she left college in July 2010.

16. A Principal Social Worker completed an initial assessment by telephone on 6 October 2009. It contained only basic details about Miss B, her disability and health problems. It was not a full assessment of Miss B's social care needs. The purpose was to refer Miss B to adult social services before her 18th birthday, in January 2010.
17. The Principal Social Worker referred Miss B to adults' services in December 2009 with little information other than Mrs B's request for day time activities for when Miss B would leave college in July 2010.

Assessing and meeting Miss B's needs

18. A Care Manager took on the specialist role of Transition Social Worker in March 2010. The Care Manager started to work with Miss B and a number of other young people who were 18 or soon to be 18. The Care Manager completed an assessment of Miss B's care needs on 23 April 2010. The assessment summary identified that Miss B needed:
 - (i) opportunities to socialise during the evenings/weekends;
 - (ii) referral to adult services physiotherapy and occupational therapy;
 - (iii) referral to a specialist employment project for a work placement after her college course.
19. During 2010, the Council funded a pilot project to work with a small number of young adults with learning disabilities. As part of the project, a local charity

employed a broker to work with the adult learning disability team. The Broker's role was to help service users and their families to devise support plans. The Care Manager referred Miss B to the project in May 2010.

20. Over the next few months, the Care Manager emailed Mrs B with a number of different services that Miss B may be able to use, including:
 - (i) Specialist projects for adults with learning disabilities, providing recreation during the daytime. These projects were already commissioned and funded by the Council's adult social care budget.
 - (ii) A direct payment of £70 per week to employ a carer to support Miss B to access activities of general interest available to all members of the public.
 - (iii) Four hours per week of support in the evenings provided by a local specialist charity. This service was already commissioned and paid for by the Council.
21. Miss B was due to finish college in summer 2010. Her mother and the Care Manager continued to exchange emails about services for Miss B. Mrs B became increasingly frustrated by what she saw as the lack of a decision on the support that her daughter was entitled to receive.
22. In July 2010, Miss B decided to go back to college in September for a further year.
23. In August 2010, the Head of Learning Disability approved the assessment of need that the Care Manager completed at the end of April. The Broker worked with Miss B and her family on a support plan. Miss B signed the support plan at the beginning of August.
24. The support plan set out Miss B's eligible needs as 'socialising, developing independence, keeping motivated and learning new skills'. There is no place on the support plan form where a Council officer can confirm that funding has been agreed for the services described. The support plan had an estimated budget of £3640 per year (or £70 per week) for Miss B. It listed the following services/activities:
 - (i) One day per week at a centre for adults with learning disabilities offering arts and crafts, animal care, cookery and horticulture (a yearly cost of £2726.88).
 - (ii) One day per fortnight at another local specialist project at a yearly cost of £910. Or, an additional day per fortnight at the first centre.
25. The support plan does not set out any funding or services to support Miss B to socialise at weekends or evenings, despite the Care Manager's assessment concluding that these were eligible needs. Emails from Mrs B at this time show

she believed the £70 mentioned in the support plan was to cover two days per week of day-time activities all year round. There was more confusion because the support plan got lost in the post, but turned up several weeks later.

26. Mrs B sent more emails during August 2010 asking her daughter's Care Manager what services Miss B was entitled to. In one reply, the Care Manager mentioned four hours per week for evening support to enable Miss B to socialise. Mrs B asked whether the four hours of evening support was in addition to the day-time activities listed in the support plan. The Care Manager replied that because of budget pressures, Miss B would not receive more than £70 per week.
27. During the summer holidays, the Council paid for Miss B and some other young people with learning disabilities to attend the centre offering arts and crafts, animal care, cookery and horticulture.
28. Mrs B complained to the Council in August 2010. The Head of Learning Disability & Mental Health responded to her complaints. Mrs B was unhappy with the response and complained to me.
29. In January 2011, the Council agreed to provide Miss B with:
 - (i) four hours a week individual support from a local charity to enable Miss B to socialise in the evenings or weekends;
 - (ii) two days a week during college holidays at the centre offering arts and crafts, animal care, cookery and horticulture;
 - (iii) a specialist employment service for people with learning disabilities;
 - (iv) 28 days a year respite care in one of the Council's own care homes.
30. In March 2011, the Care Manager assessed Miss B again and since then the Council has provided a direct payment for 28 days respite care per year.

Interviews

31. My Investigator interviewed Miss B's Care Manager, the Team Manager of the learning disabilities team, two Heads of Service and the Head of Policy. They said that:
 - (i) The learning disabilities team did not have a specialist transition worker in post when Mrs B first contacted the Council in October 2009. Miss B was placed on a waiting list until March 2010 when the Care Manager took on the role full-time.
 - (ii) The Broker's role was to develop the support plan with the family, but she had no authority to approve funding. The support plan of August 2010 was provisional and needed management approval.

- (iii) The Broker's role was unclear and the pilot project finished because managers did not think it had been a success.
- (iv) The support plan should not have taken three months to complete. It should have included all the eligible needs identified in the assessment. It had missed out Miss B's need for opportunities to socialise in the evenings and/or weekends.
- (v) The Council's published policy is to offer direct payments to everyone who has an assessed, eligible need for community care services, including respite care.
- (vi) In summer 2010, there was an over spend in the learning disabilities team budget. This was at the forefront of management decisions on funding for new care packages. The Head of Service got the Director's approval to issue internal financial guidance that included restrictions on making direct payments for respite care. The Council's policy team had not approved the internal financial guidance. The Council withdrew it in July 2011.
- (vii) The Team Manager encouraged all her staff to make use of resources that were 'cost neutral' when designing care packages. For example, care managers had to find services that were generally available and free to use, or were already commissioned and funded by the Council.
- (viii) The £70 per week provisional figure for day care services for Miss B originated from internal guidance. The guidance said that care managers in the learning disability team should offer service users funding for two days a week of day time activities. The service user could either have a direct payment for this or they could have a place in a pre-purchased specialist project or day centre. The two days a week was a starting point and some individuals may be offered additional funding depending on their needs and circumstances.
- (ix) In summer 2010, the Head of Service decided to restrict funding for day time activities for service users who were at college. These service users were now entitled to funded day-time activities during school holidays only. The Care Manager was instructed to tell all her transition service users about the change in arrangements and this prompted Mrs B's complaint to the Council.
- (x) When Miss B was first assessed in April 2010, she was in college and her need for day-time activities was being met by the college place. She did not need other day-time activities until she finished college. The support plan of August 2010, which the Broker devised shortly after Miss B had decided to continue at college for a further year, did not stipulate that the funding of £70 per week only applied during holiday periods.

32. The Head of Learning Disability & Mental Health said in interview that:
- (i) The Council's policy of only offering respite in its own residential care homes was ill-conceived and contrary to statutory guidance on direct payments and choice for service users.
 - (ii) She had not known about the Ombudsman's report about the Council's policy on direct payments in children's services.
 - (iii) The Member responsible for children's services would have seen the Ombudsman's report at the time it was published, but her counterpart in adults' services may not have done.
 - (iv) The Council has recently restructured. The adults' and children's social services departments have been brought together. There is now a regular forum for heads of services to discuss policy issues which are relevant to both areas.
33. Mrs B told my Investigator that she could not remember being offered a carer's assessment. The Care Manager said that when she assessed Miss B her mother did not appear to have any carer's needs and the caring relationship did not seem to be at risk of breaking down. The Care Manager commented that she would have offered Mrs B a carer's assessment, but she did not record this in Miss B's notes. Mrs B said that she and the Care Manager had a general discussion about respite care. The Care Manager told her that respite was available for Miss B in one of the Council's own residential homes. The Care Manager did not remember that discussion, but says that it may very well have taken place and she would have given that advice about council policy on respite care.
34. Miss B did not want to be away from the family home overnight. Instead, Mrs B wanted to make her own arrangements for Miss B's care if she needed to have a break. Mrs B understood from the Care Manager that the Council would not give a direct payment for respite care, only a place in one of the Council's residential homes. Mrs B is adamant that she would have accepted a direct payment if it had been offered. Mrs B was aware of a number of families who received a direct payment for respite care for their children and believed that this should be available for adults with disabilities. Mrs B thought that her daughter was entitled to a direct payment for respite care. This was one of the issues she raised in her complaint to the Council.

Findings – maladministration and injustice

The assessment of Miss B's needs

35. The arrangements set out in the Council's Transition Policy should have triggered a referral to adult social services before Miss B turned 18. Miss B had a statement of special educational needs when she was at school. This entitled her to additional learning support. When Miss B left school at 16 to attend college, this support did not transfer to college with her. Miss B's college tutors could have referred her to adult social services, but they did not. Children's services were not working with Miss B, so they could not refer her. The fact that Miss B did not get referred to adult social services as required by the Transition Policy was not the Council's fault. Her college tutors were responsible for referring her and they did not.
36. After Mrs B first got in touch in October 2009, it took children's services three months to refer Miss B to adult social services. There was no specialist transition worker in the adult learning disability team and this meant that no-one assessed Miss B when she turned 18 in January 2010, as required by law. The assessment did not start until April 2010 when the care manager took up the post of transition worker.
37. The law requires councils to assess people who are 18 or over and may need community care services. Assessing Miss B four months after her 18th birthday was maladministration. It denied her the opportunity to receive care services for which she was eligible. Her college placement was meeting only Miss B's eligible need for day time activities when she turned 18. Her other eligible needs for support to socialise in the evenings and for respite care were not being met.
38. There should have been a smooth and streamlined process of identifying all Miss B's needs, which needs were eligible for services and how they would be met. It took from April to August 2010 for the assessment listing Miss B's eligible needs to be authorised. Assessments should be finished in a reasonable time frame and taking four months was maladministration.

The support plan

39. It took from May to August 2010 for the Broker, acting for the Council, to produce a support plan. The plan then produced did not include all Miss B's eligible needs. The Broker forgot to include Miss B's need for support to socialise at weekends or evenings. This was maladministration.
40. The Broker drafted the support plan after Miss B decided to stay on at college an extra year. The support plan did not specify that Miss B only needed day time activities during college holidays. The lack of precision allowed for different interpretations and was maladministration.

41. Many suggestions were being canvassed for Miss B over summer 2010. It was not clear to the family what was merely a suggestion or possibility, as opposed to an authorised decision on services to meet her eligible needs. The Broker gave Miss B a copy of the support plan to sign. Neither the assessment nor the support plan specified that the funding and services were subject to management approval. Overall, the standard of written communication with the family was poor and was maladministration.

Respite care

42. The internal Council guidance issued to care managers in July 2010 restricting respite care to the Council's own residential care homes did not comply with the law. This was maladministration.

Mrs B's needs as a carer

43. Mrs B was not offered a carer's assessment, although she was providing a substantial amount of care for her daughter. The failure to offer an assessment or to consider her ability to continue to provide care was maladministration.
44. The Council did not offer a service that could provide Mrs B with a break from her caring responsibilities until the Head of Service responded to her complaint. That service – respite care for Miss B only in one of the Council's own residential homes – did not comply with the legal requirement to offer a direct payment. The failure to offer a direct payment for respite care was maladministration.

Injustice

45. The Council's failure to complete an assessment before Miss B was 18 caused her the injustice of losing services she was assessed as needing – support to socialise in the evenings and at weekends. The support plan that was eventually produced did not include services to meet these needs. This caused her the injustice of not having these services for a year.
46. The failure to communicate clearly the status of suggestions for possible services and of the support plan she was asked to sign caused Miss B's family the injustice of uncertainty, confusion and frustration.
47. The Council's internal guidance that respite care could only be offered in its own residential homes caused Miss B the injustice of being denied a direct payment and the choice to arrange her own respite care.
48. The Council's failure to offer Mrs B a carer's assessment deprived her of the opportunity to have her needs as a carer considered.

Agreed remedy

49. The Council has agreed to my recommendations that it should:

- Pay Miss B the equivalent of the cost of respite care that she missed out on and the cost of four hours a week of evening/weekend support from her 18th birthday to January 2011. This is £4240.
- Pay £250 to Mrs B to reflect her time and trouble in pursuing her complaint.
- Inform people eligible for respite care of their right to have a direct payment.
- Amend the form it uses for support plans to clearly show whether funding is provisional or has been approved.

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23 July 2012