

Report

on an investigation into
complaint no 08 020 110 about
Bradford Metropolitan District Council

27 July 2012

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Council.

The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Report summary

Subject

Mr A has severe learning disabilities. He lost the £180 a week he had from the Independent Living Fund when he moved into supported housing in 2001.

For seven years his brother, Mr H, strove to get answers about why this had happened and to get the payments reinstated.

Findings

The Ombudsman's investigation found that:

- Mr A lost his ILF payments because the Council, wrongly, told the ILF he was in residential care. At the same time, the Council was paying itself housing benefit for Mr A – this cannot be done for residential care accommodation:
- Mr H asked the Council to give his brother a tenancy agreement but it did not.
- By January 2005 the Council knew the ILF could reinstate payments to Mr A if he had a tenancy agreement or a written licence to occupy his supported housing. It did not give him either.
- The Council cannot produce any evidence that it tried to prove to the ILF that Mr A was living independently:
- Eventually in 2006 the Council transferred its supported housing to a registered social landlord. The new landlord gave Mr A an assured shorthold tenancy and in 2008 the ILF began to pay him again.
- The ILF rules had changed so Mr A got less than he'd had before moving in 2001.

Remedy

The total amount of ILF payments that Mr A lost because of the Council's maladministration comes to just over £100,000. The Council has agreed to pay Mr A this amount and to continue to pay him the difference between what he would have been entitled to and what he can now get. That is currently £142 per week

The Council also agreed to pay Mr H £5,000 in recognition of the extraordinary lengths he had to go to in pursuing justice for his brother.

The Ombudsman also recommends the Council should apologise to Mr A and Mr H.

Complaint

Mr H complains on behalf of his brother, Mr A, who lives in supported accommodation for people with severe learning disabilities. He complains that:

- Mr A lost his ILF (Independent Living Fund) funding when he moved into the supported accommodation 2001;
- this was because the Council wrongly said that Mr A was in residential care and so was no longer eligible for ILF;
- the Council then took too long to address his concerns.

Legal background

1. The Local Government Act 1974 says the Ombudsman should not investigate a complaint if it was not made within 12 months of the problem being known. It also gives the Ombudsman the power to decide this should not apply to a particular complaint.
2. I decided to investigate Mr A's move to supported housing and whether the Council's actions caused him to lose ILF. This is because the possible injustice to Mr H would be significant if the Council had acted wrongly. I also considered the difficulties Mr H met in progressing this complaint with the Council. From 2003 to 2006 Mr H wrote many letters to the Council, the ILF and other parties such as Mr A's doctors to raise his concerns about the loss of Mr A's ILF.

Background

3. In 2002 the Council, the North Yorkshire and York NHS Primary Care Trust (PCT) and the Bradford and Airedale PCT set up the Bradford District Care Trust (BDCT). It provides mental health and learning disability services to Bradford residents. From 2002 BDCT provided care and support to Mr A.
4. The Council only accepted Mr A had the right to complain to it about the actions of the Trust after he got legal help in 2006. Before this the Council and the Trust had wrongly said he should complain to the Healthcare Commission. The Council finally accepted his complaint in March 2008. A review panel completed the complaints procedure in February 2009.

Key facts

5. Mr A is 42 and has severe learning difficulties. Until 2001 he lived at home with his family. He received payments of £750 per month (about £180 per week) from the 1993 Extension Fund of the ILF.

6. In 2001 Mr A moved into supported living accommodation provided by the Council. He paid rent and was eligible for Housing Benefit. Officers from the Council's Social Services Department completed an application form for Mr A and sent it to the Council's Housing Benefit Department. The form listed Mr A's landlord as "*Social Services based at Olicana House in Bradford*". The Council did not give Mr A a tenancy agreement or a written licence. If he not been a tenant or a licensee the Council could not have paid Housing Benefit. People in residential care do not qualify for Housing Benefit.
7. In September 2001 Mr A's family realised that his ILF payments had stopped. They asked the Council to explain. They were told this was because Mr A was living in residential care. Mr H says this was never discussed with him or other members of the family before Mr A moved away from the family home. The Council says it did but has no evidence to support this. There are no records on the Council's files that suggest that any such conversation took place. The Council has since argued that Mr A was never in residential care.
8. The Council records do not show who told ILF that Mr A had moved into residential care. My investigator contacted the ILF to see if their records could help but their records for 2001 no longer exist.
9. The Council wrote to the family on 14 December 2001 confirming that Mr A's Housing Benefits claim had been submitted and '*if granted would then entitle Mr A to ILF when visiting his family*'. In fact, Housing Benefit was already being paid to the Social Services Department. The Council did not tell the ILF Mr A was getting Housing Benefit.
10. Mr H pursued his concern that his brother had wrongly lost his ILF funding. He applied to the ILF in 2002 to re-establish Mr A's ILF funding. ILF wrote to Mr H on 11 January 2002 and said that Mr A's ILF funding had been suspended because he had been placed in residential care. It said that if Mr A became a tenant before 15 April 2002 his funding would be reinstated.
11. In 2003 the Council applied to the Supporting People fund for financial assistance for Mr A. Supporting People was a programme that funded housing-related support services. Supporting People funds were not available for people living in residential care.
12. In 2003 Mr A's family applied again to the ILF. The ILF turned down this application. In a letter dated 14 January 2004 it said Mr A's Social Worker had stated that he was in residential care.
13. In 2004 Mr H contacted the Commission for Social Care Inspection [CSCI – the then regulator of residential care] to find out whether Mr A's home was registered as residential care. CSCI told him that it was not and never had been registered as residential care.

14. The Council says that at this time ILF were insisting on being provided with a copy of Mr A's tenancy agreement before further funding could be considered. It says formal tenancy agreements did not exist in such situations and there were legal problems in providing one. I have asked the Council to explain how it could have the power to create a tenancy but be unable to issue a tenancy agreement. It has been unable to explain.
15. In an attempt to resolve the matter, the Council says it explored the possibility of awarding a tenancy to Mr A. It says that, due to legal reasons, it became necessary to transfer Mr A's home to a new landlord to achieve this. This was completed in 2006.
16. The files show that between 2003 and 2008 Mr H pursued matters continuously. For example, he was in regular contact with the Council about its decision in 2003 to transfer Mr A's home to a registered social landlord. This did not happen until 2006 and through this time the files show Mr H regularly writing to the Council chasing progress.
17. It is clear from the Council's records of January 2005 that Mr H asked the Council to give his brother a tenancy agreement. The records show the Council recognised that if it provided Mr A with a written licence he would have access to ILF funding. It did not provide him with either a written licence or tenancy agreement.
18. In 2006 the Registered Social Landlord gave Mr A an Assured Shorthold Tenancy. This meant ILF reinstated his funding in 2008 but at £143.4 per week-£35 per week less than it had been paying him in 2001. The amount was lower because Mr A was now assessed under ILF's stricter 2006 regulations. In particular, it took Mr A's DLA into account when assessing his contribution. This was not the case in 2001.
19. In March 2008 the Council finally accepted Mr H's complaint. The Complaints Review Panel said in January 2009 it '*appreciated there was significant financial loss for A*'. It recognised the five years he had been pursuing matters did '*appear to be a long time*'. Despite these findings by the Panel it made no recommendations to remedy this injustice.
20. In April 2009 Mr H wrote to me and asked me to investigate his complaint.

My findings

21. There can be no doubt that Mr A has never been in residential care. Sometime in the autumn of 2001 the ILF had wrong information. The Council has told me it did discuss with Mr A's family that he would be going into residential care before he moved. The letter of 14 January 2004 from the ILF to Mr H is the only contemporaneous written record. It records Mr A's social worker as telling ILF that Mr A was in residential care. If the ILF had not been given this wrong information it would have continued to pay Mr A £750 per month. I find, on the balance of probability, the Council provided wrong information to the ILF.
22. The Council paid its Social Services Department Housing Benefit for Mr A continuously from July 2001. If Mr A has been in residential care he would not have qualified for Housing Benefit. It is clear the Council considered its Social Services Department to be Mr A's landlord.
23. The Council had, in 2003, applied to Supporting People for financial support for Mr A. Such funding is only available to people living independently in the community i.e. not in residential care. In applying for this officers at the Council must have thought Mr A was living in the community and not in residential care.
24. Mr A lost his ILF funding because of the way the Council described his accommodation to the ILF. The Council says it accepted he was a tenant but it could not produce a tenancy agreement.
25. There is conflict between Mr H's view that the Council did not provide additional support to his brother to compensate for the lost ILF funding and the Council's claim that it did. Despite having ample opportunity, the Council has not provided any evidence to support its claim. In the absence of such evidence, I prefer Mr H's evidence and find the Council did not provide extra support.
26. From 2001 the Council did not act in Mr A's best interests. He is a vulnerable adult who lost significant financial support from the ILF. The Council from the autumn of 2001 to April 2008 failed to advise the ILF it had stopped Mr A's payments based on wrong information and failed to supply him with a written licence or tenancy agreement that would have allowed the funding to be reinstated.
27. Since I began to investigate Mr H's complaint, the Council has accepted it was responsible for Mr A losing his ILF funding from 2001 onwards.

Remedy

28. I have calculated how much ILF Mr A would have received if he had not lost his funding in July 2001.
29. In June 2001 when he was living at home with his parents, Mr A received £750 per month or £180 per week. ILF say it is most likely that it would have continued to pay Mr A £180 per week for another two years. There would then have been a two-yearly review by July 2003 under the 1993 Extension Fund regulations.
30. Based on this information, if the Council had not given ILF wrong information, Mr A would have received:

£180 per week for two years up to July 2003. $£180 \text{ per week} \times 104 \text{ weeks} =$
£18,720(A)

31. I asked ILF what Mr A's payments have covered since 2008. This would show how Mr A's move to supported accommodation in 2001 would have affected his ILF funding. It also gives a clear indication of his underlying entitlement from July 2003 onwards. ILF tell me that Mr A's funding since April 2008 has been:

- 26 April 2008 to 10 December 2008 – £126.15 per week for 15 hours support of £14 per hour (as well as the support he was getting at his accommodation); less a financial contribution of £83.85 per week (because the 2006 rules take DLA income into account when the 1993 Extension Fund did not). The ILF says it has taken Mr A's DLA income into account from 2008.
- This means that from 26 April 2008 to 10 December 2008 because of the Council's maladministration Mr A lost £83.85 that he would otherwise have had for 33 weeks = **£2,767.05**.
- From 11 December 2008 to 17 April 2011 ILF paid Mr A £143.31 per week for 20 hours personal assistant support at £14 per hour and assessed that Mr A should pay £136.69 per week.
- This means that from 11 December 2008 to 17 April 2011 because of the Council's maladministration Mr A lost £136.69 that he would otherwise have had for 121 weeks = **£16,539.49**.
- From 17 April 2011 to the present ILF has paid Mr A £137.10 so he can get 20 hours personal assistant support at £14 per hour and assessed that Mr A should contribute £142.90 per week.

- This means that from 17 April 2011 to the present (up to 20 July 2012) because of the Council's maladministration Mr A has lost £142.90 that he would otherwise have had for 66 weeks = **£9,431.40**.
32. For the period 26 April 2008 to 20 July 2012 Mr A has lost **£9431.40 + £16,539.49 + £2,767.05 = £28,737.94(B)**.
 33. Mr A has lost this money because his reinstated claim could only be paid from the 2006 fund regulations. Those regulations take his DLA into account when calculating what financial contribution he should make. This would not have been the case if he had stayed on the 1993 Extension Fund. The Council caused the break in Mr A's ILF payments after 2001 by giving the ILF wrong information. If the Council had given correct information Mr A would still be eligible for payments from the more favourable 1993 fund.
 34. It is impossible to know exactly what the ILF would have decided at the review that Mr A would have had in 2003. I cannot see why a decision made then would have been different from the decision in 2008 that he should have 15 hours support. If this were the case and based on £14 per hour, Mr A would have been paid £210 per week from June 2003. He would have been paid under the 1993 fund and would not have had to make a financial contribution.
 35. Mr A is not being paid under the 1993 regulations because the Council failed to tell ILF that he lived in supported accommodation. If the Council had done this before the 2006 regulations came in, Mr A would have been paid under the more favourable terms of the 1993 Extension Fund regulations.
 36. On this basis I calculate that from June 2003 to 25 April 2008 (253 weeks) Mr A would have had 15 hours support at £210 per week = **£53,130(C)**.
 37. Together, the income Mr A has lost (A+B+C) totals **£100,587.94** to date. There can be no doubt that this is a significant injustice. I recommend the Council should pay this amount to Mr A to reimburse him for his losses. The Council has accepted this recommendation.

Distress/lost opportunity for Mr A

38. Mr H says that until he lost his ILF money payments in 2001 Mr A had enjoyed many social activities. Mr H says that when Mr A had ILF funding he used to go to a swimming club, to an evening disco every week, and on frequent trips to the seaside. Mr H says that Mr A still asks why he can't go the disco. A care planning review record of 29 October 2002 identified these activities should start again once ILF funding was regained. The manager of the home was to reapply for ILF. That did not happen.

39. Mr H says Mr A has lost many other opportunities over the past 10 years or so. I cannot quantify the impact on Mr A of:

- having his social activities severely reduced by the total loss of his ILF payments from 2001 to 2008;
- now having reduced funding for the social activities he had enjoyed up to 2001.

I think having the funding he lost restored to him is the appropriate remedy.

The effect of inflation

40. Mr H suggests the remedy for Mr A's injustice should take account of inflation increases the ILF would have been likely to have made from 2001 to 2008. He calculates this as £3,640. The payment I am recommending assumes that Mr A's lost ILF funding would have been at his current rate of £14 per hour from 2003 to the present. I have therefore decided not to recommend an extra sum for the effects of inflation.

Compensation for future losses

41. Mr H says that Mr A will continue to be financially worse off because the ILF cannot pay him from the 1993 Extension Fund. I have carefully considered this point. I am aware the Government is reviewing the ILF scheme and the nature of the scheme may change. Nevertheless, the Council's maladministration continues to cause Mr A to lose £142.90 per week that he would otherwise have had from the ILF. I recommend the Council pay him this amount from the date this report is issued until there is a change in either the ILF scheme as a whole or in the payments which Mr A would have been entitled to receive from the 1993 Extension Fund.

42. The payment for Mr A recommended in paragraph 37 should be administered by Mr H and made in such a way as to ensure Mr A does not lose any of his welfare benefits. This should be possible by a ring fenced account being set up by the Council that Mr H can draw on when needed.

Injustice to Mr H

43. The Council's maladministration also affected Mr H. He devoted the last eight years of his life to putting things right for Mr A. He has attended many meetings with Council officers and spent much time and energy writing letters and speaking with various people to try to get Mr A's ILF funding re-established. The time he has had to give to his brother's case has been at the expense of time with his two young sons and wife. The Council has agreed to pay Mr H **£5,000** in recognition of his time and trouble. This is a large amount but it reflects the

extraordinary lengths Mr H has had to go to before the Council would accept it acted wrongly.

Other steps the Council should take

44. I asked the Council to find out whether any other people who had similar living arrangements to Mr A lost out on ILF. The Council's enquiries have established that all other people who had similar living arrangements to Mr A were transferred from residential settings and so they did not lose their ILF funding. However, if because of my report other similar complaints come to light the Council should refer them to its Executive or a suitable Scrutiny Committee. That body should then decide whether to reimburse anyone who has lost funding.
45. An appropriate officer should apologise in person to Mr H and Mr A for the injustice caused by the Council.

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