

# Report

on an investigation into  
complaint no 11 009 273 about  
Birmingham City Council

**30 August 2012**

# Investigation into complaint no 11 009 273 about Birmingham City Council

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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.

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

### Adult care services

Mr N is 58 and has a severe learning disability, epilepsy and atypical autism. He also has poor vision and limited balance, co-ordination and dexterity. His epilepsy means Mr N has seizures of varying severity. He needs help with daily living including washing, dressing, using the toilet, eating and keeping safe.

Mr N and his family want him to remain living at home with his 83-year-old mother. They are close and his mother provides over 100 hours of care each week. Mr N's sister helps with his personal care needs, shopping, health appointments and takes him on holiday.

Mr N attends a day centre – arranged and paid for by the Council. He also gets funding from the ILF that he uses for help with his personal care, practical tasks, and support with leisure.

In October 2009 an assessor from the ILF and a Duty Social Worker from the Council reviewed Mr N. The ILF assessor decided that Mr N needed more help. She asked the Council to reassess him. She indicated the ILF would increase its funding by 25% (£104.25 a week) if the Council increased its funding by £35 a week.

The Council delayed for a year before beginning to reassess Mr N. A social worker produced a support plan for him in November 2010. In June 2011, 20 months after the ILF assessor's recommendation, the social worker reported to an internal Council funding panel. The report described Mr N's needs, the risks of not increasing his care, the importance of making a decision; that he was using 'assistive technology' and had no interest in moving to 'supported living'. Despite this, the Panel deferred a decision and asked the social worker to explore supported living and 'assistive technology' for Mr N.

Between September 2011 and February 2012 the Council agreed various temporary increases in Mr N's care and the NHS agreed to fund part of the costs. During this time Mr N's mother was admitted to hospital after falling while trying to care for him and Mr N broke his nose in a fall when there was no paid carer.

It took until February 2012, two years and four months after the ILF assessor's recommendations, before the support plan produced by the social worker for Mr N was fully funded.

The Ombudsman found the Council was wrong to have delayed funding the care that Mr N needed. As a result, Mr N did not get the services he should have had to a total value of £36,904 and lost ILF payments of £15,608.

The Council has paid Mr N £52,513 and £500 to his mother and sister in recognition of their time and inconvenience in trying to get adequate services for Mr N.

A voluntary organisation, Advocacy Matters, supported Mr N and his family by making many telephone calls and sending many emails to the Council. Without Advocacy Matters and the resolve of Mr N's family, the complaint would not have reached the Ombudsman and the injustice to Mr N would not have been remedied.

## **Finding**

Maladministration causing injustice.

## **Agreed remedy**

The Council has agreed to pay Mr N £52,513 being the value of the payments and services he would have had from October 2009 but for the maladministration. The Council has also agreed to pay £500 to Mr N's mother and sister in recognition of the time and inconvenience they had in trying to get adequate services for Mr N.

## **The complaint**

1. Mr N is 58 and has a severe learning disability, epilepsy and atypical autism. He also has poor vision and limited balance, co-ordination and dexterity. Mr N's epilepsy causes him to have seizures of varying severity. He needs help with daily living including washing, dressing, using the toilet, eating and keeping safe.
2. Ms D is Mr N's advocate. She complains on his behalf that Birmingham City Council:
  - took a year to assign a social worker to assess Mr N's needs; and
  - took almost another year to provide an increase in his care.
3. Ms D says that as a result Mr N and his family have not had additional support that they have desperately needed since October 2009 and Mr N has lost out on increased ILF funding.

## **Legal and administrative background**

### **The Chronically Sick and Disabled Persons Act 1970:**

- places a duty on the Council to inform itself of the need for making arrangements for disabled persons within its area;
- places a duty on the Council to arrange practical assistance in the home.

### **The National Health Service and Community Care Act 1990:**

- requires the Council to assess the need for community services of anyone who it appears may be in need of such services and to notify and invite assistance from health bodies;
- requires the Council to consider the outcome of the assessment and decide whether the individual's needs call for the provision of services.

### **The role of the Independent Living Fund (ILF)**

4. The ILF is a public body of the Department of Work and Pensions. It provides discretionary cash payments to disabled people so they can buy care from an agency or employ a Personal Assistant. The purpose of the payments is to enable disabled people to live in the community rather than in residential care.

## **Investigation**

5. Mr N wants to remain living at home with his 83-year-old mother. They are close and his mother provides over 100 hours of care each week. Mr N's sister helps

with his personal care needs, shopping, health appointments and takes him on holiday.

6. Mr N has been attending a specialist day centre for many years. The Council arranged and commissioned this service. In addition, the ILF (Independent Living Fund) provides Mr N with funding for 30 hours of care a week. He uses some of this money to pay an agency to help him each day with his personal care needs and other practical tasks. He uses the rest of the money to pay for support with leisure activities in the community.
7. There is no warning when Mr N might have an epileptic seizure. Even a mild seizure will cause him to fall to the floor. As a result he has had many injuries.
8. In October 2009 the ILF organised a scheduled two-yearly review of Mr N's funding and care arrangements. Mr N and his family, Ms D, an ILF Assessor and a Duty Social Worker from the Council attended the review. At the time Mr N was receiving ILF funding of £350.85 a week based on 30 hours care a week. The Council was funding five days a week at the day centre at a weekly cost of £285.
9. The ILF Assessor recommended that ILF funding should increase from 30 to 37 ½ hours a week. Her report records asking the Council to reassess Mr N because "*clearly more help is required*", particularly at night. More help would support Mr N and his mother to continue living together at home.
10. The ILF wrote to the Council on 12 October 2009. It confirmed that for ILF funding to increase the Council had to fund to at least £320 a week.
11. Ms D says over the following 12 months, she and Mr N's sister made regular calls to the Council's Duty Social Work Team to chase progress. The Council says it only received the three contacts on behalf of Mr N in January, September and October 2010.
12. The ILF criteria changed in June 2010. It could no longer increase funding for the additional 7 ½ hours a week it had recommended in 2009.
13. In October 2010 a Social Worker began an Individual Budget assessment of Mr N. After this the most significant events were:

Date	Event
<b>8 November 2010</b>	Social Worker completes Individual Budget assessment.
<b>18 November 2010</b>	Social Worker completes a checklist with Mr N's NHS Community Nurse to see if Mr N should have a full Continuing Health care assessment. This would find out whether Mr N is eligible for a care package provided outside hospital arranged and funded solely by

	the NHS, for people with lasting health care needs (Continuing Healthcare).
<b>26 November 2010</b>	Social Worker completes Mr N's Support Plan. This document relates to Mr N's Individual Budget and sets out the number of hours required to meet Mr N's care needs and the cost.
<b>25 January 2011</b>	The NHS Continuing Healthcare Team initially assessed Mr N for Continuing Healthcare and concluded his care should be fully funded by the NHS. The Council says a later Continuing Healthcare assessment determined Mr N was not eligible for fully funded Continuing Healthcare but that his care package should be jointly funded by the NHS and Council. The Council has provided documentary evidence to support this.
<b>13 April 2011</b>	Ms D complains to the Council about the time it is taking to increase Mr N's care package.
<b>1 June 2011</b>	The Continuing Healthcare Team provides the Social Worker with a copy of an application form for 'joint solutions' (where the Council and NHS jointly fund a care package).
<b>2 June 2011</b>	A senior Manager within the Council decided that 65% of Mr N's needs were social care related and 35% were health related.
<b>7 June 2011</b>	<p>Social Worker applies to the Council's Funding Panel for Mr N to have 47 hours home care a week plus a 10 hour 'sleep in' service each night. The sleep in service provides a carer to help Mr N to get ready for bed, to sleep at Mr N's home and be available to support Mr N should he need assistance during the night. The Social Worker's report records:</p> <ul style="list-style-type: none"> <li>• Mr N's needs as critical;</li> <li>• He was already using Assistive Technology;</li> <li>• Mr N had no interest in Supported Living.</li> </ul> <p>It describes the consequences of deferring a decision:</p> <ul style="list-style-type: none"> <li>• Mr N has frequent seizures – up to 28 in three hours;</li> <li>• he needs 24 hour care;</li> <li>• it is a risk for Mr N to live in his house without support from carers;</li> <li>• Mr N's elderly mother cannot provide enough care to him;</li> <li>• Mr N will be forced to move into a care home if he does not get additional support.</li> </ul>
<b>16 June 2011</b>	The Council's funding Panel deferred the request and asked the Social Worker to explore other options such as Supported Living accommodation and Assistive Technology for Mr N.
<b>22 July 2011</b>	The Social Worker asks to carry out a Mental Capacity Assessment of Mr N. The request was withdrawn when Ms D questioned the purpose.
<b>9 September 2011</b>	Meeting between the Council and Mr N and his representatives to plan Mr N's care package. Mr N confirms he wants to live with his family.

<b>12 September 2011</b>	The Council's Funding Panel agrees to temporarily fund an extra 21 hours of Direct Payments a week until it had reassessed Mr N again.
<b>10 October 2011</b>	Meeting between the Continuing Healthcare Team, the Council and Mr N's representatives: Mr N's needs were deemed to be social rather than health related.
<b>14 October 2011</b>	Mr N's mother falls while caring for Mr N and went into hospital with an injured back. Ms D tells the Council.
<b>17 October 2011</b>	The Council's Funding Panel agrees to fund the 10 hour sleep in service recommended by the Social Worker on 7 June.
<b>25 October 2011</b>	Mr N's family tell the Council Mr N is rising several times during the night. The agency providing the sleep in service replaces this with a 'waking support' service. This is to provide a higher level of support to Mr N throughout the night because he is getting up 4-5 times each night.
<b>29 November 2011</b>	The agency threatens to withdraw the waking support service if the Council does not agree to pay for it. The Council agrees to temporarily fund this service.
<b>6 January 2012</b>	Meeting between the Continuing Healthcare Team, the Council and Mr N's representatives: Mr N meets 'joint solutions' criteria. The NHS agrees to fund a proportion of Mr N's care. At the date of writing this Report Mr N's care package has been funded solely by the Council.
<b>17 February 2012</b>	The Council agrees to temporarily fund another 10 hours of Direct Payments a week. Mr N now has the care package his Social Worker set out in his Support Plan of 26 November 2010.

14. The Council recorded three contacts on behalf of Mr N during the 12 months. His advocate and family say they made many more. I do not need to resolve the difference between the two accounts. The Council admits it had three reminders and whether someone's care needs are assessed should not depend on how many or how often professionals contact the Council.
15. In the seven months between completing the Individual Budget assessment on 8 November 2010 and making the budget application to the Council's Funding Panel on 7 June 2011, the Social Worker liaised with the Continuing Healthcare Team to see if Mr N was eligible for Continuing Healthcare funding.
16. The Council says it had to wait four months for Mr N's NHS Community Nurse to decide whether he was eligible for Continuing Healthcare funding. The Council says the Social Worker chased the Community Nurse eight times for the decision.
17. When the Social Worker applied to the Council's Funding Panel for additional care for Mr N the Panel did not approve additional funding. Instead, it asked the Social Worker to explore other options like Supported Living and Assistive



Technology. It ignored the information it had that Mr N did not want to move from his mother's home and already had assistive technology. There is no evidence that it considered the extent of Mr N's needs and the risks to him and to his elderly mother if services were not increased.

**The Council's comments:**

18. The Council says:
  - service providers and other professionals usually get in touch when a family is not coping;
  - Mr N's day centre, the Community Nurse, Mr N's mother or his doctor did not get in touch between October 2009 and October 2010;
  - it did not assign a social worker sooner because Mr N was already receiving a substantial care package and because of the low level of contact on his behalf.
19. The Council acknowledges that it should have arranged to reassess Mr N sooner. It has offered its "*unreserved apologies*" for not assigning a social worker sooner.
20. The Council does not accept that its delay in assessing Mr N and in increasing its funding was responsible for Mr N losing funding from the ILF. It said it had no control over the change that now prevents ILF from increasing its awards.
21. The Council says if it had assessed Mr N in October 2009 it is likely it would have provided him with a "tuck-in" service of 3 ½ hours a week. This service would help Mr N to get ready for bed each night. This would have cost £49.84 a week.
22. The ILF Officer attached to Mr N's case has confirmed the ILF's position. The reason the ILF did not increase Mr N's funding was because the Council did not confirm it had increased Mr N's funding above the £320 threshold.
23. The Council eventually agreed Mr N should have 21 hours additional care a week. This was substantially less than the Social Worker assessed in November 2010. In the meantime, Mr N's mother was injured trying to help Mr N and admitted to hospital overnight. Mr N fell at home and broke his nose. These accidents happened at times of the day when Mr N did not have a service. The Council says it has no record of Mr N sustaining a broken nose so cannot tell whether this was before additional services were provided at night.
24. The Council increased Mr N's care piecemeal. It agreed temporary additional care in October 2011, November 2011 and February 2012.

## **Findings**

### **The Council delayed in assigning a social worker**

25. From 2 October 2009 the Council knew Mr N and his mother were having difficulties. The ILF told the Council that more help was clearly needed and asked the Council to reassess Mr N. The Council did not respond for twelve months. That was maladministration.

### **The Council delayed in providing services**

26. Almost two years after the ILF told the Council Mr N needed more care, it temporarily increased his weekly care by 21 hours. The Council was justified in looking for alternative funding and is not responsible for the NHS processes and decisions. However, the Council had a statutory duty to meet Mr N's assessed eligible needs. It should have arranged services or funding for Mr N while joint funding and Continuing Healthcare funding were being considered. Its failure to do so was maladministration.

### **Loss of ILF funding**

27. In October 2009 the ILF was willing to increase Mr N's funding to 37 ½ hours a week. It could not do so until the Council funding was at least £320 a week. The Council knew this. If the Council had provided the "tuck-in" service in October 2009:
- its funding would have been more than £320 a week;
  - Mr N would have been eligible for increased ILF funding;
  - on the balance of probability, I find the ILF would have paid for an additional 7 ½ hours a week (£104.25).
28. The Council's delays have caused Mr N to lose ILF funding of £104.25 a week.

### **Further delays in service provision**

29. Mr N did not get the level of care specified in his Support Plan of November 2010 until February 2012. That was maladministration.

## **Injustice**

30. The Council's failings put Mr N's mother and sister to unreasonable time and inconvenience in pursuing an increased and permanent care package for Mr N.
31. As a result of the Council's maladministration Mr N waited almost two years for any increase in the number of hours of care. During this period Mr N's mother lived in the fear that her son would be taken away from their home and moved into residential care. Mr N fell and broke his nose and his mother was injured providing him with care the Council later accepted it should have arranged and funded.
32. The Council's delays caused Mr N to lose Direct Payments and services that he should have had to a total value of £36,904:
  - Between 26 November 2010 and 12 September 2011, 21 hours of Direct Payments a week to the value of £9,437.
  - Between 26 November 2010 and 17 October 2011, 70 hours a week sleep-in support. The value of this service is £20,453.
  - Between 26 November 2010 and 17 February 2012, 10 hours of Direct Payments a week to the value of £7,014.
33. The Council's delays also caused Mr N the injustice of losing £104.25 a week ILF funding from October 2009 – a total of £15,608. This injustice ended once the Council increased his funding in September 2011.
34. Mr N and his family suffered unnecessary strain during these events. This and the time and inconvenience they have experienced is an injustice to them.

## **Recommendations**

35. The Council should pay Mr N £52,513 being the value of the payments and services he would have had from October 2009 but for the maladministration.
36. The Council should also pay £500 to Mr N's mother and sister in recognition of the time and inconvenience they had trying to get adequate services for Mr N.
37. To the Council's credit it has already made these payments to Mr N and his family.

## **Comment**

38. Ms D, who works for Advocacy Matters in Birmingham, supported Mr N and his mother and sister to pursue their complaint against the Council from October 2009 onwards. She wrote many letters and emails and made phone calls on their behalf as it seemed clear to her that they had not been treated fairly. I acknowledge the resolve shown by Mr N's family and Ms D's determination in pursuing this matter for two years. Had it not been for their efforts it is unlikely the injustice caused to Mr N by the Council's failings would have been remedied.

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**August 2012**