

Report by the Local Government Ombudsman

**Investigation into a complaint against
Knowsley Metropolitan Borough Council
(reference number: 13 000 338)**

9 June 2014

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

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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.

Key to names used

Miss A	The complainant
Mr X	Miss A's son
Mr Y	Mr X's co-resident

Report summary

Adult Social Care

Miss A complains that the Council has failed to provide an adequate service for her adult son, Mr X, who has autism with severe learning disability and challenging behaviour.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council:

- reviews Mr X's current community support assessment and support plan in his new placement. The Council should ensure both assessment and resulting support plan are sufficiently detailed and comply with government guidelines. A review timetable should be set up to include a further three month review and annual reviews after that. Given the history of the case, the Council should be particularly careful to assess whether circumstances require a review at any other point;
- considers whether there are any deprivation of liberty issues arising from Mr X's current placement and, if so, addresses them according to the Deprivation of Liberty Safeguards Code of Practice;
- reminds its staff of the importance of
 - producing support plans;
 - carrying out reviews;
 - carrying out formal capacity assessments; and
 - ensuring their decisions on behalf of people lacking capacity are clearly made in those people's best interests.

The Council should provide evidence to the Ombudsman within three months of the final report that these reminders have been carried out.

- makes a payment of £500 to Mr X's father to be spent on activities or equipment for Mr X to acknowledge the uncertainty about whether the Council's faults caused him avoidable distress; and
- pays Miss A £500 to acknowledge the uncertainty about whether the Council's faults caused her avoidable distress.

Introduction

1. Miss A complains that the Council has failed to provide an adequate service for her adult son, Mr X, who has autism with severe learning disability and challenging behaviour.

Legal and administrative background

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, we have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. Decisions made on behalf of a person who lacks capacity must be made in that person's best interests. (*Mental Capacity Act 2005, section 1(5)*)
4. When supporting a person who lacks capacity, officers of the Council have a duty to have regard to the Code of Practice on the Mental Capacity Act 2005 (*Mental Capacity Act 2005, section 42(4)(e)*)
5. Government guidance on eligibility for adult social care gives guidance on support planning and reviews. ("*Prioritising Need in the Context of Putting People First: A whole system approach to eligibility for social care*" *Guidance on eligibility criteria for Adult Care Services, England 2010*)

How we considered this complaint

6. This report has been produced following the examination of relevant files and documents and telephone calls with the complainant.
7. 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.

Investigation

Background

8. Miss A's son, Mr X, is in his 20s. Mr X needs 24 hour 2:1 care for all his personal and practical support. His communication is limited through lack of speech and his limited understanding of what other people say. His unpredictable challenging behaviour puts him and other people at risk.
9. In 2009 Mr X moved from residential school to supported accommodation. In February 2010 Mr X moved to different supported accommodation where he stayed until December 2013. He then moved to a residential placement.

10. Mr X's supported accommodation from February 2010 was a house owned by a social landlord. Initially, Mr X was the sole supported resident there. He had 24 hours a day support from a support agency. He stayed with his parents one night each weekend. Mr X regularly caused damage to the house through outbursts of aggressive behaviour. The Council arranged for the soft plaster walls to be strengthened to some extent to cope with this.

August 2011 to April 2013 at Mr X's supported accommodation

11. The Council moved a second supported resident, Mr Y, into the house in August 2011. There is evidence that at the time Miss A thought this was a good idea. There were various discussions about whether Mr Y would be a suitable co-resident but no meeting to determine if this was in Mr X's best interests.
12. Miss A was concerned that Mr X's life began to deteriorate soon after Mr Y moved in. She says members of the support agency's staff who worked well with Mr X were suspended. She says Mr X's activities stopped and he ended up in his room all the time to get away from Mr Y. Miss A says Mr X would retaliate against Mr Y's behaviour toward him. She says in safeguarding reports staff always reported Mr X as the perpetrator of attacks and Mr Y as the victim, rather than seeing Mr Y as the cause of Mr X's behavioural problems.
13. The Council says the arrangement worked initially. The Council's records show some concerns about Mr X's behaviour after August 2011 but the records do not suggest a significant change in behaviour. The records show that in March 2012 the support agency said it was going to refer Mr X to the Council's Positive Behaviour Support Service (PBSS).
14. The Council carried out a review of Mr X's support in March 2012.
15. From mid 2012 there are records which support a clear deterioration in Mr X's behaviour. He attacked Mr Y, support staff and his parents. In July he left his house unaccompanied and attacked a member of the public. He caused further damage to the house.
16. At a safeguarding meeting about the July incident officers agreed measures to secure Mr X's house better, take the house key from Mr X and increase staffing at least temporarily. These actions were to ensure Mr X did not leave the house unaccompanied again. At the meeting one of the agency staff said he believed Mr X's activities were limited because of restricted funds. Staff suggested a changed programme of activities to ensure Mr X was active and healthy but this needed extra funding. The Council says it is not aware that the agency changed Mr X's programme of activities.
17. After the July incident Miss A was concerned that support staff may be giving Mr X too much medication in response to his behaviour and this made Mr X feel worse. She had concerns about the restraint used by staff. She wanted Mr Y to move out because she felt he was the source of at least some of Mr X's problems. She raised these concerns with support staff who reported them on to the Council.

18. By August the PBSS had not yet had any involvement. In late August there was a medication review. Mr X's consultant authorised continuation of the same medication regime. The Council's records include a note that the consultant could see there were many different things which might be affecting Mr X, such as his environment, mix of residents, lifestyles, finance and new staff.
19. At the end of August the Council referred Mr X's details to an alternative support provider. That provider completed an assessment of Mr X's needs in October. The provider suggested an alternative property for Mr X to move to with suitable support. The current support provider and Miss A had concerns about how suitable the property was. In March 2013 Mr X's social worker asked the alternative support provider if there were any other placements available but none came up. The Council says there is a lack of suitable accommodation near enough to Mr X's family.
20. Towards the end of 2012 support staff raised safeguarding alerts when Mr X attacked Mr Y. In the alerts staff said the Council had acknowledged the situation at the house as unsuitable due to the incompatibility of the residents and the likelihood of Mr X assaulting Mr Y. However, at the same time, the Council recorded the manager of the supported accommodation as saying he thought Mr X's problems arose from his environment, not the person he lived with.
21. In November Miss A showed council officers a letter from a former member of staff at the residential school Mr X had attended. The former staff member said Mr X and Mr Y had never got on and Mr X's social worker knew this. She said she did not understand why the move was made and it was the worst thing anyone could have done. The Council says this is not the view of senior staff at the school but it would have investigated the view had it been given while the Council was considering whether to move the two men in together.
22. A professionals' meeting was held in December 2012. The action agreed was to move Mr Y as soon as possible to safeguard him from Mr X's behaviour. The professionals also agreed a community nurse and an officer from PBSS should meet Mr X's support staff to review, and update them about, issues of behaviour and communication.
23. In early 2013 the Council put a covering on Mr X's bedroom window in response to complaints from neighbours he had indecently exposed himself. Miss A was concerned the covering was black and dense and, if he was in his room, Mr X would not be able to tell night from day. She says support staff sometimes locked Mr X in his room. The Council says the covering was opaque and let light through. The Council also says Mr X could not be locked in the room by others but could lock himself in to have some privacy.
24. Records show the PBSS were to start work with Mr X in early 2013. However the service wanted to be clear there were no medical issues behind Mr X's behaviour before starting any behavioural intervention. In early 2013 staff made a number of incident reports which described Mr X's attacks on Mr Y as safeguarding incidents. In February and March they reported five instances of having to use physical restraint procedures in response to Mr X's behaviour.

25. At the end of March 2013 Mr X was taken from his parents' house to hospital under Section 2 of the Mental Health Act 1983 for assessment. He had been behaving aggressively and had harmed himself. At this point Miss A was referred to the community mental health team because she was extremely distressed at what was happening. Mr Y moved to different accommodation while Mr X was in hospital. Mr X left hospital at the end of April and returned to the supported accommodation.
26. Once Mr X had been in hospital and Miss A received mental health services, they were each given a mental health advocate. The advocates continue to work with Mr X and Miss A.
27. Miss A complained to the Ombudsman at the point Mr X went to hospital. Her initial concern was that Mr X's physical and mental health had deteriorated largely because of the Council's decision to let Mr Y share the house with Mr X. She said Mr X and Mr Y were incompatible and should not have been allowed to live together. She said support staff could not cope with Mr X so resorted to using medication which made Mr X feel worse. Miss A said her own mental health had deteriorated from watching her son suffer and she was using community mental health services.
28. Mr X moved to his current residential placement in December 2013.

Support plans and their review

29. The Council had a support plan for Mr X while he was at residential school. There was no support plan for when he moved to supported accommodation until April 2013. The April 2013 support plan is brief. It sets out that Mr X needs two support workers day and night. It sets out some of his needs, his likes and dislikes. It says the day time support is to enable him to participate in an activity of his choice.
30. For the period under investigation there is a record of one formal review, in March 2012. The review does not refer to a support plan. The review does not refer to how sharing with Mr Y was going or any increase in behaviour problems. One of the actions to be undertaken was for the support agency to provide the assessor with a copy of a support plan and timetable for Mr X. The assessor recorded the outcome of the review as "No new services intended or started". The assessor recorded the main need as "Personal care/wellbeing" and the main objective as "Activities of daily living."
31. Government guidance on eligibility for adult social care says councils should agree a written record of the support plan with the individual. The guidance also says a support plan should include a note of the eligible needs identified during assessment, agreed outcomes and how support will be organised to meet those outcomes and a risk assessment including any actions to be taken to manage identified risks.

32. Councils should regularly review support plans. The guidance says, amongst other considerations, a review should establish whether the outcomes in the support plan are being met and consider whether the person's needs and circumstances have changed. The guidance says there should be an initial review within three months of help first being provided or major changes to current support plans. After that, reviews should be held at least annually and more often if necessary.

Issues relating to Mr X's capacity

33. The record of the review in March 2012 referred to Mr X lacking capacity to contribute to the review but there is no record of any capacity assessment being carried out or a review of an existing assessment. The April 2013 support plan refers to Mr X being able to make some simple choices. It says on a day to day basis those who know Mr X well will make decisions for him. The support plan also says, for a decision such as moving accommodation, Mr X's capacity would need to be assessed and, if appropriate, a best interest meeting planned.
34. The Council says it considers Mr X does not have capacity to decide where he might live and who he might live with. However, for the period under investigation, the Council has provided no evidence of a capacity assessment on either decision or any reviews of previous assessments.
35. The Code of Practice on the Mental Capacity Act 2005 (the Code) says that, generally, capacity assessments should be related to specific decisions. The Code says where someone has an ongoing condition which may affect capacity, capacity should be reviewed from time to time. The Code says capacity should always be reviewed whenever a care plan is being developed or reviewed, at other relevant stages of the care planning process, and as particular decisions need to be made. The Code says preparation of a care plan should always include an assessment of the person's capacity to consent to the actions covered by the care plan, and confirm that those actions are agreed to be in the person's best interests.
36. Once someone is assessed as lacking capacity to make a particular decision, that decision must then be made on their behalf, in their best interests. Best interest meetings are one way of doing that but are not necessarily essential. However, the Code says staff involved in the care of a person who lacks capacity should ensure a record is kept of the process of working out the best interests of that person for each relevant decision.
37. The first best interest meeting on record since Mr X moved into his previous house was in September 2013. At that meeting the decision was to find an alternative service provider, something that had been under discussion for a year by then. The Council has provided no records to show best interest processes were carried out earlier.

38. Support staff took a number of actions which restricted Mr X's freedom. In response to Mr X's behaviour staff gave him medication and also used physical restraint procedures. Mr X was never meant to leave the house unaccompanied and, after he did, in July 2012, staff took extra measures to stop it happening again. The Council has provided no records of capacity assessments or reviews relating to Mr X's ability to make decisions about these issues. The Council has provided no clear records showing Mr X's best interests were considered properly when decisions were made about restricting his freedom.

Conclusions

39. The Council, support agency and other professionals put considerable effort into Mr X's supported placement. But there was an overall failure by the Council to underpin this with the planning, review and other processes designed to protect vulnerable people such as Mr X and Miss A.

Support plans and their review

40. Between January 2011 and April 2013 the Council is at fault for failing to have a support plan for Mr X relevant to where he was living. The lack of a support plan meant an annual review in March 2012 could not be carried out properly.
41. The Council is at fault for not carrying out annual reviews. While Mr X was at his supported accommodation there was only one documented annual review and it did not establish whether the outcomes in the support plan were being met or whether Mr X's needs and circumstances had changed.
42. There were other key points where a review was needed because of changes in circumstances. The Council is at fault for not reviewing:
- after Mr X started to share his accommodation with someone else;
 - when measures were introduced in summer 2012 which restricted Mr X's freedom;
 - when a safeguarding meeting in summer 2012 heard concerns about how Mr X's activities might be restricted by financial considerations and the meeting considered Mr X needed alternative provision; and
 - once it became clear that Mr X was regularly attacking Mr Y and there were concerns about their compatibility.

Issues relating to Mr X's capacity

43. Throughout the period concerned the Council is at fault for failing to formally assess Mr X's capacity to make specific decisions. The Council failed to follow correct procedures to ensure actions were taken in Mr X's best interests.

Injustice

44. The injustice caused to Mr X and Miss A is the uncertainty about whether, if the proper planning and review processes had been followed, Mr X would still have experienced the significant distress he suffered while in his supported accommodation.

45. If the Council had carried out its support planning and review responsibilities properly, Mr X's changing circumstances and behaviour may have been addressed sooner. They may also have been addressed more effectively with less distress caused to him and his family. Had the Council properly considered Mr X's lack of capacity and the need to make important decisions formally in his best interests different decisions may have been made. These could have affected where Mr X lived and who he lived with. The timing of such decisions may have been different. Better consideration of the restrictions on Mr X's freedom might have led to swifter decisions about the appropriateness of Mr X's placement.

Decision

46. There was fault by the Council causing injustice to Mr X and Miss A.

Recommendations

47. We recommend the Council:

- reviews Mr X's current community support assessment and support plan in his new placement. The Council should ensure both assessment and resulting support plan are sufficiently detailed and comply with government guidelines. A review timetable should be set up to include a further three month review and annual reviews after that. Given the history of the case, the Council should be particularly careful to assess whether circumstances require a review at any other point;
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