

# Report by the Local Government Ombudsman

## Investigation into a complaint against Herefordshire Council (reference number: 15 019 902)

**15 August 2016**

## 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.

# Investigation into complaint number 15 019 902 against Herefordshire 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.

## Key to names used

Mr B	The complainant
Mrs D	The representative and complainant's mother
Social worker X	The allocated social worker

## Report summary

### Adult social care

Mrs D, on behalf of Mr B, complains the Council has failed to move Mr B to a suitable care home even though it assessed he needed to move 11 months ago. She also complains he has not received his speech and language therapy as detailed in his care plan.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice caused the Council has agreed, within three months to:

- apologise to Mrs D and Mr B for the fault causing injustice identified in this report;
- make £2000 available for Mr B to spend on activities he would enjoy or possessions he would like. What this should be spent on should be decided at a best interests decision meeting;
- pay Mrs D £500 in recognition of the time and trouble she has experienced as a result of the faults identified; and
- provide training for social workers on the importance of ensuring they keep accurate case notes, and in using the vacancy management group and the 'move on' support service.

## Introduction

1. Mrs D complains the Council has failed to move Mr B to a suitable care home even though it assessed he needed to move 11 months previously. She also complains he has not received his speech and language therapy as detailed in his care plan.
2. Mrs D believes this has resulted in Mr B spending large amounts of time in his room and refusing to see any visitors. She thinks this has impacted on his progress and he did not get the services and care he was entitled to.

## Legal and administrative background

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. The Ombudsman may investigate complaints from a person affected by the matter in the complaint, or from someone the person has authorised in writing to act for him or her. (*Local Government Act 1974, sections 26A or 34C*).

## Adult social care law and guidance

5. The Care Act 2014 gives local authorities a legal responsibility to provide a care and support plan for adults who are eligible for support. The care and support plan should consider what the person has, what they want to achieve, what they can do by themselves with existing support and what care and support may be available in the local area.
6. Section 27 of the Care Act 2014 gives an expectation that local authorities should conduct a review of a care and support plan at least every 12 months. The authority should consider a light touch review six to eight weeks after agreement and signing off the plan and personal budget. It should carry out the review as quickly as reasonably practicable in a timely manner and proportionate to the needs to be met. As well as the duty to keep plans under review generally, the Act also puts a duty on the local authority to consider a plan if the adult or person acting on the adult's behalf asks for one.
7. The Care and Support Statutory Guidance, brought in to support the Care Act, states that a person must have a right to choose between different providers. This choice must not be limited to those settings or individual providers with which the local authority already has contracts with or within the local authority's geographical boundary.
8. Local authorities have specific duties to shape and facilitate the market of care and support services locally, including ensuring sufficient supply. As a result, a person should not have to wait for their assessed needs to be met. However, in some cases, a short wait may be unavoidable, particularly when a person has chosen a particular setting that is not immediately available.

9. In such cases, the local authority must ensure that in the interim adequate alternative services are provided and set out how long the interim arrangement may last for. In establishing any temporary arrangements, the local authority must provide the person with clear written detail of the arrangements as part of their care and support plan. As a minimum this should include the likely duration of the arrangement, information on the operation of the waiting list for their preferred setting alongside any other information that may be relevant.
10. The Mental Capacity Act 2005 is the framework for acting and deciding for people who lack the mental capacity to make particular decisions for themselves. The Act (and the Code of Practice 2007) describes the steps a person should take when dealing with someone who may lack capacity to make decisions for themselves.
11. A key principle of the Mental Capacity Act 2005 is that any act done, or any decision made on behalf of a person who lacks capacity must be done in that person's best interests.

## How we considered this complaint

12. This report has been produced following examination of the documents the Council provided in response to our enquiries.
13. 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

### Residential care

14. Mr B has a number of medical conditions, including autism, resulting in him needing full time residential care. This is fully funded by the Council. The Council has assessed Mr B's mental capacity and decided he does not have capacity to make decisions about his care. Mr B's mother, Mrs D, is involved in making best interest decisions about Mr B's care alongside the Council.
15. In April 2015, staff at Mr B's care home (care home 1) became increasingly concerned about his behaviour. This included incidents such as him walking outside of the care home without supervision. In response, the Council applied for emergency funding to increase his one to one support on a temporary basis.
16. The Council also called a best interests decision meeting to decide whether Mr B should remain at care home 1. Mrs D, social worker X and the care home manager attended this meeting in June 2015. At the meeting, all parties agreed that care home 1 was not the best placement for Mr B. The meeting recommended Mr B should move to another care home with less people, more autistic friendly stimuli and one that is more able to support his autism. The meeting decided this move should take place over the medium term,

rather than an urgent move which could result in a temporary placement, because it was the least restrictive and most appropriate way to meet Mr B's needs.

17. Following this meeting the Council said it regularly monitored potential vacancies at other care homes and was in contact with the vacancy management group. The Council runs the vacancy management group and it maintains a list of all the care homes in the local area and whether they have any vacancies. This information is held on a vacancy sheet. The Council can also refer a service user to the 'move on' team which supports social workers in identifying vacancies and making referrals. We have not seen any evidence to support the Council's assertion it was pro-actively seeking vacancies in this initial period following the decision to move Mr B.
18. Between July and October Mrs D contacted the Council on several occasions asking if there was any progress on Mr B's case. The Council informed Mrs D it had not made any progress because of workload difficulties. She was becoming increasingly concerned about the amount of time Mr B was spending in his room because care home 1 was not meeting his needs. During this period Mrs D completed her own research into potential placements and identified a new home (care home 3) which had just opened. On 17 July 2015 she told the Council this would be her preferred choice because it was nearer to her home and specialised in caring for autistic adults. The Council did not acknowledge this email but recorded it on its system in September 2015 as "previous family views".
19. In October the Council identified a possible suitable placement (care home 2) in its area and contacted Mrs D to ask if she would like to visit the home. Mrs D raised concerns about the location explaining it was in close proximity to Mr B's birth father who had previously abused Mr B and Mrs D. The Council also responded to Mrs D's concerns about Mr B spending large periods of time in his room. It told Mrs D it had spoken to care home 1 who explained Mr B does spend time in his room but he also engages in activities when he wants to.
20. Mrs D and the Council visited care home 2 in December 2015 and decided it was suitable for Mr B's needs. It also had a room available. However, this room was filled by another service user on a temporary placement. There is no evidence the Council took any action after visiting care home 2 to secure the available room. After finding out the room was no longer available, the Council added Mr B to the waiting list.
21. In January 2016 Mrs D phoned the Council asking for an update. It explained it had placed Mr B on the waiting list and had a hold on the next available place. It said it was in contact with care home 2 to find out when the temporary resident was likely to be moving out. Four weeks later the temporary resident left care home 2 but the room was not offered to Mr B. In this period there is no evidence that the Council contacted care home 2 or pro-actively monitored the vacancy.
22. Following the loss of this potential placement, the Council told Mrs D it did not have the capacity to search for an alternative care home because of workload pressures. There is no evidence the Council took any action to pursue other residential care placements until April 2016 when it referred Mr B to a couple of care homes, including care home 3.

23. Mrs D complained to the Council in March 2016 because she was unhappy Mr B still resided at care home 1, nine months after the best interests decision. In response, the Council admitted it had not progressed Mr B's case as it should have because of staffing and workload difficulties. It said it had made changes to the social worker X's workload to allow him to focus on his caseload rather than duty responsibilities. Mrs D remained dissatisfied with the Council's response and complained to us.
24. In May 2016 the Council's funding panel considered the suitability of care home 3 for Mr B. It found that care home 3 did meet his needs and agreed to start Mr B's gradual transition to his new placement within four weeks. Mr B moved into care home 3 on a permanent basis on 27 June 2016.

### **Speech and language therapy**

25. In response to Mr B's deterioration in behaviour in April 2015 the Council reviewed the speech and language techniques care home 1 was using. It found that the home was not following the speech and language recommendations previously made by the NHS in 2013. The Council said the "period of increasing displays of troubled / challenging behaviours is likely to be attributed to confusion and lack of trust...the staff team appear to want this to work for Mr B and need the tools to enable them to do this".
26. The Council asked for a speech and language therapist to complete a new assessment in June 2015. The therapist said that the existing strategies should remain in place. She confirmed staff at care home 1 should:
  - use short simple sentences simultaneously with sign and natural gesture;
  - use a slow and relaxed pace with pauses;
  - spend two 20 minute sessions per day interacting with Mr B on a one to one basis; and
  - use symbols to aid communication three times per week.
27. Following this assessment the Council reviewed Mr B's support plan. This confirmed that care home 1 should develop its own communication and support plan which incorporates these strategies. It said these recommendations should be followed at all times otherwise Mr B's "choice and control will be significantly compromised". In the care and support plan the Council also recognised that there were limitations on what staff could realistically achieve at care home 1 and it would be important to review the plan when Mr B moved to a more suitable care home.
28. The Council's records show that the speech and language therapist had an active involvement in identifying a suitable care home for Mr B. For example, a therapist visited care home 2 to see whether it would meet Mr B's needs from a speech and language perspective.

29. In response to Mrs D's complaint and our investigation, the speech and language therapist reviewed Mr B's file at care home 1. She found that staff were implementing four out of the five recommendations. They were not using symbols as detailed in the plan because they said Mr B resisted them. The therapist recommended that symbols are used in line with the recommendations. She also identified that although Mr B's file contained the relevant speech and language documents and letters, there was no clear communication support plan which she would expect to find.

## Conclusions

30. In the course of its own investigation, the Council has already acknowledged it has not been pro-active in progressing Mr B's case because of workload pressures. Between July 2015 and October 2015 there is no evidence that the Council took any action to find a suitable alternative placement. The Council told us it was making phone calls and checking the vacancy sheet but there is no evidence to support this. The lack of activity during this period was fault.
31. It then took a further two months to arrange a visit to care home 2. But case notes show the Council was working closely with Mrs D during this period, who was unfortunately experiencing health difficulties. This contributed to the delay.
32. Mr B then lost out on two vacancies at care home 2. One in December 2015 and again in January 2016. Records show that the Council was surprised that Mr B had missed out on these opportunities and said this was the fault of care home 2. While it is correct that it is a care home's final decision who they choose to accept, there is no evidence that the Council was liaising with care home 2 to monitor these vacancies and promote Mr B's case.
33. The Council is at fault for failing to keep in touch with care home 2 after referring Mr B. It was aware of previous delays and that Mr B remained in a placement that was not meeting his assessed needs. It should have been pro-actively trying to progress Mr B's case. After reviewing the Council's files there is enough evidence to determine, on the balance of probabilities, that Mr B could have moved to care home 2 if the Council had taken more action. Although Mrs D had some concerns about the location of care home 2 she accepted it was suitable for Mr B's needs, unlike care home 1.
34. Following the loss of this possible placement, once again there is no evidence that the Council actively sought alternative residential options. It said it was in regular contact with providers and checking the vacancy sheet but this is not supported by evidence. Substantive action was not taken on the case until April 2016 when the Council visited care home 3.
35. In response to our enquiries the Council said Mrs D did not inform the Council about care home 3 until March 2016. However, records show that she expressed it as her preferred choice in July 2015. Although she did not know the name of the care home, she told the Council its location and specialism.

36. The Council said it acknowledged Mrs D's preference but was trying to balance her preference with those of other family members. It also wanted to pursue a placement in its area where it said there would be greater protective factors and when in-area options became unavailable out of area options were then explored. But, this is in contrast to statutory guidance which states that choice should not be limited to geographical boundaries. We appreciate the Council wanted to balance preferences of family members but this consideration was not communicated to Mrs D nor was this thinking evidenced in case notes. There was no reason why the Council could not have explored and arranged a possible placement with care home 3 at the same time as referring Mr B to care home 2. The Council failed to follow the Care and Support Statutory Guidance about a person's choice of accommodation. This was fault.
37. Social worker X said he was also experiencing difficulties with the vacancy management group. He said the group was aware of Mr B's need to move in October 2015, but it failed to progress his case. The vacancy management group explained it did not progress the case because social worker X was the lead worker and he did not make a referral for the 'move on' support service. Social worker X said he did not know he could use the 'move on' service for Mr B's case because he thought he could not refer complex cases.
38. Social workers are usually the lead workers for developing care plans and managing movement between care homes. If they want to have additional support, social workers can refer their case to the 'move on' service who will then become the lead for finding a suitable care home and making referrals. Mr B was eligible for support from the 'move on' service. Therefore he should have been referred in June 2015 instead of April 2016. The confusion and lack of clarity about who was responsible for making referrals to the support service and leading on identifying a placement was fault.
39. It can take some time to find an alternative placement, particularly when there is a need for a specialist setting. But, the Council took no action to identify a suitable alternative for four months between July and October 2015 and three months between February and April 2016. The delay in finding Mr B a new care home is fault.
40. The Council did take appropriate action to review Mr B's speech and language plan in April 2015 and provided care home 1 with fresh guidance on working with Mr B. All relevant information was contained within Mr B's file but the Council failed to ensure care home 1 developed a specific communication plan; which the speech and language therapist said she would expect to find. The Council also failed to ensure that care home 1 was implementing all of the speech and language recommendations.

## **Injustice**

41. The faults set out above have caused injustice to Mr B. He has remained in an unsuitable care home which was unable to meet his assessed needs for longer than necessary.
42. Mrs D complains Mr B's wellbeing has been negatively impacted by remaining at this placement because he stays alone in his room for large periods of time. She argues that the home does not have sufficiently trained staff or the capacity to supervise him in his

room which means he is only able to have limited possessions there. The care home's records indicate that Mr B did spend large periods of time in his room, but not all of his time. It confirmed he often went into his room to manage his emotional wellbeing. The Council has accepted that at times Mr B struggled with the environment at care home 1. It is therefore likely that had Mr B moved to a more suitable care home sooner, he would have spent less time isolated in his room.

43. Due to Mr B's medical condition it is difficult to assess exactly what impact remaining at care home 1 has had on his wellbeing. However, it is recognised that care home 1 was not a suitable placement and it is likely that this has resulted in increased stress and anxiety for Mr B. This conclusion is supported by the Council's own records which indicate that workers raised concerns with their managers that the "placement was not meeting Mr B's needs resulting in increased anxiety levels and behavioural problems".
44. It is recognised that care home 1 tried to implement the speech and language recommendations but struggled with the use of symbols; the therapist encouraged it to start trying this again. In addition, whilst care home 1 did have all relevant information on file it failed to develop a specific communication plan. But, because of Mr B's learning needs, it is difficult to determine whether these two faults had any impact on his development. It is likely that remaining in care home 1, which didn't have the capacity to deliver advanced techniques, negatively impacted on Mr B's speech and language development rather than the specific speech and language faults identified above.
45. Mrs D has spent time chasing the Council for progress on her son's move which has taken 11 months because of the Council's delay. Throughout this period she has also experienced anxiety about her son remaining in a care home which was unsuitable for his needs.

## Decision

46. There was fault by the Council causing injustice to Mr B and Mrs D. The Council has confirmed that it will fully comply with our recommendations to remedy the injustice. We welcome the Council's willingness to accept our findings and implement our recommendations.

## Recommendations

47. To remedy the injustice caused the Council has agreed, within three months of the final report, to:
  - apologise to Mrs D and Mr B for the fault causing injustice identified in this report;
  - make £2000 available for Mr B to spend on activities he would enjoy or possessions he would like. What this should be spent on should be decided at a best interests decision meeting because Mr B lacks capacity to make financial decisions;

- pay Mrs D £500 in recognition of the time and trouble she has experienced as a result of the faults identified; and
- provide training for social workers on the importance of ensuring they keep accurate case notes and in clarifying the differing roles and responsibilities of the allocated social worker, the vacancy management group and the 'move on' support service.