

# APPENDIX

## Report by the Local Government and Social Care Ombudsman

**Investigation into a complaint about  
Leicestershire County Council  
(reference number: 21 010 888)**

**12 September 2022**

## The Ombudsman's role

For more than 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.

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

Ms X            The complainant

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## Report summary

### Adult Social Care

Ms X complained the Council failed in the way it carried out her care needs assessment and re-assessment and failed to arrange support for her eligible care needs. Ms X also says the Council failed to properly carry out her financial assessment.

### Finding

Fault causing injustice and recommendations made.

### Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice caused to Ms X by the faults identified, we recommend the Council within three months of the date of this report complete the following.

- Apologise to Ms X for the injustice caused by the faults identified.
- Pay Ms X £2,500 to recognise her distress and risk of harm caused by the lack of social care support.
- Pay Ms X £7,220 to recognise the lost services to which she was entitled.
- Pay Ms X £300 to recognise the frustration, distress, time and trouble caused to her by the delay in arranging social care support.

We also recommend the Council within six months of the date of this report complete the following.

- Review its processes to ensure preparing care and support plans for the Council's residents with eligible care needs is an integral part of the assessment process. It should make sure all front-line staff are aware of the specific timescales for this part of the process.
- Review all care needs assessments completed between March 2020 and March 2021 to identify the ones where no support followed despite eligible care needs. If after these assessments cases were closed or support was not provided because of the Council's difficulties during the COVID-19 pandemic, the Council should take action to remedy the injustice caused. The Council should share the findings and outcomes of its review with us.
- Remind relevant staff of the need to keep records when making decisions for Disability Related Expenditure and waving care charges.

## The complaint

1. Ms X, supported by Royal National Institute of Blind People (RNIB) says the Council failed to discharge its duties when conducting adult social care (ASC) assessments for her and failed to secure support for her eligible care needs by:
  - failing to complete a care plan and set up support for Ms X's identified eligible needs following Ms X's care needs assessment in March 2020;
  - issuing misleading communication;
  - delaying carrying out Ms X's care needs re-assessment triggered by her request in December 2020;
  - delaying carrying out Ms X's financial assessment – two months from the re-assessment of needs;
  - applying a discriminatory charging policy during financial assessment and delay in reviewing it following a relevant High Court judgment;
  - failing to consider Ms X's Disability Related Expenditure (DRE);
  - failing to backdate personal budget payments to December 2020 despite the Council's commitment;
  - failing to consider applying a waiver of its charging policy; and
  - failing to implement DRE and direct payment despite agreement and "without prejudice" communication in the late September.

## Legal and administrative background

### The Ombudsman's role and powers

2. We investigate 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), as amended*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

### Councils' statutory duties

5. The Care Act 2014 and the Care and Support (Charging and Assessment of Resources) Regulations 2014 (Regulations) provide details of councils' duties to their residents with eligible social care needs and rules for charging for the services provided.
6. When exercising their social care functions councils must follow the Care and Support Statutory guidance (Statutory Guidance) issued by the Department of Health and Social Care, which is based on the Care Act 2014, unless they have very good reasons not to. They should also follow the Regulations.

### **Care needs assessments**

7. Councils must carry out an assessment for any adult with an appearance of need for care and support. They must provide an assessment to everyone regardless of their finances or whether the council thinks the person has eligible needs. The assessment must be of the adult's needs and how they impact on their well-being and the results they want to achieve. It must also involve the individual and where suitable their carer or any other person they might want involved. *(Care Act 2014 S.9 and 10)*
8. Councils must carry out assessments over a suitable and reasonable timescale considering the urgency of needs and any variation in those needs. Councils should tell people when their assessment will take place and keep them informed throughout the assessment. *(Care and Support statutory guidance paragraph 6.24)*

### **Care and support plans**

9. Councils have a legal responsibility to provide a care and support plan. The care and support plan should consider what the person has, what they want to achieve, what they can do by themselves or with existing support and what care and support may be available in the local area. The support plan must include a personal budget, which is the money the council has worked out it will cost to arrange the necessary care and support for that person. *(Care Act 2014 S.24)*

### **Financial assessments**

10. Where a local authority has decided to charge, it must carry out a financial assessment of what the person can afford to pay and, once complete, it must give a written record of that assessment to the person. This could be provided alongside a person's care and support plan or separately, including via online means. *(Care and Support statutory guidance paragraph 8.16)*
11. In carrying out financial assessments councils must have regard to the detailed guidance setting out how both capital and income should be treated. *(Care and Support statutory guidance paragraph 8.17)*
12. Councils must ensure a person's income is not reduced below a specified level after charges have been deducted. This is called the minimum income guarantee. The purpose of this is to ensure the person has enough money to pay their daily living costs such as rent, food and utility bills. In addition, where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for local authority care and support, the charging arrangements should ensure that they keep enough money to cover the cost of meeting these disability-related costs. *(Care and Support statutory guidance paragraph 8.42)*

### **Disability related expenditure**

13. Where DRE are considered, councils should make an assessment. Councils have discretion when deciding what should be treated as DRE but it is recommended that they include payment for any community alarm system, specialist washing powders or laundry, any heating costs above the average levels for the area and housing type, reasonable costs of basic garden maintenance, cleaning or domestic help. *(Care and Support statutory guidance Annex C paragraphs 39-41)*

### **Relevant court judgment**

14. In a judgment against Norfolk County Council the court found the council had not considered the differential impact of its charging policy on the most severely disabled people (despite consulting widely with relevant interested groups). It recognised the changes would affect some people but crucially would have an inevitably greater impact on people with a higher level of benefits and no access

to alternative incomes. The court found the council had not identified or discussed this difference. It did not seem to have considered alternatives suggested in guidance which should have been considered (such as taking into account all the person's income above the minimum income guarantee or setting a maximum percentage of disposable income). So even though the court found the council had put in place some mitigation for the change this did not properly address the fundamental, identified discriminatory impact and was 'manifestly without reasonable foundation'. (*The Queen on the application of SH v Norfolk County Council [2020] EWHC 3436 (Admin)*)

## How we considered this complaint

15. We have produced this report following the examination of relevant files and documents.
16. We reviewed
  - Leicestershire County Council Charging Policy for Social Care and Support;
  - Leicestershire County Council Paying for Social Care Fact Sheet no 11 'Paying for care and support at home or in the community – your assessed financial contribution'; and
  - Leicestershire County Council Paying for Social Care Fact Sheet no 12 'Disability Related Expenditure'.

We also considered our guidance ['Principles of good administrative practice'](#).

17. We gave Ms X and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

## What we found

### What happened

#### Background

18. Ms X is severely sight impaired and receives Personal Independence Payment (PIP) daily living component enhanced, PIP mobility component standard and Income Support.
19. In its response to our further enquiries the Council explained it did not adopt the COVID-19 easement measures. Throughout the pandemic the Council followed its usual policies and procedures. It adapted the way it carried out its social care assessments. The pandemic also affected the social care assessments timescales as at times it took longer to complete them.

#### Council's actions from March 2020 – April 2021

20. In March 2020 the Council assessed Ms X's care needs for the first time. The ASC report issued in April 2020 found Ms X had eligible social care needs in the areas of managing and maintaining nutrition, maintaining personal hygiene, accessing and engaging in work, training, education or volunteering, being able to make use of the home safely and making use of necessary facilities or services in the local community.
21. Two comments in the report referred to the support for Ms X's eligible needs:

- confirmation of Ms X's eligibility for support but no possibility for the Council to provide support through its commissioned services due to the COVID-19 pandemic; and
  - Ms X's wish not to proceed with the ASC services at the time.
22. At the end of March 2020 Ms X contacted the Council asking for some support with shopping. She explained she would normally go to the nearby shop with her sister, who is also visually impaired, and they would get help from the staff. During her recent shopping trip, however, nobody was available to help her due to staff shortages caused by the pandemic. Her usual family and friends support system was not available either for the same reasons. Ms X's social care worker was not working on the day she rang, but she talked to another member of social care staff, who advised her on the community shopping support she could access.
  23. In mid-April 2020 Ms X's Social Worker emailed her with the care needs assessment report attached. The social worker advised Ms X that once she re-referred herself to the Council after the COVID-19 crisis, the Council would re-open her case. She could then expect support from a Personal Assistant (PA) under the Direct Payment Scheme.
  24. In December 2020 RNIB contacted the Council on Ms X's behalf and asked for the social care support for her.
  25. At the end of February 2021 RNIB pointed out to the Council, that it failed to complete a care plan following Ms X's care needs assessment in March 2020.
  26. At the beginning of March 2021 the Council carried out another care needs assessment for Ms X, which resulted in the report issued at the beginning of April 2021. The findings of this assessment matched the previous one. The Council identified Ms X's eligible care needs would be met by 12 hours of weekly support from a PA. It estimated an indicative budget for a PA as £213.78 a week.
  27. A day after the second care needs assessment the Council responded to RNIB's letter from February 2021. The Council explained the reasons for not providing social care support after the first care needs assessment. It claimed Ms X agreed, to mitigate a risk of having people coming to her house, to defer the support until the risk of infection caused by the pandemic would have decreased. As Ms X allegedly agreed not to pursue her care support, the Council refused to backdate any payments.
  28. After receiving the new care needs assessment report in April 2021, RNIB complained to the Council. It claimed the Council misinterpreted Ms X's position following the first care needs assessment. RNIB considered it was the Council who refused to provide Ms X social care support rather than her agreeing to its postponement.
  29. Later in April 2021 in its response the Council confirmed Ms X's eligible social care needs would be met through her personal budget and the arrangements for her support plan were underway. The Council apologised for the delay in arranging support after Ms X's request at the end of December 2020 and agreed to backdate the personal budget to this date.

#### **Council's actions from April 2021 – October 2021**

30. At the beginning of June 2021 the Council carried out Ms X's financial assessment. The Council disregarded from the calculation of Ms X's care charges PIP - mobility component and Council Tax.

31. At the end of June 2021 RNIB complained the Council applied a discriminatory policy and failed to consider Ms X's DRE.
32. A month later, following RNIB chasing up correspondence, the Council stated it was reviewing its charging policy in light of the Norfolk case. It said it would consider a temporary waiver of Ms X's care charges under its charging policy and would review her DRE.
33. After further correspondence from RNIB, in mid-August 2021 the Council confirmed it would disregard the highest rate of the DRE under its self-assessment approach from the calculation of Ms X's care charges.
34. With no social care support for Ms X forthcoming and no substantive response from the Council, after several further emails, in October 2021 RNIB complained to us.
35. In January 2022 the Council carried out a new care needs assessment for Ms X with the indicative budget of £183.24 for 12 hours of PA support weekly.
36. A few days later the Council issued a care and support plan for Ms X, identifying the total cost of weekly services for her as £228.60. The Council arranged to make direct payments for a personal budget to Ms X from the fourth week of January 2022.

## **Analysis**

### **Late complaint**

37. RNIB brought Ms X's complaint to us more than 12 months after the date of the first care needs assessment, which is part of this complaint. We consider, however, there are important reasons to exercise our discretion and investigate all the issues.
38. RNIB first complained to the Council in February 2021. In April 2021 the Council provided its response with assurances of speedy resolution as well as remedial actions which would satisfy Ms X. It was only after the Council's further delays and non-compliance with its own plan of action that RNIB sought our help in resolving the issues of this complaint. Therefore, we consider the delay in bringing this complaint to us was caused by RNIB's justified expectation of its resolution directly with the Council.
39. Besides, before getting RNIB's help Ms X, because of her disability, would have had significant difficulties in pursuing any complaints against the Council.
40. In such circumstances it is fair to exercise our discretion and consider this complaint in its entirety, despite a few months' delay in raising it with us.

### **Lack of support from April 2020 till December 2020**

41. Ms X, represented by RNIB, and the Council are in dispute about reasons for the lack of social care support for Ms X following the first care needs assessment in March 2020. Ms X's view is that she was refused social care support due to the COVID-19 pandemic. The Council, however, says Ms X agreed to defer her social care support arrangements until the risk of infection was reduced.
42. As the Council did not adopt any COVID-19 easement measures, it had a duty to support Ms X's eligible care needs.
43. The only evidence to support the Council's position that Ms X agreed to postpone support for her eligible care needs is in the social worker's statement and one comment on page 23 of the care needs assessment carried out in March 2020.



44. However, this position is contradicted by the following evidence:
- another comment on page 19 of the care needs assessment;
  - the content of the social care worker's email from mid-April 2020;
  - Ms X's statement in RNIB's letter of April 2021; and
  - the Council's case notes saying at the end of March 2020 Ms X contacted the Council, specifically requesting support for shopping. This confirms that despite the pandemic and lockdown Ms X needed support, and potentially even to a higher degree than before, and was ready to accept it.
45. The available evidence, on balance, leads to the conclusion Ms X did not voluntarily agree to postpone her social care support. The Council's failure to provide it is fault.
46. The Council's fault caused Ms X injustice as for many months she struggled to meet her needs.

### **Assessments from January 2021 and timescales**

47. The Council failed during the process of carrying out Ms X's social care assessments and arranging social care support for her, which is fault, through:
- **Delay with the re-assessment of Ms X's care needs.** Following RNIB's request at the end of December 2020 her care needs re-assessment should have been prioritised. The Council was aware of Ms X's eligible care needs and that they had not been met for many months. In its response to RNIB's complaint in April 2021 the Council apologised for the delay in arranging this assessment and offered to backdate the personal budget payments to December 2020.
  - **Significant delay with preparing the care and support plan.** Following Ms X's care needs re-assessment in March 2021 the Council failed to issue a care and support plan for her, which is a statutory duty. The plan was only prepared after the next assessment in January 2022.
  - **Delay with Ms X's financial assessment.** The Council took two months to carry out Ms X's financial assessment from the date of her care needs re-assessment report. Although there are no specific timescales, we expect councils should complete assessments in a timescale that is proportionate to the complexity of the issues, and normally within 28 calendar days. The Council exceeded this time. Besides, the Council should have prioritised Ms X's assessment as it was aware she had unmet eligible social care needs.
  - **Delay with arranging the personal budget payments to Ms X.** After completing Ms X's financial assessment, further discussions followed about her chargeable income and DRE. These, however, were completed by mid-August 2021 and at this stage we cannot see any explanation for the further delay in arranging Ms X's personal budget payments.
  - **Non-compliance with the charging policy and good administrative practice when considering Ms X's DRE appeal and waiver request.** There are no records of the Council's decision-making for Ms X's DRE and waiver request. There is no way of checking whether the Council followed the right process, prescribed in the Council's charging policy. There are no records of reasons for the Council's decisions. This is not good administrative practice and caused Ms X injustice by making it difficult for her to challenge the Council's decisions.

- **Inconsistent communication with Ms X’s representative.** RNIB acting for Ms X on multiple occasions contacted the Council, chasing its actions and responses. The Council’s responses were inconsistent – it did not reply to some communications and some of its responses were delayed. This made the whole process excessively burdensome and complicated.

48. The Council’s fault with the care needs re-assessment and subsequent actions caused Ms X injustice by further delay in the social care support she was entitled to by over eight months. It would be reasonable to expect the Council to complete the whole process of assessments and start making personal budget payments by the beginning of May 2021.

### **Charging policy**

49. We do not find fault in the Council’s approach to its charging policy.
50. The Statutory Guidance upholds the principle of councils’ discretion when charging for care and support. This is to ensure affordability of care cost charges. At the same time, when applying discretion councils should treat people with similar needs equally and therefore they are encouraged to develop and maintain a policy setting up how they will apply their discretion.
51. The Norfolk judgment issued in December 2020 considered the need for councils to have regard to the potential differential impact of charging policies on people who have a higher-than-normal part of their income from benefits.
52. In its response to our query the Council confirmed when reviewing its charging policy in March 2022 it considered the Norfolk judgment’s findings and conclusions. The Council proceeded to adopt measures which would ensure equal treatment of its residents whilst promoting their financial independence. It also specified ways of challenging the Council’s decision in individual cases.

### **Care charges waiver**

53. We cannot criticise the Council for not waiving Ms X’s care charges. This is a decision the Council is entitled to make, based on the Council’s charging policy which specifies conditions for waiving care charges or their part. A person who receives social care support can request a waiver but the decision to agree it under exceptional circumstances remains in the scope of the Council’s discretion.
54. However, as outlined above, we have found fault with how the Council reached its decision not to waive Ms X’s care charges, which caused her injustice. We also found fault in the Council’s communication with RNIB which was at times inconsistent and confusing.

### **Injustice**

55. The lack of social care support for over 21 months despite the Council’s awareness of Ms X’s eligible care needs, caused her injustice. When cooking without help she frequently burnt herself, and she also had several falls. The lack of support necessary for her to access the community and socialise increased her isolation and loneliness, which affected her emotional wellbeing.
56. Delays and confusion within the Council’s social care processes caused Ms X distress, frustration and uncertainty.

### **Remedies**

57. In considering financial remedies for Ms X from the beginning of January 2021 we referred to the Council’s response to the RNIB’s complaint in April 2021. In this letter the Council accepted its delays and agreed to backdate the personal budget

payments for Ms X to December 2020. The Council's further delays and failures meant Ms X's personal budget payments only started in January 2022 – 55 weeks of delay in total.

## Conclusions

58. The Council was at fault because:
- following care needs assessment in March 2020 it failed to prepare a care and support plan, carry out a financial assessment and provide Ms X with support for her eligible care needs;
  - there were delays with Ms X's care needs re-assessment, her financial assessment, preparing her care and support plan and arranging her personal budget payments;
  - it failed to comply with its charging policy and good administrative practice when it considered Ms X's DRE appeal and waiver request; and
  - its communication with Ms X and her representative was inconsistent.

## Recommendations

59. To remedy the injustice caused to Ms X by the faults identified, we recommend the Council complete within three months of the date of this report the following.
- Apologise to Ms X for the injustice caused by the faults identified.
  - Pay Ms X £2,500 to recognise her distress and risk of harm caused by the lack of social care support from the end of April 2020 to the end of December 2020.
  - Pay Ms X £7,220 as an equivalent of the personal budget payments from January 2021, which the Council agreed in April 2021.
  - Pay Ms X £300 to recognise the frustration, distress, time and trouble caused to her by the delay in arranging social care support.
60. We also recommend the Council complete within six months of the date of this report the following.
- Review its processes to ensure preparing care and support plans for Council residents with eligible care needs is an integral part of the assessment process. It should make sure all front-line staff are aware of the specific timescales for this part of the process.
  - Review all care needs assessments completed between March 2020 and March 2021 to identify the ones where no support followed despite eligible care needs. If after these assessments cases were closed or support was not provided because of the Council's difficulties during the COVID-19 pandemic, the Council should take action to remedy the injustice caused. The Council should share the findings and outcomes of its review with us.
  - Remind relevant staff of the need to keep records when making decisions for Disability Related Expenditure and waving care charges.
61. The Council must consider the report and confirm within three months the actions it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

**Decision**

62. We have completed our investigation into this complaint. There was fault by the Council which caused Ms X an injustice. The Council will take the action identified in paragraph 59 to remedy that injustice.