

Report by the Local Government Ombudsman

**Investigation into a complaint against
London Borough of Bromley
(reference number: 16 000 780)**

<14 February 2017>

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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Contents

Report summary.....	1
Introduction	2
Legal and administrative background	2
How we considered this complaint.....	2
Investigation	2
Conclusions.....	5
Decision	7
Recommendations	7

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 and Mrs X - The complainants

Y – Mr and Mrs X's son

Report summary

Subject

Transition from children's services to adult social care

Mr and Mrs X complain the Council failed to ensure their son's transition from children's services to adult care services was smooth with no gap in the care and support he received. They also complain the Council has wrongly reduced his care package.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council:

- pays Mr and Mrs X a sum equivalent to the cost of missed respite and support between October 2015 and April 2016. This sum should be calculated based on the care package provided by children's services, which should have continued until adult care services had a package in place;
- pays Mr and Mrs X £1,000 in recognition of the significant stress, anxiety and time and trouble they have experienced as a result of the Council's failings;
- reassesses Y's and Mrs X's needs and draws up appropriate support plans. Any decisions, including those made by the funding panel should be properly reasoned. If the reassessments identify a need for an increased level of respite or support to that currently being provided the Council should pay Mr and Mrs X a sum equivalent to the cost of any additional missed provision; and
- reviews its transition policy and procedures to ensure the transition process runs smoothly and there are no gaps in the provision of care and support.

The Council has accepted our recommendations to remedy the complaint. It should confirm it has taken the action within three months of the date of this report.

Introduction

1. Y lives at home with his parents, Mr and Mrs X, and his younger sister. He has a number of medical conditions and had received a support package from children's services for a number of years. Mr and Mrs X complain the Council failed to ensure Y continued to receive a support package following his 18th birthday when he transitioned to adult social care. They complain that despite repeatedly advising the Council of the impact it was having on their health and wellbeing, and that they would not be able to continue to support Y at home, they have been left to cope with almost no support or services.

Legal and administrative background

2. 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)*)
3. Chapter 16 of the Care and Statutory Support Guidance issued under the Care Act 2014 sets out the Council's duties in relation to transitions from children's services to adult social care. This publication has since been superseded, but was in place at the time Y turned 18.
4. The expectation is that the transition is carried out in a person-centred way. The guidance is clear that local authorities must not allow a gap in care and support when young people and carers move from children's to adult care services. It states:

"If transition assessment and planning is carried out as it should be, there should not be any gap in provision of care and support. However, if adult care and support is not in place on a young person's 18th birthday, and they or their carer have been receiving services under children's legislation, the local authority must continue providing services until the relevant steps have been taken, so that there is no gap in provision."

How we considered this complaint

5. This report has been produced following the examination of relevant files and documents.
6. 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

7. Mr and Mrs X's son Y had received support from children's services for many years. Y's care package provided six nights a month at a respite centre (Centre 1) and 18 days a

year at a day/holiday club. Mr and Mrs X were happy with this level of support and respite and were keen to ensure this support continued when Y turned 18 in October 2015.

8. Mrs X contacted the Council in July 2015 as she was concerned she had not been contacted about the transition process. Although Mr and Mrs X had wanted Y to remain at home Mrs X advised the officer they were struggling to cope and may have to consider a residential placement. The Council's records state Mrs X advised the officer they were struggling with Y's behaviour and noise, and had received complaints from neighbours. The Council had agreed to partially fund converting the garage into a soundproof room, but Mr and Mrs X could not afford the balance.
9. The Council advised Mrs X that Y would not be able to attend Centre 1 when he turned 18 and it would be necessary to find alternative provision.
10. In September 2015 the Council carried out an assessment to determine whether Y was eligible to continue the services he was receiving. The assessment determined Y had eligible needs. The assessment document states the social worker completed the assessment in early October 2015 and it was approved in January 2016. It suggests Y receive an indicative budget for respite at Centre 2, a respite centre for adults, for 36 nights a year and direct payments for 16.5 hours support each week.
11. The Council also carried out a carer's assessment for Mrs X in September 2015. This assessment noted Mrs X's concern that they could not meet Y's needs at home as the impact on their emotional wellbeing was so severe.
12. The Disabled Children's team ended the support it provided Y and closed its file on 27 October 2015. At this stage there were no arrangements in place for any support or respite from adult care services.
13. A social worker from the transition team completed a report for the Council's funding panel on 21 December 2015. This report suggested the maximum respite of 28 days would not be sufficient and recommended the panel agree to 72 days respite per year. The social worker felt that if the panel did not grant respite at the higher level the family would be looking for a residential placement for Y.
14. The funding panel was due to consider the request in January 2016. The Council gave Mrs X contact details for Centre 2 so that if funding was approved she could contact them to arrange respite. Y attended Centre 2 for an afternoon/early evening visit a few days later. Following this visit Centre 2's manager advised the Council Y would need one to one support for his first few visits. The manager also advised the Council they were very busy and unlikely to be able to offer respite for six nights a month.
15. The funding panel deferred making a decision in January 2016 and considered the matter on 10 February 2016. It agreed to 28 days respite. The decision paper does not record a reason for the decision nor does it refer to the additional hours of support set out in the indicative budget. It states:

"Agreed – 28 days respite, do not agree to 72 days."

16. As Y was not able to begin respite at Centre 2 without one to one support, the social worker referred the matter back to the panel to request additional funding for one to one support for the initial visits. In March 2016 the panel agreed to one to one support for two visits only. Should Y need one to one support at further visits the social worker would need to bring the matter back to the panel.
17. Mrs X was not happy with the decision but arranged Y's first day support for 5 April 2016 and his first overnight visit for 16 April 2016. Mrs X also queried Y's direct payments for additional support services during the Easter holidays.
18. The Council made a request to its funding panel for direct payments for six hours a week for 38 weeks. The panel considered the request on 15 April 2016 but did not agree to it. The Council submitted a further request for 20 hours support a week for 14 weeks, and six hours support a week for 38 weeks. The panel considered and agreed this on 22 April 2016.
19. In May 2016 the funding panel agreed to one to one support for two further respite visits. Y attended Centre 2 for respite on 18 June 2016. Mrs X then advised the Council they no longer wanted Y to attend Centre 2. She did not consider it safe for Y to attend without a supervisor and asked the Council to set up direct payments so that they could make their own arrangements for overnight respite.

Complaint

20. In February 2016 Mrs X made a formal complaint to the Council about the support it had provided. Mrs X complained:
 - Y's needs had not changed when he turned 18 but the Council had reduced his care and support;
 - the Council failed to carry out an assessment in a timely manner. Y was 18 in October 2015, but the Council did not make a decision on his care and support until February 2016;
 - the Council repeatedly delayed in referring the matter to the funding panel and in making a decision, and did not provide timely feedback on the decisions;
 - since turning 18 Y had been unable to access overnight respite as Centre 2 cannot accommodate him without 1:1 support;
 - the Council had not offered direct payments which would allow the family to find help while waiting for respite; and
 - the Council had not provided the family with draft assessment papers so they were unable to comment or clarify points.
21. Mrs X asked the Council to reinstate the level of care Y received before he was 18. She also asked the Council to review its practices.

22. The Council responded to Mrs X's complaint in April 2016. It stated Y's assessment was completed and authorised before he turned 18, and that it had sent a copy to Mr and Mrs X. The response also confirmed it had agreed 28 nights respite each year with one to one support on each visit to enable a smooth transition.
23. The Council advised that adult care services are not able to provide the same services as children's services.
24. As Mr and Mrs X are not happy with the Council's response they have asked us to investigate. In response to our enquiries the Council states there were no delays in the transition planning process. It assessed Y's needs and completed the care assessment before his 18th birthday. It suggests part of the delay in implementing respite was around the appropriateness of the respite provision, managing risk, liaising with Centre 1 and the assessing social worker leaving the service.
25. The Council states the funding panel did not agree the existing six nights or the recommended three nights of respite each month as the family circumstances had changed. It states the family had moved into a house and renovated the garage to provide a space for Y and some quiet time for the family. As a result of these changes it decided respite should be provided once a fortnight.
26. In addition the Council states that funding for any service is subject to financial procedures and protocols. This can be a lengthy but necessary process which could be perceived as delay.

Conclusions

27. The Council suggests there was no delay in the assessment process, but this is not borne out by the documents. Although the assessment began on 10 September 2015 there is no evidence it was completed or authorised before Y's 18th birthday. Mr and Mrs X did not receive a copy of the assessment document until after it had been presented to the funding panel in February 2016.
28. There was also a delay in agreeing funding and implementing respite. The Council was aware in January 2016 that Centre 2 had asked for one to one support to accommodate Y, but did not request funding for this until March 2016. As the funding panel sits once a week we consider this matter could have been resolved much sooner.
29. The Council had a clear responsibility to continue to provide services until adult social care was in place so that there were no gaps in Y's care and support. As children's services had ended their involvement the Council's delays meant Y was without respite care and support from mid October 2015 until April 2016.
30. We consider the Council's delays and failure to ensure a smooth transition from children's services to adult social care with no gap in services amounts to fault.
31. Mr and Mrs X are not happy with the reduction in the level of respite now offered. When considering complaints, we may not act like an appeal body. We cannot question the

merits of the decision the Council has made or offer any opinion on whether or not we agree with the judgment of the Councils' officers. Instead, we focus on the process by which the decision was made.

32. We consider there are a number of discrepancies in this process. The assessment document suggests an indicative budget for 36 days respite a year and direct payments for 16.5 hours support each week. But there is no suggestion Y's needs have changed and no explanation for the proposed 50% reduction in Y's existing respite provision.
33. The social worker's report to the panel in February 2016 does not ask for the indicative budget set out in the assessment, but requests 72 days respite a year and makes no reference to direct payments. There is no record of any discussion with Mr and Mrs X or explanation for the change in position.
34. The panel did not accept the indicative budget or the social worker's recommendation and agreed only 28 days respite a year. There is no contemporaneous explanation for this decision. The Council has subsequently explained the decision is based on a change in the family's circumstances with the conversion of the garage.
35. Again we are not persuaded this is borne out by the documents. The reports to the panel state:

"They have applied for a grant to have the garage renovated into a soundproof room for [Y] which has now been agreed."

"When the garage is completed this will give [Y] and his family some quiet time."

36. The Council's records show the additional funding for the conversion was agreed in December 2015/January 2016. Work started on the conversion in late May 2016 and concluded in October 2016. There had not therefore been a change in the family's circumstances or in Y's needs at the time of the panel's decisions in February, March, April or May 2016.
37. If the Council considers the availability of a soundproof room changes Y's circumstances and his needs we would expect the Council to properly assess this and where appropriate revise Y's support plan.
38. There was no justification or explanation at the time of the reduction in respite to 28 days a year. This raises significant questions about the way the Council makes decisions about the level of respite it will provide. This is of particular concern given the social worker's reference in the report to panel of December 2015 to the Council's "maximum" of 28 days respite per year. The provision of respite should be based on a service user's assessed needs, and to impose a blanket maximum level would clearly be inappropriate.
39. It is essential that families are able to understand what support they are likely to receive when the young person transitions into the adult system. We consider the lack of consistency and contemporaneous explanations for the social workers' recommendations and the panel's decisions amounts to fault.

Injustice

40. These failings have meant that Y and his family had no respite or support services between 15 October 2015 and 5 April 2016 and minimal support in the subsequent months. Over the last 12 months Mr and Mrs X and Y have had four nights respite. This has placed significant and unnecessary additional stress and anxiety on the family who were already noted to be struggling to cope. The Council's records clearly record the detrimental impact the lack of support has had on the family. Mrs X repeatedly advised the Council the family was at breaking point without respite and support, and were considering a residential placement for Y. It has also put Mrs X to unnecessary time and trouble in trying to resolve the matter.

Decision

41. Fault found causing injustice.

Recommendations

42. We recommend the Council:

- pays Mr and Mrs X a sum equivalent to the cost of missed respite and support between October 2015 and April 2016. This sum should be calculated based on the care package provided by children's services, which should have continued until adult care services had a package in place;
- pays Mr and Mrs X £1,000 in recognition of the significant stress, anxiety and time and trouble they have experienced as a result of the Council's failings;
- reassesses Y's and Mrs X's needs and draws up appropriate support plans. Any decisions, including those made by the funding panel should be properly reasoned. If the reassessments identify a need for an increased level of respite or support to that currently being provided the Council should pay Mr and Mrs X a sum equivalent to the cost of any additional missed provision; and
- reviews its transition policy and procedures to ensure the transition process runs smoothly and there are no gaps in the provision of care and support.

43. The Council has accepted our recommendations to remedy the complaint. It should confirm it has taken the action within three months of the date of this report.