

**Report by the Local Government and
Social Care Ombudsman**

**Investigation into a complaint against
Nottinghamshire County Council
(reference number: 16 009 251)**

27 July 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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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 K - the complainant

Mrs J – his partner’s mother

Report summary

Adult care services: safeguarding

Mr K complains that he has been banned from visiting his partner's mother, Mrs J, at her Care Home.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council has agreed our recommendations and will commission an Independent Advocate to get Mrs J's views on seeing Mr K away from the Care Home. If Mrs J wants to see Mr K the Council will arrange for her to do this away from the Care Home and pay Mr K £300 for the failure to do this sooner:

The Council will also:

- write to Mr K apologising for its failings and those of the Care Home and Care Provider; and
- consider what action it needs to take to ensure it and its care providers deal with such matters properly in future.

Introduction

1. Mr K complains he has been banned from visiting his partner's mother, Mrs J, at the Care Home the Council has placed her in.

Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, 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 investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
4. In November 2016 the Care Quality Commission (CQC) produced *Information on visiting rights in care homes*. This includes a section on what a care provider can do if it believes a visitor poses a risk to other residents, staff or the running of the service, which says:

"Seeing a loved one in a care home can be distressing, especially in the beginning or as they become more dependent because of frailty, illness or decreasing capacity. Bearing this in mind, if issues or conflict develops, the care provider should first meet with the visitor and try to resolve them. Conflict between the provider and a family member or friend may be detrimental to the wellbeing of the resident. If the visitor has concerns about a resident's care, these should be acknowledged, understood and acted on".

"Care homes have a duty to protect people using their services. If issues cannot be resolved, as an extreme measure the provider may consider placing some conditions that restrict the visitor's ability to enter the premises if, for example, they believe (having sought advice from others, like the safeguarding team) that the visitor poses a risk to other people using the service and staff, or to the running of the service. For example, the provider could limit visits to take place in the resident's room only. Any conditions should be proportionate to the risks to other people or staff and kept under review. The provider must be able to demonstrate that any conditions are not a response to the visitor raising concerns about the service as this would be a breach of the regulations. The provider should seek advice from the local authority's Deprivation of Liberties team if the resident lacks capacity to make decisions".

How we considered this complaint

5. We produced this report after examining relevant files and documents, and discussing the complaint with Mr K and Council officers.

6. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

Investigation

7. The Council placed Mrs J in the Care Home in 2013 when Mr K and his partner could no longer look after her. According to its case notes, in November 2013 Mr K told officers he had come close to losing his temper physically with Mrs J. The Council asked Mr K not to visit Mrs J at the Care Home "*at least for the time being*". Mr K agreed to this. The Council told the Care Home what he had agreed and advised it to ask him to leave if he tried to visit and to call the Police if he refused. The Care Home is one of over 100 homes run by HC-One Limited (the Care Provider).
8. On 2 December 2013 Mr K asked the Council if it had banned him from visiting Mrs J for life. It advised him to speak to a member of its Safeguarding Team about this. There is no record of him doing this.
9. On 15 April 2014 the Council noted Mr K "*had not been barred from visiting, a risk assessment has been put in place, should he visit and not comply with the rules of the home*". The Council has not provided a copy of the risk assessment.
10. In June 2014 Mr K reported concerns to the Council that Mrs J had not had a bath for four weeks. He also reported his concerns to CQC. The Council addressed Mr K's concerns via a safeguarding investigation. It did not substantiate the allegations.
11. On 20 November 2015 the Council noted "*[Mr K] is not allowed to visit the Care Home due to threatening behaviour*".
12. In December 2015 Mr K told the Council Mrs J had asked him to get the ban lifted as she wanted him to visit. He said he had visited many times at weekends, including 12 times in the past six months.
13. The Care Home has provided statements from two members of staff who were there when Mr K tried to enter the home at 15.40 on 8 January 2016. They wrote the statements at the end of March 2017. According to the statements, one member of staff told Mr K he was not allowed on the premises but Mr K said it had "*been sorted*". The member of staff told Mr K to leave. The statements say Mr K was very loud and swore at staff in the presence of other visitors. According to the statements, Mr K left after another member of staff went to call the Police. It appears the Police were not called.
14. On 1 March 2016 the Council visited Mrs J. After the visit the Council called Mr K to let him know Mrs J could decide to resume contact with him and he could visit the Care Home again.
15. In April 2016 Mr K raised safeguarding concerns with CQC about Mrs J's care at the Care Home. CQC passed the concerns on to the Council to investigate. The Council contacted the Care Home on 28 April 2016. The Care Home said it knew Mr K had raised the safeguarding concerns. It told the Council it did not know Mr K had been given the go

ahead to return. The Care Home said it did not agree with this decision “*primarily to safeguard other residents and, as importantly, members of staff*”.

16. On 29 April the Council called Mr K to let him know Mrs J was happy with her care at the Care Home.
17. On 3 May the Care Home did a risk assessment for Mr K’s “*access to the home*”. This refers to “*previous threats made to staff and management*” and describes them as frequent but does not say what the threats were or when they were made. It identified these risk control measures:

“*[Mr K] is not allowed access to [the Care Home] – staff are aware of this and know to call 999 if [he] tries to gain access. Social Services are also aware of this restriction. Police have also been made aware of threats made to home’s management.*”
18. The Care Home’s reviews of the risk assessment in August and December say “*Risk assessment remains relevant*”.
19. On 9 May the Care Provider wrote to Mr K in response to a letter received on 3 May. It said its visitor records showed he had only been in the Care Home for about 20 minutes, so he could not say call bells had been going for over an hour. It said it monitored call bells and none had gone off for an hour. It said he had been banned from visiting the Care Home since Mrs J came to live there. It said the Council had lifted the ban in March 2016 without consulting the Care Provider. It said because of threats he had made to staff and managers at the Care Home, which were logged with the Police, it had to uphold the ban. It said if Mrs J wanted to see him, the Council should be able to arrange for him to see her outside the Care Home. It said the Care Home could provide transport for Mrs J.
20. On 12 May the Care Provider told the Council it wanted to discuss e-mails it had received from Mr K. It later told the Council it would not allow Mr K to access the Care Home. The Council asked Mr K to stop writing to the Care Home with his concerns and to direct them to the Council.
21. On 20 May the Council visited Mrs J at the Care Home. The Care Home told her she would have to leave if she wanted Mr K to visit her there. The Care Home said this was due to threatening behaviour towards staff and false allegations.
22. On 26 May Mr K told the Council that the Police had confirmed they had not received an allegation of threatening behaviour against him from the Care Home.
23. On 28 June the Council met Mr K with his partner. They discussed concerns about poor care. The Council said the Care Home had carried out its own investigation which did not support their allegations. The Council said it had not been able to substantiate the allegation of neglect. It said the evidence from its visits showed Mrs J was being cared for. Mrs J had confirmed she was happy living in the Care Home and had the capacity to decide where she lived. Mr K and his partner said Mrs J had repeatedly told them she wanted to move to another home as there were not enough staff to meet the residents’ needs. The Council said it would appoint an Advocate to find out Mrs J’s views.

24. On 26 July Mr K wrote to the Care Home. He said the Police had confirmed it had no record of the Care Home reporting him for making threats. He said he had reported the Care Home to CQC three times because of the poor care he had witnessed. He said it had banned him because of these reports. He said the Care Home had to lift the ban within five days or they would move Mrs J to another Care Home. He said the ban was unfair and based on lies and false accusations.
25. On 1 August an Independent Advocate visited Mrs J to check whether she wanted to stay at the Care Home. The next day she e-mailed the Council to report:

“[Mrs J] said that she was settled in her placement and that she didn’t want to move as she didn’t know what a new placement would be like and she was happy where she was. [Mrs J] says she likes the staff and has built relationships with other residents. [Mrs J] enjoys reading and engages with activities there. [Mrs J] on several occasions said that she didn’t want to move placement”.
26. The Council sent the e-mail to the Care Provider.
27. On 4 August the Care Provider wrote to Mr K. It said it had received a response from the Council about the Independent Advocate’s visit. It said Mrs J:

“was asked if she wanted to go out to meet with you and could not decide, however, she said she would think about it and let the home know. If she does decide she wants to meet with you we will of course set up a date and time to meet you off the premises of [the Care Home] in a suitable location chosen by [her]”.
28. The Care Provider told Mr K they had contacted the Police and had “*on file reference numbers in relation to this*”.
29. On 8 August the Council told the Care Home it was open to Mrs J’s daughter to take her out of the home to meet Mr K, if that is what Mrs J wanted to do.
30. On 18 August the Council wrote to Mr K. It said Mrs J had the capacity to decide where she lives and the Independent Advocate had confirmed she wants to remain at the Care Home. It said it could not reach a firm conclusion on the lack of sympathy Mr K said officers had towards his ban on visiting the Care Home. It said the management of the Care Home had been distressed by his behavior. It said it was not appropriate for the Council to intervene.
31. CQC published a report on the Care Home. It required the Care Home to make improvements relating to being: safe; effective; responsive; and well-led. It found the Care Home was providing a good service in terms of being caring. Mr K says the need to make improvements shows he was right to report problems to CQC.
32. The Manager of the Care Home says Mr K verbally threatened her over the telephone “*telling me to be careful when I leave work as the car park is dark at night*”. Mr K denies saying this. The Manager says she contacted the Police immediately after the

conversation but was not given a crime number or an incident number. She says she cannot provide a date for the incident, having worked at the Care Home for two years.

33. The Care Home has recorded consulting Mrs J about seeing Mr K on: 8 September 2016, 5 October 2016, 18 November 2016, 22 December 2016, 13 January 2017 and 15 February 2017.
34. In response to our enquires on this complaint, the Care Home told the Council Mrs J's daughter takes her out so she could see Mr K if she wanted to. Mrs J's daughter says this is untrue. She says this would not be possible because of her mother's mobility problems. Mrs J uses a wheelchair and needs a hoist and sling and two people for transfers. The Care Home has been unable to provide any evidence in support of its claim that Mrs J goes out with her daughter.

Conclusions

35. This complaint has revealed some poor practices by the Council, the Care Home and the Care Provider. Although not issued until November 2016, the CQC guidance reflects what has always been good practice. The failure to follow a structured process over the ban has resulted in a confused sequence of events. This could have been avoided if the right process had been followed.
36. The Council asked Mr K not to visit Mrs J when she first moved to the Care Home. Any restriction on visiting should either be based on a specific request from the resident, if the resident has the capacity to make such decisions, or a risk assessment and best interest decision if they do not. Any restrictions on visiting because of a risk to staff or other residents needs to be based on a risk assessment. The Council failed to consult Mrs J or do a risk assessment before asking Mr K not to visit and, more significantly, advising the Care Home to call the Police if he tried to visit and would not leave. That was fault.
37. Although the request not to visit was "*at least for the time being*" the Council did not review the arrangement. That was also fault. There should be regular reviews of any visiting restrictions. Such reviews should, wherever possible, take account of the resident's views. The Council did not do this until March 2016. That was fault.
38. The issue of contact with Mr K is one for Mrs J to make. The Care Home should not have threatened her with eviction if she wanted Mr K to visit her at the Home. That was fault. That threat is likely to have had an impact on her subsequent answers to questions about meeting Mr K. Mrs J should at least have been given the option of meeting Mr K away from the home.
39. In April 2014 the Council appears to have decided it had not banned Mr K from visiting, although that was clearly not the case. It noted a risk assessment was in place but has provided no evidence of this. In November 2015 the Council accepted Mr K had been banned from the Care Home. The failure to review the ban resulted in it being left in place when there may have been no need for it. That was fault.

40. The ban has not always prevented Mr K from visiting Mrs J. It appears the Care Home did not always enforce the ban. It was clearly aware he had been visiting as he had recorded at least one visit in its visitors' book.
41. The Care Provider has no records of the threats it says Mr K made to the Manager of the Care Home or other staff. Nor does it have any records of the incident which it says took place on 8 January 2016. If the Care Home had reported the threats to the Police it should have had a reference number. The failure to keep proper records is fault. The Care Home should record any threats and report them to the Council, as the safeguarding authority, so it can take account of them when reviewing a risk assessment.
42. The Council failed to tell the Care Home it had decided to lift the ban on Mr K visiting. That was fault. In April 2016 the Care Home told the Council it did not agree with lifting the ban as Mr K posed a risk to other residents, as well as to members of staff. There is no evidence to support the claim that he posed a threat to residents.
43. The Care Home finally did a risk assessment in May 2016; over two years after Mr K had been banned from visiting Mrs J. The risk assessment is not robust enough. This is because it does not substantiate the allegations against Mr K. There is no current evidenced risk to Mrs J and she had confirmed that she was content to see Mr K. The timing of the risk assessment, following Mr K's complaint to CQC, raises the prospect that his complaint prompted the Care Home to reinforce its ban. This is supported by the record of the Council's visit to the Care Home on 20 May 2016 when it told the Council Mr K's "*false allegations*" were a reason for the ban. That was fault.
44. The Care Provider has made some inaccurate statements. It told Mr K the Independent Advocate had asked Mrs J if she wanted Mr K to visit. But that is not supported by the Independent Advocate's e-mail to the Council. The Care Provider also told Mr K it had reference numbers for its contact with the Police, but that was not the case. This casts doubt over some of the Care Provider's other statements. It also means it cannot be accepted as a reliable broker when asking Mrs J if she wants to see Mr K. The Council needs to commission an Independent Advocate to obtain Mrs J's views.

Injustice

45. The injustice to Mr K is to some extent dependent on whether Mrs J wants to see him. Nevertheless, the bodies involved have not dealt fairly with him and for that reason the Council needs to apologise to him.

Decision

46. The Council was at fault because it:
 - did not involve Mrs J properly in the decision to ban Mr K from visiting her;
 - did not carry out a risk assessment;

- did not review the ban; and
 - failed to tell the Care Home or Care Provider when it lifted the ban.
47. The Council is also accountable for the faults of its Care Provider and the Care Home which:
- did not keep proper records;
 - provided inaccurate information; and
 - threatened Mrs J with eviction without offering all the options.

Recommendations

48. In order to remedy the injustice caused by the faults identified by this report the Council has agreed within the next three months to commission an Independent Advocate to get Mrs J's views on seeing Mr K away from the Care Home. If Mrs J wants to see Mr K, the Council will arrange for her to do this away from the Care Home and pay Mr K £300 for the failure to do this sooner.
49. The Council will also:
- write to Mr K apologising for its failings and those of the Care Home and Care Provider; and
 - consider what action it needs to take to ensure it and its care providers deal with such matters properly in future.