

The Ombudsman's final decision

Summary: The Ombudsman should not investigate Mrs B's complaint that the Council has refused to complete a capacity assessment for her son in connection with her application to the Court of Protection for deputyship. This is because there is no evidence of fault in the Council's decision-making process.

The complaint

1. The complainant, whom I shall call Mrs B, complained that the Council has refused to complete a capacity assessment for her son, Mr C, in connection with her application to the Court of Protection for deputyship.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - it is unlikely we could add to any previous investigation by the Council, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants. (*Local Government Act 1974, section 24A(6), 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*)

How I considered this complaint

4. I have considered the information Mrs B sent to us and given her an opportunity to comment on my draft decision.

What I found

5. Mrs C told us that professionals in the Community Learning Disability Team (CLDT) are the people who know her son best. She says Mr C's social worker

completed the capacity assessment for her property and affairs application. But the psychiatry service, which is part of the CLDT, has refused to assist with her health and welfare deputyship application.

6. The Council says it completed the property and affairs application as a gesture of goodwill. After considering the impact on its resources, the Council told Mrs B it would not assist with her private application for health and welfare deputyship. The Council said Mr C's GP should have enough information to complete the assessments and forms and it would provide information to the GP, subject to Mrs B's and Mr C's consent. The Council is aware a GP is likely to charge for this service.
7. Mrs B told us she does not have the resources to fund completion of the assessment by her GP, or an independent social worker or psychiatrist. Mrs B's view is the Council should do the health and welfare capacity assessment under its duty of care to her son.
8. Our role is to consider the Council's administrative action. The existence of a duty of care is a legal matter which the courts are the appropriate body to determine.
9. We look at the way the Council reaches its decisions. We cannot question whether the Council's decision in this case is right or wrong if there is no evidence of fault in the way it was reached. The Council's response to Mrs B's complaint shows it has considered what she has said as well as the impact on its resources of assisting with Mrs B's private health and welfare application. There is no evidence of fault in the Council's decision-making process.
10. Mrs B wants the Council to carry out the health and welfare assessment without charge and in a timely manner. In the absence of evidence of fault in the Council's decision-making process, this is not an outcome the Ombudsman would be able to achieve for Mrs B.

Final decision

11. The Ombudsman will not investigate this complaint. This is because there is no evidence of fault in the Council's decision-making process.

Investigator's final decision on behalf of the Ombudsman