

The Ombudsman's final decision

Summary: The Council acknowledges it was in error in the way it decided that Mrs X had deliberately deprived herself of assets to avoid care home charges: it also took too long to resolve the matter. The Council has now backdated payments of care home charges to December 2016, when Mrs X's assets fell below the threshold. The Council agrees to apologise to Mrs X's family for the distress caused by the delay in reaching a resolution and offer a payment in recognition of the anxiety its actions have caused.

The complaint

1. The complainant (whom I shall call Mrs A) complains that the Council failed to give proper consideration to all the relevant information when Mrs X's finances fell below the threshold at which the Council would help fund her care.

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. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

3. I considered the written information provided by the Council and by Mrs A. Both the Council and Mrs A had the opportunity to comment on an earlier draft of this statement before I reached a final decision.

What I found

Relevant legal background and guidance

4. The charging rules for residential care are set out in the "*Care and Support (Charging and Assessment of Resources) Regulations 2014*", and the "*Care and Support Statutory Guidance 2014*". When the Council arranges a care home placement, it has to follow these rules when undertaking a financial assessment to decide how much a person has to pay towards the costs of their residential care.

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5. The rules state that people who have over the upper capital limit are expected to pay for the full cost of their residential care home fees. However, once their capital has reduced to less than the upper capital limit, they only have to pay an assessed contribution towards their fees.
 6. The council must assess the means of people who have less than the upper capital limit, to decide how much they can contribute towards the cost of the care home fees.
 7. The *Care and Support Statutory Guidance 2014* says “*People with care and support needs are free to spend their income and assets as they see fit, including making gifts to friends and family. This is important for promoting their wellbeing and enabling them to live fulfilling and independent lives. However, it is also important that people pay their fair contribution towards their care and support costs*”.
 8. The *Guidance* goes on to say, “*There may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:*
 - (a) *whether avoiding the care and support charge was a significant motivation in the timing of the disposal of the asset; at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?*
 - (b) *did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?*

What happened - background

9. Mrs X, who is now 92, lived in her own home (a former Council-owned first-floor flat which she had bought under the Right to Buy scheme in the 1980s) until March 2013. After a fall she was admitted to hospital. She was unable to return to her own home as she could no longer access the stairs safely: she decided to sell her flat and move into ground- floor sheltered accommodation.
10. While Mrs X’s flat was for sale, she moved on a temporary basis into a care home where she funded her own care.
11. Mrs X’s house was sold in July 2013 for £147,038 (after sale expenses). From the sale money she repaid a loan of £20,000 to her daughter for help with the purchase of the flat in the 1980s, she made several monetary gifts to grandchildren and she continued to live a out-going life.
12. Mrs A says that although the family had found a suitable warden-controlled property for Mrs X, it became clear in consultation with the warden and members of the clinical and care team looking after Mrs X that because of the falls risk she would not be able to leave residential accommodation.
13. Mrs X remained in the care home until November 2015 when she moved into a nursing home, as her health had deteriorated and she had dementia.

The financial assessment and deprivation decision

14. In late 2016 Mrs X’s family approached the Council for assistance with care home fees; they said Mrs X’s finances had now fallen below £3000. (Mrs A says they had contacted the Council earlier but been told to come back when Mrs X’s finances had fallen below the threshold).

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15. The Council carried out a financial assessment in January 2017. It calculated that based on the amount of capital available after the sale of her property, Mrs X should still have had around £63,000 remaining in savings. In March 2017, after discussion with Mrs X's family about the way in which the money had been spent, the Council wrote to Mrs X to say it had concluded that "*deprivation had occurred*" and it would not be funding her care home placement.
 16. In April 2017 Mrs A complained to the Council and asked for a review of the decision. She said that in 2013 when Mrs X repaid the loan of £20,000 and made gifts to her grandchildren she had every intention of moving into sheltered accommodation and not into a care home. She added that while in the first care home, Mrs X played a full part in the life of the home: visited the hairdresser and beautician, enjoyed shopping trips and went out for lunch and dinner to restaurants to meet her family. She said since moving into a care home in 2013 Mrs X had spent nearly £170,000 on care fees and questioned how that could be considered as intentionally avoiding care charges.
 17. The Council continued to correspond with Mrs A and in July 2017, wrote to say that it would take responsibility for funding Mrs X's care backdated to the date when her assets fell below the threshold amount. However, it said unless it received evidence of repayment of the loan and the other use of money it intended to recover from her family the difference between what it would have charged if the disputed assets had not been transferred.
 18. The Council did not, in the event, take the required action to pay the care home charges. It was not until January 2018 when the care home contacted Mrs A about the lack of payments that the Council realised it had failed to put the payment system in place.
 19. Mrs A complained to the Ombudsman in February 2018. She said the Council had failed to respond properly to her complaints and could not explain how it considered Mrs X had spent "*excessively*".

The Council's response

20. The Council says it now recognizes there have been significant failings in the way it has considered this matter; both in terms of its initial decision about deprivation and in its delay in resolving the matter since then.
21. It has now funded the placement backdated to December 2016 and will not pursue further the question of deprivation.
22. The Council has also reviewed its system for approving decisions about deprivation.

Analysis

23. The Council acted in error in the way it concluded there had been deprivation of assets. It did not properly consider the evidence under the terms of the statutory guidance.
24. The Council now recognises that there were failings and proposes to remedy them.

Agreed action

25. Within one month of my final decision, the Council will apologise formally to Mrs X's family for the distress caused by the lengthy delay in resolving this matter.

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26. In addition, the Council agrees to pay £1000 to Mrs X's family for the distress and anxiety caused by the uncertainty and long delay.
 27. It will also pay £300 to Mrs A to recognise the time and trouble she has been put to in making the complaint.
 28. The Council has already reviewed its systems so I do not propose any remedy there.

Final decision

29. There was fault on the part of the Council which caused injustice to Mrs X's family, and the actions agreed above will remedy that injustice.

Investigator's decision on behalf of the Ombudsman