

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mrs A's late complaint about the actions of her aunt's, Mrs B's, care provider in 2016 and 2017. This is because Mrs A could have come to the Ombudsman sooner if she was concerned about the money being taken from Mrs B's account at the time. The Ombudsman could not say Mrs B lacked capacity in 2016 to make the decisions she made, or say she should not have to pay for her care. There is no good reason for the Ombudsman to disapply the law and investigate these matters now.

The complaint

1. Mrs A says her aunt, Mrs B, did not have capacity to make withdrawals of cash or purchase items she did not need in 2016. Mrs A says her uncle, Mr B, should not be responsible for the £33000 debt the Council says Mrs B owes for her care. Mrs A says the Council failed to undertake a capacity assessment in 2016 when she requested it and says if it had done a capacity assessment in 2016, it would have concluded she lacked capacity. Mrs A says Mrs B does not have £33,000, the amount the Council says she owes in care fees.

The Ombudsman's role and powers

2. 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*)

How I considered this complaint

3. I discussed the concerns with Mrs A and considered the information she and the Council provided. I sent Mrs A a copy of my draft decision for comment.

What I found

4. Mrs A says Mrs B could not have taken cash out of her account or the account she shared jointly with her husband in 2016 because she lacked capacity.
5. Mrs A says the police investigated her concerns, but decided Mrs B had capacity and does not know the outcome of the police investigation. The Ombudsman cannot investigate police matters.
6. The law says complaints to the Ombudsman must be made-

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- in writing, and
 - before the end of the permitted period.

(2) In subsection (1)(b), “the permitted period” means the period of 12 months beginning

With-

- the day on which the person affected first had notice of the matter, or
- if the person affected has died without having notice of the matter—
- the day on which the personal representatives of the person affected first had notice of the matter, or
- if earlier, the day on which the complainant first had notice of the matter.

(3) A Local Commissioner may disapply either or both of the requirements in subsection (1)(a) and (b) in relation to a particular complaint.

7. Mrs A could have come to the Ombudsman in 2016 if the Council had failed or refused to carry out a capacity assessment when it was requested. He could not say now Mrs A lacked capacity to make decisions for herself or withdraw money in 2016.
8. The Court of Protection gave Mr B deputyship for Mrs B’s finances in 2017 and he was advised to sever the joint account and set up separate one for Mrs B, which he did. Mrs A says Mr B should not be responsible for the payment of Mrs B’s care fees the Council says he is.
9. Mr B is not responsible for Mrs B’s care fees or any debts incurred by Mrs B, however as her deputy he has the duty to manage her finances and pay the debts she owes. The Council confirmed in a meeting with Mrs A, Mr B and his grandson, Mr C, the debt for care fees of £33000 still needed to be paid. Mrs B received an inheritance of £62000 from her deceased brother and gifted £35000 to Mr C before she was diagnosed with dementia. Mr B transferred the sum of £62000 from one joint account to another following this transaction in July 2016 and says he says he owns 50% of this amount. The Council confirmed Mrs B still needs to pay the debt and the Ombudsman could not say she should not.

Final decision

10. The Ombudsman will not investigate this late complaint. This is because Mrs A could have come to the Ombudsman sooner if she was concerned about money being taken from Mrs B’s account. The Ombudsman could not say Mrs B lacked capacity in 2016 to make the decisions she made, or say she should not have to pay for her care. There is no good reason for the Ombudsman to disapply the law and investigate these matters now.

Investigator’s decision on behalf of the Ombudsman