

12 August 2019

Complaint reference:
19 000 204

Complaint against:
London Borough of Havering

The Ombudsman's draft decision

Summary: The Ombudsman will not investigate Ms A's complaint about the amount the Council is charging her father, Mr B, for his care. This is because there is no evidence of fault warranting an Ombudsman investigation.

The complaint

1. Ms A says the Council are charging her father, Mr B, too much for his care and he does not have enough money to pay for his Speech and Language Therapy (SALT) and physiotherapy. Ms A says Mr B cannot go to the gym or eat the food and drink he wants.

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
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify our involvement, 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, or
 - there is another body better placed to consider this complaint, or
 - it would be reasonable for the person to ask for a council review or appeal.

(Local Government Act 1974, section 24A(6), as amended)

How I considered this complaint

3. I considered the information Ms A provided. I sent Ms A a copy of my draft decision for comment.

What I found

4. Ms A says Mr B's contribution towards his care costs do not leave him with enough money to pay for the speech therapy and physiotherapy he needs to improve his condition in the care home where he lives following a stroke and discharge from hospital.
5. The Council says Mr A was assessed for Continuing Health Care (CHC) but did not meet the criteria for full NHS funding but he was awarded Funded Nursing Care (FNC).
6. In April 2016 the NHS increased the weekly amount it would pay Care Providers for FNC from £112 to £156.25. The increase was announced in July 2016 and backdated to 1 April.
7. FNC is legally a payment to the Care Provider, not to an individual towards his or her social care costs. So changes in FNC do not affect the amount the resident pays or contributes towards their accommodation and personal care.
8. Social care charging arrangements for 2018/19 have been set out in a circular issued by the Department of Health. It confirms levels, including capital limits and the Personal Expenses Allowance (PEA) for local authority supported care home residents, will remain at their current levels. Local authorities are required to act under the guidance set out in the circular.

The circular confirms that for the financial year 2018/19:

- capital limits remain at their current level—lower capital limit is £14,250 and upper capital limit is £23,250;
- PEA for local authority supported care home residents remains at its current level—£24.90 per week;
- Minimum Income Guarantee for people receiving local authority arranged care and support other than in a care home remains at its current levels;
- savings credit disregards remain at their current level—up to £5.75 per week for individual supported residents and up to £8.60 per week for couples;
- Disposable Income Allowance for people who have entered into a deferred payment agreement with a local authority remains at its current level of £144 per week.

Local Authority Circular LAC(DHSC)(2019)(1)

Social care charging arrangements for 2019/20 have been set out in the above circular, which can be accessed [here](#).

9. The Council has charged Mr B for his care taking into consideration the arrangements set out by the Department of Health. The Ombudsman could not say this is fault.
10. The Council has explained to Ms A speech and language and physiotherapy are health care matters and Ms A should speak to Mr B's GP about referrals to these services if she believes Mr B needs them. These are not matters the Ombudsman can consider.
11. Ms A says Mr B spends his available income on food and drink.
12. An adult social care provider within the Ombudsman's jurisdiction is one which carries out 'regulated activities' in connection with providing adult social care. The

activities include personal care or other practical support provided in the place where the person lives.

Personal care and practical support are defined as “physical assistance (or prompting and assistance) given to a person in connection with:

- i. eating or drinking (including giving parenteral nutrition),
- ii. toileting (including in relation to menstruation),
- iii. washing or bathing,
- iv. dressing,
- v. oral care, or
- vi. the care of skin, hair and nails (except for nail care provided by a chiropodist or podiatrist)”

(Health and Social Care Act 2008 (Regulated Activities) Regulations 2010)

13. Mr B’s care costs include food and drink. If Mr B has specific dietary requirements, Ms A should explain this to this care provider who can arrange to accommodate them.

Final decision

14. The Ombudsman will not investigate this complaint. This is because there is no evidence of fault warranting an Ombudsman investigation.

Investigator’s decision on behalf of the Ombudsman