

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

**Investigation into a complaint against
Staffordshire County Council
(reference number: 18 018 592)**

15 August 2019

The Ombudsman's role

For more than 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.

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

Ms X The complainant

Report summary

Adult Social Care

Ms X, complains the Council has failed to complete the actions it agreed to take following her previous complaint.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council:

- meet with Ms X and her Advocate if she completes another self-assessment form, so she can deliver it and discuss it with her Advanced Social Work Practitioner (ASWP);
- within four weeks apologise to Ms X and pay her a further £500 for the distress it has caused and the trouble she has been put to;
- apologise to Ms X and pay her £250 for the distress caused to her, if she returns the personal data about someone else and it confirms what she has said;
- within eight weeks meet with the Trust to agree an action plan, including timescales, for ensuring agreed remedies are completed within the required timescales and assessments and care and support plans meet the requirements of the Care and Support Statutory Guidance, including:
 - eliminating unnecessary delay over assessments, care and support planning and decisions on personal budgets;
 - ensuring assessments adequately identify care needs;
 - providing estimated personal budgets as the basis for care and support planning;
 - providing people with copies of their assessments and care and support plans; and
 - ensuring care and support plans include the final personal budget.

The complaint

1. The complainant, whom we shall refer to as Ms X, complains the Council has failed to complete the actions it agreed to take following her previous complaint.

Legal and administrative background

2. We investigate complaints about ‘maladministration’ and ‘service failure’. In this report, 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. 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, sections 30(1B) and 34H(i), as amended*)
4. 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*)

How we considered this complaint

5. We have produced this report after examining the relevant files and documents, and discussions with Ms X.
6. We gave Ms X and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before we completed the report.

What we found

What happened

7. Staffordshire and Stoke on Trent Partnership NHS Trust (the Trust) carries out adult social care assessments and produces care and support plans for the Council. Because of paragraph 4 above, the Council is accountable for the Trust’s actions.
8. Ms X has mental as well as physical health problems.
9. When investigating Ms X’s last complaint ([18 005 920](#)), we found the Council had not completed all the actions it had agreed to take following an earlier complaint ([17 016 883](#)). This was because it did not apologise or pay financial redress within the agreed timescale. It also delayed in assigning a social worker to reassess Ms X’s needs. It therefore took 15 weeks to complete an assessment and produce an “*indicative*” care and support plan, rather than the six weeks the Council had agreed to take to do this. This followed an earlier failure to produce a care and support plan explaining how to meet Ms X’s eligible care needs after the Council turned down the Trust’s request for a personal budget.
10. Before we issued the final decision on Ms X’s last complaint in January 2019, the Council agreed:

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- its Chief Executive would, by 30 January, write to Ms X apologising for the fact she has had to complain again, the distress it had caused her and the failure to complete a care and support plan;
 - to pay Ms X £500 by 30 January for the distress she had been caused and the trouble she has been put to, and a further £350 so she could make her own arrangements for care until the Council agreed a care and support plan with her;
 - to agree a care and support plan with Ms X by 13 February, which meets her eligible care needs;
 - to reconsider its response to the service improvements identified in paragraph 11 below by 27 February, and consider what it needs to do to make sure care and support planning does not end when the Brokerage Team does not accept an indicative care and support plan.
11. The Council had previously agreed to consider what action it needed to take to ensure assessments and care and support plans meet the requirements of the Care and Support Statutory Guidance, including:
- eliminating unnecessary delay over assessments, care and support planning and decisions on personal budgets;
 - ensuring assessments adequately identify care needs;
 - providing estimated personal budgets as the basis for care and support planning;
 - providing people with copies of their assessments and care and support plans; and
 - ensuring care and support plans include the final personal budget.
12. In December 2018 the Trust assigned an ASWP to reassess Ms X. The ASWP asked Ms X's Advocate to provide some dates to do this.
13. The ASWP met Ms X with her Advocate on 16 January 2019. They discussed her needs and what to include in a care and support plan. The ASWP updated an assessment from August 2018. But Ms X said she did not want the ASWP to send the assessment on until she had completed another self-assessment. She said she had returned a self-assessment form in October and was disappointed the Trust had lost it. The ASWP said Ms X's Advocate had told her she would not complete another assessment, as she found it too distressing. The ASWP gave Ms X another self-assessment to complete. The ASWP said she would complete her assessment, an indicative support plan and an application for funding when she had Ms X's completed self-assessment.
14. On 31 January Ms X told us she would complete the self-assessment over the coming weekend and take it to the Trust herself. She said she returned the first self-assessment in October in a pre-addressed envelope addressed to the Ambulance Service. She said she could not understand why the envelope was not addressed to the office the ASWP works in.
15. On 6 February the Council told us Ms X's decision to complete a self-assessment had delayed agreeing her care and support plan. It said it would check what had happened to the apology and payment to Ms X from her previous complaint.

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16. On 7 February Ms X told the Trust she had completed the self-assessment and posted it on 4 February. She said the ASWP should forward her assessment with Ms X's self-assessment when seeking approval for her personal budget.
 17. The Trust's Director of Adult Social Care sent an apology to Ms X on 15 February and said she would receive a cheque for £850 "*shortly*". We pointed out the Council had agreed to get its Chief Executive to apologise to Ms X, not an officer from the Trust.
 18. Ms X left a message for the ASWP to call her on 20 February.
 19. On 21 February the Council told us the form needed to arrange payment to Ms X had been passed to the Director of Finance for signature on 19 February.
 20. On 28 February Ms X told us she had not received an apology or cheque. She said she had received another self-assessment form to complete that day. Ms X agreed we would ask the Council to collect the self-assessment when she had completed it and at the same time deliver the apology and the cheque. The Council agreed to this and to Ms X calling its Complaints Team when she had completed the self-assessment.
 21. The Council's Chief Executive signed an apology to Ms X on 1 March, saying she would receive the £850 "*shortly*".
 22. On 5 March Ms X told us that what she had assumed was a self-assessment form when we spoke on 28 February, was the personal file for another person, which included very sensitive information. She said there was a letter from the ASWP saying she had enclosed a self-assessment. But it only contained one page with her personal details saying she lives alone. She said she felt vulnerable and concerned that she could be burgled, as the Council could have shared her personal details with someone else. She said she had received calls from someone who would hang up before speaking and a car had been stopping by her home. Ms X said she wanted the Council to deliver the apologies from her two previous complaints and to pay further financial redress for the distress it was causing her.
 23. The ASWP called Ms X on 6 March but she put the phone down when the ASWP said who she was. The ASWP tried calling again but Ms X did not answer.
 24. The Council posted another self-assessment form to Ms X.
 25. On 12 March a Neighbourhood Manager left a message for Ms X, saying she and the ASWP would hand deliver the cheque and apology letter at 2pm on 13 March. The ASWP also sent an e-mail to Ms X's Advocate asking her to pass the same message on to her.
 26. On 13 March Ms X's Advocate told the Council she did not want anyone coming to her home as she felt ill and was stressed. She said to post the cheque and apology to her. The Council posted the apology, cheque and another blank self-assessment form to her on 15 March.
 27. Ms X says she returned another completed self-assessment form to the Council on 14 March, using a pre-addressed envelope addressed to the Ambulance Service. The Council has not received this.

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28. The Council is proposing a personal budget for Ms X of £149 a week. This includes funding to:
- employ a personal assistant for eight hours a week to help with washing; and
 - access day services one day a week.
29. Ms X received the cheque and apology on 20 March.
30. When the Council replied to our enquiries on 4 April, it said:
- the Trust had contracted with the Ambulance Service to manage its post;
 - the Ambulance Service would sort all the mail and forward it unopened to the relevant Trust department;
 - post would then be opened, date stamped, uploaded onto the system and delivered to the intended recipient;
 - many departments used the pre-addressed envelopes and no other problems had been reported;
 - the Trust no longer contracts with the Ambulance Service and now receives all post at its Headquarters;
 - the Trust had written to Ms X with a stamped addressed envelope on 14 March asking her to return the personal data about someone else, but she had not done so;
 - the Trust could not take any other action over the personal data unless Ms X returned it. It would then be able to tell the individual and report a data breach to the Information Commissioner's Office; and
 - it posted the apology and cheque to Ms X on 13 March as Ms X asked the Council not to hand-deliver them.
31. We had asked the Council to say what action it was taking to ensure agreed remedies are completed within the agreed timescales. It said:
- *“The Trust acknowledges there had been some initial delays in completing the remedies identified, however, it is the Trust’s understanding that all outstanding actions have been completed, any further remedies would be addressed by the Trust’s internal performance management processes”.*
32. With regard to the service improvements identified in paragraph 11 above, the Council says:
- *“The Trust have advised that they now have a comprehensive quality assurance process implemented in [the Trust]. This will enable the Trust to monitor the length of time assessments are taking and address this with individual assessors where necessary. This is supported by the caseload management tool. That is used in supervision which all assessors have at least monthly. The support plan is incorporated in the assessment and should therefore be addressed by the improved quality assurance process. The assessment is linked to a Resource Allocation System that identifies the personal budget but this is then confirmed and agreed by Staffordshire County Council who hold the funding budget. This is managed through Staffordshire County Council’s Brokerage Service.”*
 - *“All service users should have a copy of their assessment once agreed between the assessor and the individual. This is good practice and expected of*

all staff. The quality assurance can be reviewed to include this as a standard request.”

33. On 15 April Ms X told us she would not return the personal data for someone else to the Council.

Conclusions

Apology and payment

34. Neither the apology nor the payment was made within the agreed timescale. The Chief Executive’s letter was not written until 1 March, over four weeks late. That was fault by the Council. This is the second time this has happened to Ms X. Given her mental health problems, this added unnecessarily to her distress and resulted in a further loss of confidence in the Council and its agent, the Trust.

Care and support plan

35. We do not find fault with the Council. Its agent, the Trust, updated Ms X’s assessment to reflect recent changes in her circumstances. It also completed a care and support plan and discussed it with her on 16 January. It was her choice to complete a self-assessment form before agreeing the care and support plan. The Council has confirmed it will implement the care and support plan and backdate payments to 16 January, if Ms X agrees to this.

Self-assessment form

36. Ms X believes the Trust has received her self-assessment forms and is not telling the truth when it says they have not arrived. However, there is not enough evidence for us to say the Council is at fault over this. While we cannot rule out the possibility that, having received one or more of her forms, it mislaid them, we also cannot rule out the possibility that they never arrived. Ms X has no proof of postage. It is therefore not possible to say what happened to her self-assessment forms.
37. Ms X still wants to submit a self-assessment form. The Council has sent her another one and has provided evidence that Ms X signed for it. When she has completed it, she will arrange a meeting with her ASWP and Advocate so she can deliver it.

Someone’s else’s personal data

38. We do not find fault with the Council, as Ms X has not provided evidence that she received someone else’s personal data. Similarly, the Trust cannot be expected to take more action unless Ms X returns the personal data. If she does this and it confirms what she has said, the Council needs to send a further apology and pay financial redress for the distress caused by receiving disturbing information about someone else and by the possibility that her personal data could have been shared with someone else.

Service improvements

39. The response to the service improvements is inadequate. It does not address the specific issues raised and does not take account of the fact responsibilities are shared between the Council and the Trust. Ms X’s initial problems arose when the Council did not accept the Trust’s proposals for a personal budget and care and support plan. Although the Trust had identified eligible care needs, Ms X was left without any support at all.

Recommended action

40. When a council commissions another organisation to provide services on its behalf (in this case, the Trust) it remains responsible for those services and for the actions of the organisation providing them. So we have just made recommendations to the Council.
41. We recommend the Council:
 - meets with Ms X and her Advocate if she completes another self-assessment form, so she can deliver it and discuss it with her ASWP;
 - within four weeks apologises to Ms X and pays her a further £500 for the distress it has caused and the trouble she has been put to;
 - apologises to Ms X and pays her £250 for the distress caused to her, if she returns the personal data about someone else and it confirms what she has said;
 - within eight weeks meets with the Trust to agree an action plan, including timescales, for ensuring agreed remedies are completed within the required timescales and assessments and care and support plans meet the requirements of the Care and Support Statutory Guidance, including:
 - eliminating unnecessary delay over assessments, care and support planning and decisions on personal budgets;
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 - ensuring care and support plans include the final personal budget.

Decision

42. The Council was at fault because:
 - for a second time it failed to send the apology or payment within the agreed timescale; and
 - it has failed to identify adequate service improvements to prevent the problems Ms X has experienced from being repeated.
43. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)