

**Complaint reference:**  
13 015 861

**Complaint against:**  
North Tyneside Metropolitan Borough Council

## **The Ombudsman's final decision**

Summary: The Council failed to act in accordance with the law in attempting to prevent Mrs Y from travelling abroad by air. The Council failed to adhere to the Code of Practice set out in the Mental Capacity Act 2005. This caused Mrs Y unnecessary stress, distress and disruption to her travel plans.

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## **The complaint**

1. Mr X complains on behalf of his mother Mrs Y. Mrs Y is elderly and lives in her own home. Mr X lives abroad. He complains that the Council attempted to prevent his mother from travelling by air to visit him as she had done many times before.
2. He complains specifically that a social worker cancelled his mother's flight without any authorisation.

## **The Ombudsman's role and powers**

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

## **How I considered this complaint**

4. As part of this investigation I have:
  - considered the written complaint;
  - considered the correspondence between Mr X and the Council including the Council's response to the complaint;
  - made enquiries of the Council and considered the responses;
  - made enquiries of third parties and considered the responses;
  - taken account of relevant legislation;
  - offered Mr X and the Council the opportunity to comment on the provisional view.
  - considered the comments Mr X and the Council made before coming to a final decision.

## **What I found**

### **Legal and Administrative background**

5. The Mental Capacity Act 2005 (MCA) is relevant to anyone who has a relative or friend who may lack capacity. It applies whenever decisions are being made on

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behalf of a person who lacks capacity to make a particular decision for themselves.

6. The Act is accompanied by a Code of Practice which provides guidance as to how it should work on a day to day basis.
7. As in any other situation, an assessment must only examine a person's capacity to make a particular decision when it needs to be made. It may be possible to put off the decision until the person has the capacity to make it (Code of Practice 4.27)

### **Background**

8. Mrs Y is elderly and lives in her own home. She has been in receipt of home care services since her discharge from hospital in August 2013. Prior to the admission to hospital Mrs Y had been self caring at home with support of relatives living close by.
9. Mr X, her son, lives abroad. He does not have Power of Attorney but manages his mother's affairs with her consent.
10. On Mrs Y's discharge from hospital a relative, whom I shall call Ms Z alerted the Council that Mrs Y needed home care services and also that Mrs Y was intending to travel abroad to see Mr X in September 2013. Ms Z believed Mrs Y was not fit enough to travel. Ms Z also expressed concern about the support Mr X provided to Mrs Y.
11. On receiving the information from Ms Z the Council undertook an initial needs assessment of Mrs Y on 23 August 2013. The outcome of the assessment showed that Mrs Y was eligible for home care services and needed some aids and adaptations, which were then provided. The assessment showed Mrs Y needed assistance with meals, drinks and medication prompt.
12. Due to the concerns Ms Z raised about Mrs Y's impending travel arrangements the Council raised a safeguarding alert. The safeguarding team allocated a social worker to investigate the concerns raised.
13. The Council's records show the actions the Council took from the 23 August 2013. The Social Worker undertook initial safeguarding investigations and completed 'Safeguarding Adults Form 1'. This records that there were apparent complex family dynamics between Mr X, who lived abroad and the relatives who lived close to Mrs Y and who provided support to her.
14. On the 29 August 2013 the social worker telephoned Mrs Y. The social worker recorded the details of the conversation and that "*mrs [y] displayed good memory during our conversation*". The social worker told Mrs Y she would visit her.
15. The social worker then telephoned the re-ablement team who were providing home care services to Mrs Y to ascertain exactly what care was being provided to her.
16. The social worker received a call from Ms Z, who told the social worker she was a district nurse and re-iterated her concerns for Mrs Y. She also said that she believed Mrs Y lacked capacity to make any decisions and that Mrs Y's GP was visiting her to assess her capacity.
17. The Social worker then telephoned Mrs Y's GP. The social worker records that the GP was planning to visit Mrs Y but a GP had made notes following a conversation with Mrs Y that she appeared to have capacity to make decisions.
18. The social worker visited Mrs Y on 29 August 2013. The Council's records show that Mrs Y's relatives were present during this visit. The purpose of the visit was to gather information and complete safeguarding documents. The social worker

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recorded that Mrs Y displayed short term memory loss and appeared to have a lack of awareness about her care needs, and that Mrs Y was unable to recall specific details about her travel plans even after this had been discussed with her.

19. During this visit the social worker completed a Mental Capacity Assessment of Mrs Y.
20. *'The Mental Capacity Assessment Form MCA1' shows the decision which Mrs Y was being assessed as having the capacity to make. TO MAKE DECISION REGARDING CHECKING WITH [travel agent] WELFARE DEPARTMENT WHAT LEVEL OF SUPPORT WILL BE PROVIDED TO ENSURE THAT CARE NEEDS WOULD BE MET BY CABIN CREW DURING FLIGHT"*.
21. The social worker also completed *'MCA2 Record of actions taken to ensure a best interests decision'*. This concludes that the social worker is in agreement with Mrs Y's relatives about her ability to travel alone and that the airline should be contacted to establish what level of support would be provided during the flight given Mrs Y's health and memory issues.
22. During the visit Mr X telephoned Mrs Y. He spoke to the social worker. He told her he had Power of Attorney for his mother, which included managing her finances and health and welfare. Mr X had strong views about his involvement in decisions his mother made. He also said his mother had the capacity to decide to travel alone and that she had been doing this regularly for the last 25 years.
23. Following this visit the social worker took advice from other officers in the Council. She also contacted Mrs Y's GP and left a message for the GP to contact her.
24. On 2 September 2013 Mrs Y's GP contacted the social worker to say she had visited Mrs Y. The GP explained the outcome of her visit. The GP noted that Mrs Y did appear to have some memory problems. The GP'S records say *"spoke with ... from social services-she wishes an old age psych referral so that she has an official dementia diagnosis so that safe guarding team can act in her best interests and so that they are legally safe from the point of view of the son"*
25. The social worker's notes of the visit records *" dr felt she could not prepare for journey without support, short term memory was very poor, she mentioned referral to memory clinic but mrs y said she didn't want this, dr did not feel she was able to make this decision but also wondered what be benefit it would be for gp to refer to poas if client didn't want to engage, however we discussed that client would probably not remember that she had declined and it would be in her best interest to gain diagnose of memory condition...i felt we needed proof of mrs y has dementia to support us to act in her best interest.."*. The GP did refer Mrs Y for an assessment at the memory clinic.
26. On 4 September 2013 a social worker from the Council's Psychiatry of Old Age Service visited Mrs Y to undertake an assessment of her mental health. The social worker recorded *"My opinion based upon my visit to her on 3.9.13 is that she should go to ... but a plan should be set up by which includes support from the time she leaves her home, passed over to someone at the airport..."*. It further records *"She was aware that I may stop her visiting... and often asked if I was going to stop her"*.
27. The Council held a safeguarding strategy meeting on 6 September 2013. Mrs Y's relatives attended the meeting. The notes of this meeting recorded on 'Safeguarding Adults Form 2 is detailed and extensive. The notes reiterate the

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- concerns for Mrs Y's wellbeing and her ability to make a decision about travelling abroad. The notes say "...at the moment we are just looking at Capacity to make informed choices about travelling to see her Son".
28. The strategy meeting concluded that Mrs Y had the capacity to make the decision to travel abroad and the Council were accepting of this along as "*she is fit and well to travel*".
  29. On 11 September 2013 the social worker emailed Mr X to inform him that Mrs Y was looking forward to the visit and that carers would support her to pack and leave her house safely.
  30. On 12 September 2013 the social worker received an email setting out the GP's concerns, that Mrs Y was not capable of travelling abroad alone, that she would find it difficult and it would be unsafe.
  31. The social worker contacted Mrs Y's relatives to pass on the information from the GP. She also contacted other officers within the Council.
  32. On 13 September 2013 the social worker sent Mr X an email setting out the GP's concerns for his mother. She asked Mr X to clarify what plans were in place to support Mrs Y and that "*Our local authority does not support your mother flying to ... and would step in, if necessary to protect her from this risk*".
  33. Mr X replied to the social worker explaining he had arranged a friend to escort his mother from her home to the airport. He included the contact details of person.
  34. The social worker then telephoned the friend of Mr X who would be escorting Mrs Y to the airport. The social worker told this person what Mrs Y's care needs were and asked who would be packing Mrs Y's clothes and ordering her medication. Mr X's friend did not know this information but told the social worker the airline's welfare team usually look after Mrs Y. The records show that Mr X's friend planned to telephone the airline to ask advice about Mrs Y.
  35. The social worker telephone the GP again to ask him to visit and "*check her over and provide social services a written report stating if she is medically fit to travel*". The GP contacted the social worker to say that he had spoken to Mrs Y on the telephone and she appeared to be fine and he did not see the need to visit her.
  36. The Council's records show the social worker was exchanging numerous emails about Mrs Y with senior social workers, safeguarding officers and legal officers of the Council.
  37. The social worker recorded that she received a telephone call on 19 September 2013 from a social worker from Psychiatry for Old Age Service (poas) who had previously assessed Mrs Y on 4 September 2013. This social worker said "*she considered that mrs y had capacity to state that she wants to travel to ..., however she is extremely vulnerable and lacks awareness of risks*".
  38. Mrs Y's GP telephoned the social worker on 20 September 2013 saying the friend of Mr X had contacted him to ask if he should escort Mrs Y to the airport. The GP followed this up with an email setting out the reasons why he considered it was unsafe for Mrs Y to travel alone. The GP said this decision was based upon a capacity assessment he had completed on Mrs Y, which concluded that Mrs Y was physically and cognitively unfit to travel. The GP did not provide the Council with the formal Mental Capacity Paperwork or say when he had visited Mrs Y to undertake the formal capacity assessment.

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39. The GP's records show that Mrs Y telephoned the GP on 20 September 2013 to ask why her travel plans were being obstructed. The GP records discussing the situation with Mrs Y and that she seemed keen to go. The GP further recorded "*in my most recent call to [the social worker] i asked what would happen if the patient decided to go against our advice and she stated that she would be speaking to her superior and the legal team, and if on Monday, it appeared the lady had gone, they would consider getting the police to attend the airport*".
  40. Later the same day the GP records show a further telephone conversation with the social worker. This shows the social worker had contacted the airline and based on the information the social worker gave the airline said "*based on the info we have given them, they do not think she will be fit to travel.. [the social worker] has spoken to the legal team and they will get a court order if she tries to travel, she has assured me that [social worker] from poas agrees with the capacity assessment*"
  41. The social worker telephoned one of Mrs Y's relatives. This person was not available to speak to the social worker so the social worker relayed the GP's information about Mrs Y to the person's step- son.
  42. The social worker sent an email to the Council's legal team and a senior social worker saying "*...gp is stating that [mrs y] is unfit to travel*".
  43. On 20 September 2013 Mrs Y's relative telephoned the social worker to inform her that Mrs Y was planning to travel to the airport in the early hours of the morning. The social worker advised Mrs Y's relative to contact social services 'out of hour's team' if this happened. The social worker also contacted the 'out of hours team' to give information about Mrs Y's travel plans. The social worker also contacted the police.
  44. In the early hours of the 21 September 2013 the 'out of hour's team' was alerted that Mrs Y was travelling to the airport by taxi. An Approved Mental Health Social Worker and the police went to the airport. Both the social worker and the police concluded that Mrs Y had the capacity to make an informed decision about travelling. On this occasion Mrs Y did not travel because the flight was not direct to her destination. Mrs Y returned home.
  45. Later that day the airline company telephoned the social worker to say it had decided to cancel Mrs Y's flight and refund the money to Mr X.
  46. On 23 September 2013 Mrs Y's relative telephoned the social worker to ask if Mrs Y could be prevented from making further travel plans. The social worker said she would need to consult the Council's legal team as Mrs Y had been deemed to have capacity to make such a decision.
  47. The social worker was then informed that Mrs Y had caught an alternative flight with a different airline company to see her son.
  48. Mr X says that during his mother's visit she was anxious and distressed about returning back to the UK. She believed she would be in trouble with the police and social services. Mr X says he discovered the airline company had also cancelled her flight back to the UK. Mr X had to re-book a return flight with a different airline company.
  49. During his mother's visit Mr X exchanged emails with the Council about various issues. He also complained about the social worker's actions.
  50. Mr X consulted a solicitor in the UK, who subsequently contacted the Council on Mrs Y' behalf. This related to the whereabouts of the keys to his mother's home,

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the safety of her possessions, and the care arrangements for her return. The council confirmed who held the keys to Mrs Y's home.

51. Prior to Mrs Y's return to the UK the Council allocated a different social worker. This social worker exchanged email correspondence with Mr X about the services she would need when she returned home.
52. Mrs Y returned to the UK in January 2014.

### **Mr X's complaint**

53. Mr X complained to the Council about the actions of the social worker. He said the social worker had breached his mother's confidentiality by giving information about her to an airline company, which resulted in her flight being cancelled. He said he had contacted the airline company for information and believed the social worker had not been truthful about the nature of her relationship with Mrs Y. He believed the social worker's actions had interfered unnecessarily with his mother's private life. He asked the Council to recompense his mother for the additional expenses she had incurred.
54. A manager in the Council's social care team responded to Mr X in October 2013 saying that its officers did not cancel his mother's flight as they did not have the authority to do so, that it was the airline that cancelled the flight following the advice of Mrs Y's GP. It apologised for any distress that he or his mother had experienced and said this had not been the intention of the social worker.
55. It also clarified other points Mr X had raised about the whereabouts of his mother's house key.
56. Mr X was unhappy with the Council's response to his complaint and continued to correspond with the Council.
57. The Council provided Mr X with a further response to his complaint on 10 December 2013. The letter says that the decisions made by the social worker, including the sharing of risk related information provided by medical assessment with an airline company "*were made on the basis of our duty of care*"
58. Mr X remained dissatisfied with the Council's response and complained to the Ombudsman.

### **Consideration**

59. A key principle of the Mental Capacity Act 2005 is that adults are legally able to make a decision for themselves unless it can be shown that they are unable to make it. This means that people must not assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability, or because they are of a particular age or appearance.
60. The Act says that people are allowed to make what might seem to others to be an unwise or eccentric decision. People make unwise decisions but this alone does not mean that they lack capacity to make decisions for themselves.
61. The social worker had a duty to investigate the concerns raised about Mrs Y. However her actions appear compulsive and disproportionate. It appeared the social worker's concern focused on Mrs Y's ability to travel.
62. The social worker contacted the GP seeking a diagnosis of dementia in the belief that this would allow the Council to act in Mrs Y's best interests. It does not follow that because a person has dementia they lack capacity to make decisions about their life. Regardless of whether Mrs Y had a diagnosis of dementia, capacity is decision specific.

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63. The GP had not previously expressed any concern about Mrs Y's ability to make decisions about travel.
  64. Whilst the GP did express concerns about Mrs Y's capacity these views were not a formal assessment of Mrs Y's capacity. They were not recorded on formal mental capacity paperwork. The GP's views should have contributed to the formal capacity assessment the social worker undertook.
  65. The GP did not at any time contact the airline company.
  66. The social worker says she undertook an assessment of Mrs Y's ability to make a decision to travel abroad. She did not do this. The Mental Capacity Assessment shows that the decision Mrs Y was being assessed as having capacity to make was whether the social worker should contact the airline to establish what in-flight support would be available to Mrs Y. The social worker did not need to establish this. The only decision that needed assessing was whether Mrs Y had the capacity to make a decision to travel by air to visit her son.
  67. The social at no point assessed Mrs Y's capacity to travel alone abroad. Had she done so it would have been probable that Mrs Y would have the capacity at that time to make this decision, despite any memory difficulties she was experiencing. This is fault.
  68. The social worker breached Mrs Y's confidentiality. She contacted a third party and gave personal information about Mrs Y's health without authorisation to do so. Mrs Y did not give her consent for the social worker to divulge personal information about her to an airline. It was as a result of this information that the airline cancelled Mrs Y's flight. The airline would not have cancelled the flight had the social worker not contacted it. In taking this action the social worker acted outside of her powers as an officer of the Council and overstepped professional boundaries as a social worker. This is fault
  69. The diary notes of the airline detail the conversation the social worker had with its customer service about Mrs Y. The name recorded was that of the social worker.
  70. The social worker also gave personal information about Mrs Y to other third parties without Mrs Y's consent. These include the person who was to escort Mrs Y to the airport and the step-son of a relative of Mrs Y. This is a breach of confidentiality. This is fault.
  71. The social worker gave inaccurate information to Mrs Y's GP. She told the GP that the Council's Psychiatry for Old Age Service Team agreed with the Mental Capacity Assessment, and that the Council would obtain a court order if Mrs Y attempted to travel. The GP did not know that the social worker had not undertaken an assessment of Mrs Y's capacity to make a decision to travel. The Council would not have been able to obtain a court order. This information may have influenced the view of the GP.
  72. The Council told me the Social Worker incorrectly recorded a conversation with a social worker from the Council's Psychiatry for Old Age Service Team. The Ombudsman must however make her decisions based on the records completed at the time and cannot accept retrospective interpretations of the records.
  73. The Council has provided a retrospective assessment of Mrs Y,s mental health and capacity completed by a social worker from its Psychiatry for Old Age Service Team. The Ombudsman cannot consider such information now because it is not based on a formal mental capacity assessment completed at the time.

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74. The social worker made assumptions about Mrs Y's ability to make a decision to travel abroad and attempted to impose restrictions on Mrs Y's freedom. She failed to give due regard to the principles of the Mental Capacity Act 2005.
  75. This caused significant injustice to Mrs Y and Mr X. Mrs Y not only had her travel plans disrupted, she was stressed and distressed at the attempted curtailment of her travel plans and the possibility she would be deemed unable to make her own decisions about travelling.
  76. During her time abroad she feared reprisals from the authorities about her decision to travel. This affected the enjoyment of her holiday. She also had the added costs of having to book alternative flights both ways.
  77. Mr X had to advocate on his mother's behalf from abroad. This caused him unnecessary stress and distress. He also had to rebook a flight for his mother's return to the UK.

### **Recommended action**

78. I have found fault causing injustice and recommend the Council takes the following action:
  - provide Mrs Y with a full written apology;
  - provide Mr X with a full apology;
  - ensure its officers are aware of the principles, and act in accordance with the Mental Capacity Act 2005;
  - pay the difference between the cancelled flights and the re-booked flights;
  - pay Mrs Y £500 for stress and distress;
  - pay Mr X £250 a time and trouble for pursuing this complaint.

### **Final decision**

79. The Council failed to act in accordance with the law in attempting to prevent Mrs Y from travelling abroad by air. The Council failed to adhere to the Code of Practice set out in the Mental Capacity Act 2005. This caused Mrs Y unnecessary stress, distress and disruption to her travel plans.
80. A social worker gave information about Mrs Y to an airline without authorisation to do so which resulted in the airline cancelling Mrs Y's flight abroad. This is fault.
81. A social worker gave confidential information about Mrs Y to third parties without Mrs Y's consent. This was a breach of Mrs Y's confidentiality. This is fault.
82. The above recommended action represents a suitable way to settle the complaint.
83. The investigation is complete. The complaint will now be closed.

### **Investigator's decision on behalf of the Ombudsman**