

Complaint reference:
14 020 430

Complaint against:
North Tyneside Metropolitan Borough Council

The Ombudsman's final decision

Summary: the Council failed to assess C's adult social care needs when asked and has delayed unreasonably in dealing with a request from another Council to conduct the assessment so that Council can complete his transition planning for leaving care.

The complaint

1. Ms B complains the Council refused to provide help or support for C, a young adult living with her.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

How I considered this complaint

4. I have considered:
 - information provided by Ms B;
 - information provided by the Council, including copies of assessments, case notes, and correspondence with Council C;
 - the Children Act 1989;
 - *The Children Act 1989 guidance and regulations, volume 3: planning transition to adulthood for care leavers* published by the Department for Education in October 2010;
 - *"Staying put" Arrangements for Care Leavers aged 18 and above to stay on with their former foster carers. DfE, DWP and HMRC Guidance* published by the Government in May 2013; and
 - *Guidance on good practice: remedies*, published by the Local Government Ombudsman in 2016.
5. I invited Ms B and the Council to comment on my draft decision.

What I found

Background

6. Ms B lives in North Tyneside. She was a foster carer and has cared for C since he was a young child. C was placed with Ms B by a neighbouring Council, Council C, in 2001. He was a *looked after child*. He is now an adult.
7. When C reached 18, in 2013, he said he wanted to continue to live with Ms B. Ms B was happy to continue to provide support.
8. Ms B, and Council C, were concerned that C would not be able to manage independently so Council C asked Adult Social Services at North Tyneside to assess C's adult social care needs. Ms B hoped that C could continue to live with her under a 'shared lives' arrangement.
9. In September 2014, North Tyneside refused Ms B's request to fund a 'share lives' placement for C with her. Instead, C continued to live with Ms B under 'staying put' arrangements funded by Council C. These arrangements will remain in place until C reaches 21, in 2016, at the latest.
10. Ms B complained to the Ombudsman in March 2015. She was unhappy that North Tyneside had refused to provide support, and in particular had refused to approve a 'shared lives' arrangement for C. She said that both she and C needed certainty about the future. She believed a lack of certainty was responsible for a deterioration in C's behaviour which was becoming more challenging.
11. The Ombudsman has investigated complaints against both North Tyneside and Council C. The Ombudsman found Council C had delayed in planning for C's transition to adulthood. This statement concerns the actions of North Tyneside.

What happened

12. On 17 December 2013, shortly after C's 18th birthday, Council C emailed North Tyneside to request an assessment of C's adult social care needs. Council C described C as "a very vulnerable young person with very limited capabilities."
13. On 8 January 2014, after confirming that C was 'staying put' with his former foster carer, North Tyneside agreed to assess C's eligibility for adult social care, using the *Fair Access to Care Services* eligibility criteria in operation at the time, and also to consider his eligibility for North Tyneside's 'shared lives' programme.
14. Between February and September 2014, both Council C and North Tyneside visited Ms B and C a number of times to complete the assessments. The outcome of the assessments was:
 - Ms B was approved as an interim 'shared lives' carer; and
 - C was eligible for adult social care, but his 'indicative personal budget' was not enough to qualify him for the 'shared lives' programme.
15. Given this discrepancy between C's assessed needs and the cost of the 'shared lives' programme he requested, his case was referred to the Council's Resource Panel for further consideration.
16. On 3 September 2014, the Panel decided that North Tyneside would not take responsibility for C. The Panel's view was that since he was a *looked after child*, C remained the responsibility of Council C until he reached the age of 21.
17. An officer from North Tyneside emailed Council C on 12 September 2014 to explain the Panel's decision.

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18. An officer from Council C emailed North Tyneside on 18 September 2014 to explain that C was no longer a *looked after child* as he was 18 years old, but he remained with his former foster carer under a 'staying put' arrangement. Council C explained that it had requested North Tyneside assess C's eligibility for adult care services since Council C would no longer be able to provide this support once he reached 21.
 19. Council C's Legal Services wrote to North Tyneside on 27 October 2014 to confirm that C intended to continue living with Ms B in North Tyneside and to request confirmation of the Council's intentions regarding his adult social care.
 20. North Tyneside replied on 9 January 2015. It said that as C came under the 'staying put' initiative, he would remain the responsibility of Council C. North Tyneside said that Council C should provide advice, assistance and support, including financial support, to maintain the arrangement. North Tyneside offered assistance with completion of benefit forms and any future care planning.
 21. Council C replied on 23 March 2015. It confirmed that it continued to fund C's placement with Miss S under 'staying put' arrangements, but again asked North Tyneside to assess C's adult social care needs.
 22. North Tyneside replied on 14 May 2015. It explained that it had reservations about the appropriateness of a 'shared lives' arrangement for C and said it required Council C to provide a pathway plan before it could allocate a social worker and begin the transition process.
 23. The Ombudsman began an investigation on 3 July 2015 following a complaint from Ms B against North Tyneside.

Legal and administrative terms used

Looked after child

24. When a Court decides a child is suffering, or at risk of suffering, harm as a result of the care he receives from his parents, it may make a Care Order. A Care Order gives a Council parental responsibility for the child. A child subject to a Care Order is said to be a *looked after child*. Legislation, regulations and guidance set out the Council's duties and responsibilities towards looked after children. Councils may arrange for foster carers to carry out the day-to-day job of caring for the child, but the Council remains responsible for the child's welfare.
25. A child ceases being a looked after child on his 18th birthday (or earlier if the Court discharges the Care Order).

Leaving care

26. The government has recognised that, just like other children, looked after children may continue to need support after their 18th birthday. Legislation, regulations and guidance place duties on councils to prepare looked after children for adulthood before they reach 18, and to continue to provide support to previously looked after children once they reach 18.

Transition planning

27. Government guidance says transition to adulthood should not just start on a looked after child's 16th birthday; preparation for a time when they will no longer be looked after should be integral to the care planning process throughout their time in care. Councils responsible for looked after children must produce a 'pathway plan'. A pathway plan sets out the actions the responsible authority, the

young person, their carers, and other agencies must take to enable the young person to make a successful transition to adulthood. The pathway planning process must involve an analysis of the young person's continuing need for care, accommodation and support as they approach the end of their time in care. (*The Children Act 1989 guidance and regulations volume 3: planning transition to adulthood for care leavers (chapter 3)*)

28. Where it is likely that a care leaver will require continuing support from adult services, it is good practice to make a formal referral as early as possible from age 16 so that eligibility for support is established in time for the young person's 18th birthday. An adult services worker should contribute to the pathway planning.

Duties to care leavers aged 18 - 25

29. A council's duty to provide accommodation and maintenance for looked after children ends when they reach 18 (unless they wish to 'stay put' – see below). However councils have duties to care leavers to:
- provide general assistance;
 - provide assistance with the expenses associated with employment; and
 - provide assistance with the expenses associated with education and training, including bursaries for care leavers in Higher Education.
30. A council's duties to care leavers operate primarily until the young person reaches the age of 21. The duties continue beyond the young person's 21st birthday where they remain in education or training and continue until the end of the agreed programme as set out in their pathway plan. A former looked after child who returns to education or training after their 21st birthday is entitled to a Personal Advisor allocated by their responsible authority.

The responsible authority

31. Where a care leaver lives out of area, that is to say not in the area of the Council granted the Care Order, responsibility for provision of services may change when they reach 18. Leaving care support remains the responsibility of the placing authority (in C's case, this is Council C). Adult social care provision is normally the responsibility of the local authority in whose area the adult lives. (*The Children Act 1989 guidance and regulations volume 3: planning transition to adulthood for care leavers, paragraph 6.12*)
32. Where local authorities cannot agree who is responsible for an adult's social care, usually because the person's 'ordinary residence' is in dispute, they can request a determination from the Secretary of State.

Staying put

33. Local authorities have a legal duty to advise, assist and support both care leavers and their former foster carers if they wish to remain living together after the care leaver's 18th birthday. These are known as 'staying put' arrangements and are intended to enable care leavers to make the transition to independence when they are ready and able. (*Children Act 1989, s 23CZA*)
34. Staying put arrangements end on the young person's 21st birthday.

Shared lives

35. Adults with significant care needs who are eligible for support from adult social services (see below) may be eligible for an 'adult placement', known as 'shared lives'. An adult placement is similar to a foster placement for a child, although it is subject to separate statutory provisions, regulations and guidance.

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36. Government guidance says that where a disabled young person meets the eligibility criteria for an adult placement, the possibility of their former foster carers becoming their adult carers should be considered. (*The Children Act 1989 guidance and regulations volume 3: planning transition to adulthood for care leavers, paragraph 6.17*)

The difference between ‘staying put’ and ‘shared lives’

37. The “staying put” framework is aimed at former looked after children who require an extended period with their former foster carers due to delayed maturity, vulnerability and/or in order to complete their education or training. Where young people have an on-going cognitive disability and are eligible for adult social care, foster placements should be converted to adult placements, or ‘shared lives arrangements’, when the child reaches their eighteenth birthday. This is important to insure that both the child and young person and the foster carer and adult placement carer have a formal regulatory and safeguarding framework that addresses their respective needs. (*“Staying put” Arrangements for Care Leavers aged 18 and above to stay on with their former foster carers. DfE, DWP and HMRC Guidance May 2013, p 11*)

Social Care support for adults

38. The legislation governing social care support for adults changed when the Care Act came in to force on 1 April 2015. In considering Ms B’s complaint, I have taken account of the law that was in force at the time.
39. When C became an adult in 2013, councils had a duty to assess anybody in their area who appeared to be in need of community care services. (*National Health Service & Community Care Act 1990, section 47*) They must then decide which of a person’s assessed needs are eligible for support. Government Guidance at the time, Putting People First, described four levels of need (critical, severe, moderate or low) depending on the risk to a person if their needs are not met. Councils did not have to meet all needs. Councils set their own thresholds for support. Many Councils, including North Tyneside Council, would only meet critical or substantial needs. If the Council provided support to meet a person’s eligible needs, it must produce a written care plan.
40. The Care Act, and the associated regulations, introduced national eligibility criteria and new procedures for deciding whether somebody is entitled to support. If the Council were to assess C now, it would use the new procedures.
41. Under the new criteria, an adult has eligible needs if:
- their needs arise from or are related to a physical or mental impairment or illness;
 - as a result of their needs, the adult is unable to achieve 2 or more of the specified outcomes (which are described in the guidance); and
 - as a consequence of being unable to achieve these outcomes there is, or there is likely to be, a significant impact on the adult’s wellbeing.

Consideration

42. Ms B complains that North Tyneside has refused to provide support for C. In particular, she is unhappy the Council has refused her request for his foster placement to become a ‘shared lives’ placement.
43. Preparation for C’s transition to adulthood was significantly delayed. Council C was responsible for initiating transition planning. The Ombudsman found Council C was at fault for the delays in beginning transition planning. Council C accepted the Ombudsman’s findings and recommendations.

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44. This complaint concerns what happened when Council C, and Ms B, asked North Tyneside to assess C's eligibility for adult social care support. Council C should have made this request when C was 16, in 2011. It made the request when C was 18, in 2013.
45. North Tyneside carried out an assessment of C's adult social care needs, although the assessment was not authorised and the Council considers it a 'working document'. The assessment showed C had eligible social care needs and an indicative personal budget (the estimated cost of a care package to meet his eligible needs) of £12,740 per year. This was significantly less than the cost of the 'shared lives' programme Ms B and C wanted. For this reason, the Council referred the case to its Resource Panel.
46. The Council also assessed Ms B and C for the shared lives programme. The Council's Shared Lives Service Manager made a number of visits to Ms B and C. Although his assessment of Ms B was positive, he had reservations about the long-term suitability of 'shared lives' for C.
47. The Council's Resource Panel considered all the evidence. The Panel's decision is recorded in an email from the Panel Chair to C's social worker. The Chair's email notes that C was a *looked after child*; he was currently living in a foster placement; and he would remain the responsibility of Council C at least until he was 21. The Chair says she has discussed this with the social worker's manager, and copied her email to the Council's solicitor "in case there is a dispute about the funding with [Council C]."
48. The Council has been unable to locate paperwork relating to the Panel meeting, but provided a statement from the Chair and C's social worker which explains the rationale for the Panel's decision, namely:
- there were concerns about the lack of planning by Council C;
 - Officers had observed C's communication difficulties and were aware of some disruptive behaviours, but there was a lack of certainty about his diagnosis;
 - there was no plan or treatment for C's attachment disorder, other than a continuation of his placement with Ms B;
 - the primary health evidence was a report from a consultant who had not met C;
 - although the Council approved Ms B as a shared lives carer for C, this was only for a short time because the assessment found she was very protective of him rather than moving him towards independence;
 - the Panel therefore considered whether a different funding framework would better meet C's needs and concluded that the existing 'staying put' arrangement was the best way forward as it would allow for more detailed transition planning.
49. The Council informed Council C of its decision – that C was a *looked after child* and therefore Council C's responsibility – on 12 September 2014, almost 9 months after the Council requested the assessment. It has not disclosed the assessment of C's social care needs which it considers a 'working document'.
50. There then followed 8 months of correspondence between Council C and North Tyneside in which Council C explained that C was not a *looked after child* and repeated its request that North Tyneside assess his adult social care needs. North Tyneside finally agreed to assess C's adult social care needs in May 2015, on condition Council C first provide a completed pathway plan.

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51. Unfortunately, by this time, the relationship between Ms B and North Tyneside had broken down to such an extent that Ms B and C were reluctant to undergo any further assessment. It appears Ms B hopes that resolution of her complaint about the Council's September 2014 decision not to fund a shared lives arrangement will avoid the need for further assessment.

Findings

52. Council C asked North Tyneside to assess C's adult social care needs. The Council has not complied with this request. This is fault. The Council has legitimate concerns about the absence of transition planning for C (set out in paragraph 48 above), but these are not grounds to refuse to complete an assessment of his adult social care needs. Council C needs a decision from North Tyneside about C's eligibility for adult care services if it is to plan for his transition to adulthood. North Tyneside's refusal to assess C has frustrated Council C's efforts.
53. North Tyneside's response to Council C's request to assess C's adult social care needs was to declare him a *looked after child* and the responsibility of Council C. This is fault. C was an adult, not a looked after child.
54. Furthermore, North Tyneside spent almost 9 months carrying out assessments before it informed Council C in September 2014 of its decision that C was a looked after child and Council C's responsibility. This decision bore no relationship to Council C's request to assess C's adult social care needs. This caused delay. After 9 months of assessments, North Tyneside did not provide an assessment of C's adult social care needs. This is fault.
55. When Council C pointed out to North Tyneside that C was an adult, not a looked after child, North Tyneside declared C able to stay with his foster carers until he was 21 under the 'staying put' initiative and pointed out that he would remain the responsibility of Council C. This is fault. In making this statement, North Tyneside was acting outside its powers. It was not for North Tyneside to decide whether C should stay with his former foster carer under 'staying put' arrangements. This was a decision for Council C. Government guidance, quoted above, says that 'staying put' arrangements are not suitable for young adults with continuing adult social care needs. Council C had requested an assessment of C's adult social care needs, albeit very late, so that it could decide whether 'staying put' or other arrangements were in his best interests. North Tyneside's refusal to assess C frustrated Council C's efforts.
56. North Tyneside agreed to assess C's adult social care needs in May 2015, subject to Council C providing a pathway plan, some 8 months after its erroneous September 2014 decision that C was a looked after child and therefore the responsibility of Council C. Although both North Tyneside and Council C took a long time to respond to each other's correspondence during this time, nothing changed except North Tyneside's acceptance of its duty to assess C's needs. Council C's position remained constant. This 8 months of delay was, therefore, fault by North Tyneside.
57. While there is truth in North Tyneside's view that 'staying put' arrangements allow C to continue to live with Ms B (which they both want) and provide time for more detailed planning to take place, Ms B is anxious to arrange appropriate adult social care for C. North Tyneside has not contributed to the long-term arrangements for C's care during his staying put placement with Ms B. This is fault. Time is running out for C. Staying put will end when he is 21 in December.

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58. Ms B believes C's needs can best be met by a 'shared lives' arrangement. They have undergone an assessment and they are entitled to a decision from the Council so they can, if they disagree, challenge the Council's decision. North Tyneside's failure to give them a decision is fault.

Injustice to Ms B and C

59. Council C has continued to maintain C's placement with Ms B under a 'staying put' arrangement. As a result, he has not been without accommodation or support from Ms B. Nevertheless, his transition to adulthood, and adult services, has been delayed. Although Council C was responsible for some of the delay, particularly before C's 18th birthday, North Tyneside has frustrated Council C's attempts to complete his transition planning.
60. If C is eligible for adult social services, not only has he not received those services, but both he and Ms B have missed out on the safeguards and protections to which they are entitled as recipients of adult care services.
61. The Ombudsman cannot assess C's adult social care needs and cannot say how they should be met. Without an assessment by North Tyneside, I have no way of knowing whether the 'shared lives' arrangements Ms B and C would like are appropriate to meet C's needs. Not knowing whether his needs are eligible for support or how any eligible needs will be met is a cause of uncertainty for C and Ms B who has put herself forward as a shared lives carer. Ms B believes this has caused his behavior towards her to deteriorate. This uncertainty is an injustice.

Recommended action

62. The Ombudsman has published guidance to explain how she calculates remedies for people who have suffered injustice as a result of fault by a council. Her primary aim is to put people back in the position they would have been in if the fault by the Council had not occurred. When this is not possible, as in the case of Ms B and C, she may recommend the Council makes a token payment to acknowledge what could have been avoidable distress, harm or risk.
63. When the Ombudsman recommends a payment for distress, she only takes account of *avoidable* distress that is the result of fault by the Council. A remedy payment for distress is often a moderate sum of between £100 and £300. In exceptional cases, the Ombudsman may recommend a higher payment.
64. Taking all of these factors into account, I recommend the Council:
- apologise to Ms B and C for the distress caused by its failure to respond appropriately to Council C's request to assess C's adult social care needs in December 2013;
 - assess C's adult social care needs and, if appropriate, produce a care plan without delay so that Council C can complete his transition planning; and
 - make a payment of £500 each to Ms B and C to acknowledge the impact of the Council's delays on them at this time of uncertainty in their lives.

Final decision

65. I find fault because the Council:
- failed to carry out an assessment of C's adult social care needs when asked by Council C;

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- acted outside its powers when it decided not to complete the assessment because C could continue to live with Ms B under a 'staying put' arrangement; and
 - delayed unreasonably in accepting its duty to carry out an assessment.
66. This fault has caused Ms B and C injustice: they still do not know whether C has eligible needs and, if so, how they will be met. I have recommended a remedy for this injustice.
67. The Council has accepted my recommendations, so I have completed my investigation and closed the complaint.

Investigator's decision on behalf of the Ombudsman