

Complaint reference:
14 009 812

Complaint against:
Herefordshire Council

The Ombudsman's final decision

Summary: The Council accepts and regrets that, on a few occasions towards the end of 2014, Mrs B's carers arrived late and once failed to arrive at all. Mrs B did not however, suffer harm as a result. The interruption in Mrs B's care between the end of January and 25 March 2015 was because Mr B would not allow a new provider to deliver care until Mrs B's needs had been reassessed. There was some delay in completing the reassessment but this was due to Mr B's wish for a solicitor to be present.

The complaint

1. Mr B complains on behalf of his mother, Mrs B, that the company commissioned by the Council to provide his mother with domiciliary care had poorly trained staff who sometimes arrived late and sometimes failed to arrive at all. He says between the end of January and 25 March 2015 his mother had no professional care at all. Mr B also complains the Council was slow, after offering to reassess his mother's needs, to complete the reassessment.

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)*)

How I considered this complaint

3. I considered the information sent to me by Mr B and I discussed Mr B's complaint with him. I considered the Council's response to my enquiries.
4. Responding to a draft of this decision Mr B asked me to consider his telephone recordings. Mr B said they challenged the Council's account of events. I considered all the telephone recordings and I considered the Council's telephone logs. I interviewed a senior social worker and considered evidence from the Council's Information Technology Manager.

What I found

How the Council approves and monitors its care providers.

5. All care providers commissioned by the Council are registered with the Care Quality Commission (CQC.) CQC have their own standards, which include the need for staff training, and they carry out their own inspections.
6. In addition the Council's own officers make annual checks to review recruitment, support, training and rotas for staff and the care records and contingency plans for those receiving care.

Mrs B's care package

7. Mr B cares for his mother at the family home. He is helped by professional carers, who come in twice a week on Tuesdays and Fridays, to help Mrs B bathe and to apply cream to treat a skin condition.
8. Mr B complained to the Council when, on two occasions in August and September 2014, carers arrived significantly late and when, on one occasion in November, they failed to arrive at all. The Council checked with the care provider who did not dispute what Mr B said but it said it had offered other days. Mr B disputes this. He asked for a refund in his mother's contribution to the cost of her care. The Council apologised to Mr B and explained why no refund could be made to her.
9. Mr B was not the first nor was he alone in complaining about the care provider and, by the time he complained to the Council, it had already contacted the CQC. CQC undertook its own visit to the provider on 13 August 2014. It was not satisfied with what it found and agreed an action plan with the company. It also told the Council what it was doing.
10. Meanwhile the Council was working with all its care providers to introduce new software for recording details of visits, which the Council could also access. This would enable the Council to check on the exact dates and times of visits itself. When Mrs B's provider went into liquidation at the beginning of 2014, it had not introduced the new software although other providers had.

Managing Mrs B's care when the provider went into liquidation.

11. On 30 January Mr B's mother's care provider told the Council that, with effect from Wednesday 4 February, it was going into liquidation. Mrs B should have had an immediate letter, telling her about this. The Council accepts she did not and it has apologised.
12. When the Council was told the care provider was going into liquidation, it had to find alternative provision for a number of people: it says 24 but Mr B says he was told 63 people lost provision. At short notice, this was not easy.
13. The Council expected the provider to continue until Wednesday 4 February, including providing Mrs B's care on Tuesday 3, and it had arranged for an interim provider to pick up Mrs B's care package from Friday 6 February until a new, permanent provider was found.
14. No carer arrived to bathe Mrs B on Tuesday 3. Instead Mr B had a telephone message from the Council but it did not prepare him for an unfamiliar carer arriving on Friday 6th. When someone without identification whom he did not recognise arrived as he was leaving to take his mother to hospital, B refused her entry.

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15. Mr B says from that date, in fact from 30 January the day on which his mother last had care until 23 March 2015 when the new provider began, his mother had no care. He says his mother's needs had also changed and she had been waiting, since December, for a reassessment.
16. The Council does not dispute Mrs B had no care but it says this was because, after Mr B turned the interim provider away, he told its interim provider and its social worker he would not allow another until his mother's needs had been reassessed.
17. The Council's records show Mr B called it on 11 and 13 February asking a social worker to call him back. He says this shows he wanted the Council to get on with the reassessment quickly. Then on Friday 13 February at 16:40 a social worker records the following telephone conversation with Mr B:
- “(Mr B) stated that he is very unhappy that his mother has not been reviewed as requested. I apologised for this and agreed to look at the delay and when requested. He shared that his mother has been without a care service since (the old provider) ceased at short notice. I explained that (the old provider) had ceased service and that the LA had only a few days notice. He said that this was not the situation and that a provider could not just cease. I confirmed this is what happened and he said that the LA should have tighter control over agencies that they contract with.
- “I confirmed that the LA had not left his mother without care and confirmed that his mother's care package had been passed to (the interim provider) who started on the 6th of Feb, but that I was informed that his mother refused this care. He stated that this was not the case and that he had refused the care as his mother should have been reassessed prior to a new agency starting. I clarified that the new agency would follow the existing care plan until a reassessment of needs. He stated that he would not agree to this. I said that this would leave his mother without a care package and possibly at risk and he said that he would not change his decision. His mother's care is currently twice a week Tuesday / Friday.
- I discussed with (Mr B) how we should move this situation forward. He shared that he would like 2 appt dates / times when a social worker would visit. He will then ask his solicitor to attend. I asked why he would like a solicitor to be present and he said that the Ombudsman is currently investigating a complaint regarding care. He also shared that when a support plan is agreed he would want the social worker to sign a separate letter stating the agreed care, this letter would be sent by the solicitor. I clarified that the support plan is a legal document and that the social workers name would be on this and a signature from himself.”
18. Mr B says he does not recall this call or this conversation but the Council's telephone log confirms someone from the Council called Mr B on Friday 13 February at 17.17. The call lasted for 22 minutes 24 seconds. I interviewed the social worker who made the call. She recalls the conversation and describes Mr B as “quite clear and quite strong.”
19. The Council accepts it was under significant pressure to resolve care for so many people at short notice. The experience has led it to change its procedures. A new procedure has now been implemented and this will ensure, should a similar situation arise in the future, people will be kept safe. In future, if a care provider is unable to provide the care, the person expecting the care will be contacted in

writing on the day the Council receives notice. This new system is now in place but it was not in place when Mr B's mother's provider went into liquidation.

Reassessment of Mr B's mother's needs

20. When Mr B first asked for his mother's needs to be reassessed, the Council sent a trained officer to do this. Mr B was not happy. He said he expected his mother's needs to be reassessed by a qualified social worker. The Council explained the worker who came to assess Mrs B's needs, although not a qualified social worker, was trained to do that job but, to allay Mr B's concerns, it offered Mrs B another assessment. On 18 December 2014 Mr B agreed to this.
21. Unless there are exceptional circumstances, the Ombudsman expects needs to be assessed within 28 days of a request having been made. We have seen, in paragraph 17 above, Mr B's exchanges with the Council on 11 and 13 February. These show Mrs B had not been assessed within 28 days and Mr B was concerned about this.
22. After Mr B's conversation on 13 February, the Council suggested three possible dates: 23 February, 2 March and 3 March. The Council's record shows the social worker called Mr B again on 19 February to apologise that their solicitor could not manage 23 February. The record of that call ends in the middle of a sentence, as though the person making the record had been interrupted. The record shows it was "updated" some days afterwards by another officer. Mr B queried this record.
23. The Council explained: "when a worker enters a case note, they have an option to either Save it or Finish it. If the worker Finishes the Case Note then it cannot be amended or deleted. To avoid a worker keeping a Case note in an open amendable state ad infinitum we have an overnight process routine that runs at 8pm every night that automatically finishes Case Notes after 7 days. This then preserves the note in its form at the 7 day stage. A Case note cannot be re-opened once it is finished. The reason the audit log records my details is that the Finish Case Note routine that runs has to be done by worker with System Admin rights." I find no reason to question the Council's explanation.
24. The reassessment of Mrs B's needs was carried out on 6 March 2015. The Council accepts there was delay and some of this was its fault. I note the request was made just before the Christmas holiday period although the Council does not refer to this. It says it had to prioritise more urgent cases and, when the social worker was told on 16 February that Mr B wanted his solicitor present, it considered it too should have legal representation. It was 6 March before a date suitable to all parties could be found. Mr B's mother was reassessed then.
25. Mr B, as his mother's carer, had his needs assessed too in March 2014.

Final decision

26. I find no fault with the Council's current procedures for commissioning and monitoring the provision of care. There were shortcomings when Mr B made his complaints and the Council was right to raise those with the care provider and ultimately with the CQC. I cannot see, under the circumstances, what more it could have done. Mrs B would be inconvenienced and disappointed when her carers did not turn up to give her a bath but there is no evidence she suffered harm as a result.
27. The interruption in Mrs B's domiciliary care from 1 February, when her care providers went into liquidation, until late March was not the Council's fault. There

may have been a misunderstanding but I am persuaded by the record that Mrs B's son, in seeking to protect his mother's interests, refused provision until his mother's needs had been reassessed. It is not always necessary for assessments to be undertaken by qualified social workers, providing the assessor has been properly trained.

28. There was a delay in completing Mrs B reassessment of need. This was due in part to the Council's need to prioritise its resources elsewhere and in part to Mr B's wish to involve a solicitor, again to protect his mother's interests. The Council has apologised for its part in the delay. As there is no evidence this caused Mrs B any real harm, I cannot recommend it do more.

Parts of the complaint I did not investigate

29. Because Mrs B had not always had the care for which she was assessed, Mr B asked the Council for a refund of his mother's contribution to the cost of her care. The Council explained, because it topped up the payments, it could recover overpayments itself but Mrs B's contribution fell below the threshold for a refund for her. There was no fault with the Council's decision and I told Mr B I would not pursue this part of his complaint.

Investigator's decision on behalf of the Ombudsman