8 October 2015

Complaint reference:
14 019 277

Complaint against:
Herefordshire Council

Local Government OMBUDSMAN

The Ombudsman's final decision

Summary: The Council moved B from one residential care home to another without introductory meetings or overnight stays to familiarise himself with his new surroundings. The Council accepts this was not an ideal transition but that does not mean it was unplanned. There was limited time to move B, he was not easy to place and officers involved with his care considered knowledge of an impending move would cause him unnecessary distress.

The complaint

1. C complains on behalf of his half-brother, B, that:

- B's move to a new care home was poorly managed; and
- B was not receiving care appropriate to his needs.

What I have investigated

2. I investigated C's complaint and associated concerns C raised with me when we discussed his complaint. For example, C did not know if his half-brother had a social worker, or who was responsible for his finances, or why his fluid intake had been restricted.

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.

4. The Ombudsman cannot investigate late complaints unless she decides there are good reasons. Late complaints are when someone takes more than 12 months to complain to the Ombudsman about something a council has done. ***(Local Government Act 1974, sections 26B and 34D)***

How I considered this complaint

5. I have discussed C's complaint with him several times and I have considered all the information C has sent me. I have considered the Council's response to my enquiries.

6. C and the Council have had an opportunity to comment on a draft of this decision.

What I found

Background and significant people in B's life

7. C's family adopted B when he was 10 months old. B lived in the family home until his adoptive mother was no longer able to care for him. That was about 4 years ago. B then moved to temporary accommodation and then residential care but, following an incident involving another resident, the care home said it could no longer meet B's needs. It gave him one month's notice to leave.

8. B now lives in another residential care home, H House. B has been there since moving from his previous accommodation in December 2013.

9. B lacks capacity. When significant decisions have to be made concerning someone who may lack capacity, a Mental Capacity Assessment must be carried out to decide whether the person can contribute to the decision or not. Mental Capacity Assessments are time and situation specific. In other words, a separate assessment must be made for every significant decision.

10. The Council's records show it carried out a Mental Capacity Assessment for the first time for B in August 2011 following which a Best Interest Decision decided he should move from the family home into a 24 hour registered care home. It carried out another Mental Capacity Assessment in May 2012 followed by another Best Interest Decision to move B into his previous residential care home. At this point the Court of Protection appointed a representative to deal with B's property and finances.

11. The Council has sent me the Mental Capacity Assessment which it completed on 4 November 2013 when B was under notice to leave his previous care home. (Appendix 1) I have considered this document and will refer to it again below. It is comprehensive and I can find no fault with it. This was followed by another Best Interest Decision to move B to H House.

12. B has an Independent Mental Capacity Advocate. The Council has sent me a copy of her appointment which is also enclosed (Appendix 2.) I can find no fault with this document either.

13. B's finances are managed by the Court of Protection Deputy. She is based in the Council and acts on its behalf.

14. The Council's Learning Disabilities Team has overall responsibility for B's care. B has no permanent social worker because H House manages his care. The Learning Disability Team must review B's needs periodically and for that purpose a social worker is allocated, as one has been. Once the review is complete, the social worker will have no on-going involvement.

15. The Council has sent me B's Best Interest Decision Record (which is also enclosed at Appendix 3.) C is named on the form as a family member whom the Council must consult on any significant decision or change to B's care. C's views on his half-brother's move to H House are recorded in the Best Interest Decision Record. The Best Interest Decision form does not involve B's mother because of her own frailty and the onset of dementia.

The complaint that B's move was poorly managed

16. The record shows C and his sister had concerns about B's care at his first long-term residential placement. C says B's toothache was not dealt with and this may have affected his behaviour. The record shows that on 9 October 2013 the home told the Council B had become aggressive to female service users and staff. By 25 October, despite safeguarding measures and the vigilance of staff, B's

behaviour had deteriorated to the point B was given notice to leave. The home told the Council it respected its duty to give 28 days' notice but asked that B be moved as soon as possible as his behaviour was putting others at risk.

17. C complains the Council did not prepare B properly for the move. It offered B no choice of accommodation nor did it visit possible homes with him to prepare him for the move.

18. It would be good practice for the Council to consider all its options, to explain to B why he had to move, to help him choose alternative accommodation and to accompany him on familiarisation visits.

19. The Council's records show why this did not happen in this case. Its case notes of actions and discussions involving B over the period of his move show officers considered at least eleven other placements but all were unsuitable. Some were too noisy, one could offer no sleep-in facility, another considered B too great a risk and two could only offer 1st floor accommodation which was unsuitable for B who had been assessed with a visual perception impairment which affected his ability to manage stairs (See Appendix 7, between 28 October - 3 December 2013.)

20. A problem with the move was time. Officers had 28 days from 25 October to find and settle B into new accommodation. The care home at first refused to extend the notice period but, when finding alternative accommodation proved difficult, it granted an extension to 2 December. The Council says it found a placement in H House only a few days before the 28 day notice period expired.

21. The Council accepts a planned transition with over-night stays would have been preferable but the circumstances did not allow for it. The record also shows the Council would like to have considered supported living for B but there was not enough time then to do this.

22. C is critical of the Council's decision not to involve B in his move. The Council's records however show this was not an oversight but conscious planning. B's Mental Capacity Assessment records: "It is important to note that it was decided not to ask (B) if he knew he had been given notice from (his care home) due to his aggressive behaviour towards another service user and that alternative permanent accommodation needs to be identified for him. The reason for this is because I did not feel it appropriate to unduly stress (B) if he was able to understand this information."

23. C says B understands more than he communicates. He says B would have found the story-boards, through which officers explained the impending move to B, patronising. C says he eventually told B himself about the move because he could see B was upset and scratching himself until he bled. C says B was not distressed but visibly relieved when he was told.

24. Officers did not discount C's views. A Best Interest meeting was convened for 14 November but, when C and a representative from the home did not arrive, the meeting was adjourned until 28 November. The Best Interest Record (Appendix 3, pages 4 & 5) describes B's communication difficulties and C's belief his half-brother could understand more than he would say. However the officers' own observations were that B's communication skills were limited. Even when he suggested he wanted to do something himself, he would wait to be directed.

25. The record shows Council officers considered this carefully. The responsible officer consulted B's Speech and Language Therapist, his Psychiatrist and his Occupational Therapist to discuss how best to prepare B for the move. In B's

Mental Capacity Assessment, the officer recounts the questions she put to B and she recounts his verbal and non-verbal responses. Her narrative account illustrates her attempt to engage with B and to understand what information he could process. After B moved his Speech and Occupational Therapists maintained contact with him. The record shows they also worked with care staff at H House to help them communicate with B. (Appendix 7, 3 December 2013 and 9 July 2014)

26. I take account of C's concerns and I note his different experience of B. But, having considered the Council's contemporaneous records, I cannot conclude the way B was moved, or the decision to explain the move through story-boards was unreasonable or patronising. Council officers were genuinely concerned to spare B distress and to prepare him, without inducing anxiety, for the move.

The complaint B is not receiving care appropriate to his needs

27. C complains B's care is not appropriate to his needs. He is concerned about B's medication: his says B's speech is sometimes slurred, his eyes glazed and his voice uncharacteristically quiet. He now takes laxatives and Gaviscon, neither of which he used when he lived with the family at home. C is also concerned B is fearful of stairs.

28. Because the Council is responsible for commissioning B's care, it should have carried out its own assessment of B's needs and its own care plan. H House should also have a care plan for B. I asked the Council if it would send me all three documents.

29. The Council has sent me a copy of its Assessment of B's needs, a copy of its Care (Support) Plan and a copy of H House's Care and Support Plan. They are enclosed at Appendices 4,5 & 6. Each is a comprehensive document with which I can see no fault. In particular, the Council's Assessment and H House's Care Plan set out clearly B's medical history and current medication. B's fear of stairs has been assessed as due to a visual perception difficulty.

30. Although the Council, as commissioning body, has ultimate responsibility for B's care, including his medical care, day to day medication is the responsibility of B's primary and secondary practitioner, in B's case his general practitioner (GP) and Consultant Psychiatrist. The Council has sent me the contact details of both which I assume C already has.

31. Responding to C's complaint, a Council officer visited H House and spoke to one of its managers. B's medication is set out in his Care Plan although the manager said one particular medication for epilepsy was being substituted and for a transitional period the old and new were running together. Staff at H House told the officer they had no concerns about B's current medication and, if they did, they would raise their concerns with his GP or Psychiatrist. Laxatives and Gaviscon are both prescribed by B's GP because his behaviour was noted to deteriorate when he had stomach pain.

C's concern about the limit on B's fluid intake

32. After I had begun my investigation C raised a particular concern he had about B's fluid intake. He said it was limited to 1½ ltrs a day and he did not think this was right. I asked the Council.

33. The Council asked the deputy manager of H House about this. She told him that in January 2015 B had a routine blood test which showed his sodium levels were low. As a result B's Psychiatrist recommended restricting B's fluids until his

sodium levels returned to normal. This process was monitored and, after two weeks the levels had returned to normal and normal fluid intake was resumed.

34. There had been no restrictions since but, after C raised his concerns about it, a manager at H House discussed the position with B's Psychiatrist. She told C she was concerned there was not enough information on B's files about fluid restriction (which should be properly recorded.) As a result, B has recently had another blood test. If his sodium levels are again low, fluid restriction may be re-introduced but it must be properly recorded.

35. I can see nothing to suggest B's needs have not been properly assessed, or that his care packages are not appropriate for his needs, or that his care is not being properly delivered.

Whom should C contact with concerns about B?

36. If B has any concerns about his brother, it would be appropriate for him to raise them first with H House. If his concerns continue, he should contact the Learning Disabilities Team on (number supplied.) This number is manned throughout the working day.

Final decision

37. I can see no evidence of fault in the way the Council managed B's move to a new care home nor any reason to be critical of the Council for the care it is currently providing B.

Parts of the complaint that I did not investigate

38. I have not investigated C's complaint about his half-brother's previous move or care (in particular dental care) because they happened too long ago.

Investigator's decision on behalf of the Ombudsman