

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

**Investigation into a complaint against
Somerset County Council
(reference number: 18 012 742)**

5 June 2019

The Ombudsman's role

For 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 do what it agreed to do when we closed her previous complaint, as it has failed to clearly address her eligibility for care and support under the Care Act 2014.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council:

- writes to apologise to Ms X and pays her £250 for the trouble it has put her to in pursuing her complaints;
- updates its assessment for Ms X so that it includes a clear decision on eligibility, as required by the Care Act, and shares this with her;
- takes action to ensure all its assessments include clear decisions on eligibility by:
 - informing assessors of the need to do this;
 - updating its guidance for officers; and
 - providing us with evidence that it has done this.

The Council has accepted our recommendations.

The complaint

1. Ms X complains the Council has failed to do what it agreed to do when we closed her previous complaint, as it has failed to clearly address her eligibility for care and support under the Care Act 2014.

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. The Care and Support Statutory Guidance (Statutory Guidance) says:
 - *“The assessment and eligibility process provides a framework to identify any level of need for care and support so that local authorities can consider how to provide a proportionate response at the right time, based on the individual’s needs. Prevention and early intervention are placed at the heart of the care and support system, and even if a person has needs that are not eligible at that time, the local authority must consider providing information and advice or other preventative services. Local authorities must also consider the person’s own strengths or if any other support might be available in the community to meet those needs. The assessment and eligibility framework provides for ongoing engagement with the person so where they have eligible needs they are involved in the arrangements put in place to deliver the outcomes they want to achieve.” Paragraph 6.6*
 - *“Eligibility determinations must be made on the basis of an assessment, and cannot be made without having first carried out an assessment.” Paragraph 6.12*
 - *“During the assessment, local authorities must consider all of the adult’s care and support needs, regardless of any support being provided by a carer.” Paragraph 6.15*
4. To have eligible care needs all the following must apply.
 - a) The needs must arise from or be related to a physical or mental impairment or illness.
 - b) Because of the needs, the adult must be unable to achieve two or more of these "outcomes":
 - managing and maintaining nutrition;
 - maintaining personal hygiene;
 - managing toilet needs;
 - being appropriately clothed;
 - being able to make use of the home safely;
 - maintaining a habitable home environment;
 - developing and maintaining family or other personal relationships;
 - accessing and engaging in work, training, education or volunteering;
 - making use of necessary facilities or services in the local community including public transport, and recreational facilities or services;

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- carrying out caring responsibilities for a child.
- c) Because of not achieving these outcomes, there is likely to be, a significant impact on the adult's well-being.
5. Having decided someone has eligible care needs under section 13(1) of the Care Act, councils must meet the adult's needs for care and support which meet the eligibility criteria (provided certain conditions are met).

How we considered this complaint

6. We have produced this report after examining the relevant files and documents, and discussions with Ms X.
7. We gave the complainant 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

8. Ms X's previous complaint ([18 001 415](#)) was about the failure to assess her needs properly or consider her eligibility for support properly under the Care Act 2014. We closed the complaint in July 2018 when the Council agreed to:
- reassess Ms X's needs, making sure it addresses all the required outcomes and explaining how she is able to achieve them in such a way that does not meet the eligibility threshold (if that is the case); and
 - consider what action it needs to take to make sure assessors consider all the required outcomes and provide reasons for their decisions.
9. The Council visited Ms X to reassess her on 20 September 2018. The assessment says she asked for help with:
- showering and drying;
 - dressing;
 - preparing and cooking fresh meals;
 - shopping, social events and family visits;
 - prompts/reminders for appointments and medication;
 - continence occasionally; and
 - checking skin integrity regularly.
10. The section of the assessment on eligibility addresses these outcomes.
- Maintaining and managing nutrition – Ms X is managing to shop and prepare meals and drinks, by following advice given she can continue to meet this outcome independently. Ms X accepted a referral to a Community Agent to “*support and link in with shops*”. The Council advised Ms X to use the help provided by supermarkets to wheelchair users, shop online and buy prepared vegetables.
 - Maintaining personal hygiene – Ms X said she struggled to shower safely, could not do this adequately, and was caused fatigue. The Council noted she needed advice and equipment to continue meeting this outcome and offered to refer her to the Integration Rehabilitation Service (IRT) but she refused this. It noted she paid privately for help with laundry.

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- Managing toilet needs – Ms X can use and access the toilet without help. The Council advised her to contact her GP for a continence assessment to get pads to provide reassurance when she feels anxious. It said this would help her to continue to meet her toilet needs.
 - Being appropriately clothed – Ms X achieves this by wearing loose clothing that she can get into without help. The Council told her “*small pieces of equipment*” were available and the IRT could advise if she struggles on her bad days.
 - Making use of the home safely – Ms X can get around her home, has an alarm to get help should she have a fall and can access 24 hour support where she lives.
 - Maintaining a habitable home environment – Ms X achieves this by employing help privately.
 - Developing and maintaining family or other personal relationships – Ms X can get out using her mobility scooter, use the telephone and social media. A friend visits “*as often as possible*” and takes her out when she can. A community agent could help find a volunteer to help her use a wheelchair taxi to visit wider family.
 - Accessing and engaging in work, training, education or volunteering – the Council noted it could offer advice if Ms X wanted help with this.
 - Making use of necessary facilities or services in the local community, including public transport and recreational facilities or services – Ms X can access local services using her mobility scooter.
11. The assessment does not say whether Ms X has eligible care needs under the Care Act.
 12. The Council says Ms X “*has eligible needs but these needs do not require a paid service from Adult Social Care as they can be met utilising community services and voluntary sectors to continue to promote [her] independence*”.
 13. The Council says it has achieved our second recommendation - “*consider what action it needs to take to make sure assessors consider all the required outcomes and provide reasons for their decisions*” - by reassessing Ms X’s needs.
 14. The Council follows a ‘strengths based’ approach to care needs assessments. Its guidance says:
 - “*Adult social care assessments are all too often service led rather than needs led. From an asset-based perspective, in an authentic personalised social care world, individual needs and carers assessments have to clearly identify four things:*”
 1. “*What strengths, values, skills and resources the individual has/had and would like to develop?*”
 2. “*What information, advice and support does the individual need to enhance personal resilience? i.e. personal skills and knowledge development, and improve or maintain their wellbeing?*”
 3. “*Is it necessary to re-engage or develop immediate circle of support, and if so, what help or support is needed to achieve this?*”
 4. “*To the extent that 1 and 2 are not able to address identified needs, what more informal and/or formal support is required from organisations or*

people in the person's local community to help them source the right solutions for themselves?"

15. There is nothing in the Council's guidance on the 'strengths based' approach to care needs assessments about the need to include a decision on eligibility. However, its Assessment and Eligibility Policy says:
- "We will follow the national eligibility rules to work out if you are eligible for our financial support to help you achieve some, or all of the things in your care and support plan. We will explain our decisions."*

Conclusions

16. Although the Council's reassessment of Ms X's needs addresses the required outcomes it does not say whether she has eligible care needs. That is fault by the Council. A needs assessment must include two elements; an assessment of the adult's need for help achieving the outcomes and a decision on eligibility. In the absence of the latter, it is not clear what Ms X's eligible needs may be, or how the Council can be satisfied Ms X does not need a personal budget to meet any of them.
17. The Council has not taken any action to make sure assessments explain the reasons for eligibility decisions, as required by the Care Act, the Statutory Guidance and its own policy. That is also fault.
18. This has caused injustice to Ms X as it leaves some doubt over the outcome of her needs assessment. It has also put her to the time and trouble of pursuing her complaints to us.

Recommended action

19. 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*)
20. To rectify its faults and remedy the injustice it has caused, the Council has agreed to:
- write to apologise to Ms X and pay her £250 for the trouble it has put her to in pursuing her complaints;
 - update its assessment for Ms X so that it includes a clear decision on eligibility, as required by the Care Act, and share this with her;
 - take action to ensure all its assessments include clear decisions on eligibility by:
 - updating its guidance for officers;
 - informing assessors of the need to do this; and
 - providing us with evidence that it has done this.

Decision

21. The Council was at fault because:

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- its reassessment of Ms X's needs does not meet the requirements of the Care Act or the Statutory Guidance; and
 - it has failed to take any action to ensure its assessors consider all the required outcomes and provide reasons for their decisions.