

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

**Investigation into a complaint against
Wiltshire County Council
(reference number: 16 015 946)**

12 April 2018

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.

Investigation into complaint number 16 015 946 against Wiltshire Council

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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

Mrs N – The complainant acting on behalf of her son

Mr N – Her husband

Mr P – Their son, an adult in need of specialist care

Report summary

Adult Care Services

Mrs N cares for Mr P, her son. She complains the Council has wrongly cut the respite care provided for her son and has wrongly asked her to pay towards the cost of her son's transport between home and day care.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council has accepted our recommendations. The Council will consider the report at its full Council or Cabinet or other appropriately delegated committee of elected members and confirm within three months the action it has taken or proposes to take. We will require evidence of this.

In addition to the requirements set out above the Council has agreed to take the following action to remedy the injustice identified in this report. The Council will:

- Apologise to Mrs N;
- Restore the previous level of respite care pending a re-assessment compliant with the Care Act 2014;
- Confirm it will offer her 24 days respite care to be taken at a time of her choosing in recognition of the respite care wrongly withdrawn;
- Pay Mrs N £747.50 in recognition of money she paid the Council for transport;
- Pay Mrs N £500 in recognition of distress and time and trouble;
- Review its policy and procedure on respite care to reflect the requirements of the Care Act 2014;
- Review other files for evidence of use of the Matrix Assessment Tool (MAT). It should write promptly to anyone similarly affected and review their cases;
- Review the files of anyone whose transport was cut to ensure these cuts were compliant with the Care Act;
- Inform the Ombudsman of the numbers of people involved and undertake to review all cases within a further three months;
- Ensure all staff receive training in the requirements of the Care Act and the relevant guidance; and
- Review all relevant documents to ensure they reflect the current law.

The Complaint

1. Mrs N and her husband care for their disabled adult son, Mr P. Mrs N complains the Council has wrongly cut Mr P's respite care and she was wrongly asked to pay towards the cost of his transport to and from his day care centre.

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 Ombudsman may investigate matters coming to our attention during an investigation, if we consider a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E*)
4. When investigating complaints, if there is a conflict of evidence, the Ombudsman may make findings based on the balance of probabilities. This means that during an investigation, we will weigh up the available evidence and base our findings on what we think was more likely to have happened.

Social care

5. The Care Act 2014 introduced a requirement that local authorities should promote 'wellbeing' and '*signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs'.... The concept of meeting needs recognises that everyone's needs are different and personal to them. Local authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into*'. (*Care and Support Statutory Guidance, Ch 1*)
6. Councils must also consider the importance of preventing or delaying the development of needs for care and support among carers. Statutory guidance recommends 'tertiary prevention' methods such as respite care. (*Care and Support Statutory Guidance 2.10*)

Needs assessment

6. A council must carry out an assessment of any adult who seems to need care and support. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
7. Having identified eligible needs through a needs assessment, the Council has a duty to meet those needs. (*Care Act 2014, section 18*)
8. The Care Act sets out examples of different ways a council can meet eligible needs. Examples include accommodation in a care home, care and support at home, counselling and social work, and information, advice and advocacy. (*Care Act 2014, s 8*)

9. If a council decides a person is eligible for care, it must prepare a care and support plan. This must set out the needs identified in the assessment. It must say whether, and to what extent, the needs meet the eligibility criteria. It must specify the needs the council intends to meet and how it intends to meet them. (*Care Act 2014, ss 24 and 25*)
10. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan needs. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. (*Care Act 2014, s27(4) and (5)*)
11. The care and support plan must set out a personal budget which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. (*Care Act 2014, s 26*)
12. The High Court has confirmed an individual's wishes are not the same as their needs and their wishes are not the paramount consideration. A council must have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs. (*R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin)*)
13. A person with eligible care needs can have a council arrange their care. Or, if they wish, they can arrange their own care using a direct payment. (*Care Act 2014, s 31*)

Carers

14. A council must consider whether to carry out a carer's assessment if it appears the carer has need for support. It must assess the carer's ability and willingness to continue in the caring role. It must also consider the results the carer wishes to achieve in daily life and whether support could contribute to achieving those results (*Care Act 2014, s10*)
15. The Act says the local authority can meet the carer's needs by providing a service directly. In these cases, the carer must still receive a support plan which covers their needs, and how they will be met. (*Care Act 2014, s 25*)
16. The Council can also provide a carer's personal budget, which must be sufficient to enable the carer to continue to fulfil their caring role. The Council should consider the carer's wishes for their day-to-day life. The Council should try to agree the personal budget and its use during the planning process. (*Care and Support Statutory Guidance 2014*)

Allocation of resources

17. The Care and Support Statutory Guidance states:
 - a. *"It is important to have a consistent method for calculating personal budgets that provides an early indication of the appropriate amount to meet the identified needs to be used at the beginning of the planning process. Local authorities should ensure that the method used for calculating the personal budget produces equitable outcomes to ensure fairness in care and support packages*

regardless of the environment in which care and support takes place, for example, in a care home or someone's own home. Local authorities should not have arbitrary ceilings to personal budgets that result in people being forced to accept to move into care homes against their will." (Ombudsman's emphasis added. *Care and Support Statutory Guidance 2014, 11.22*)

- b. "There are many variations of systems used to arrive at personal budget amounts, ranging from complex algorithmic-based resource allocation systems (RAS), to more 'ready-reckoner' approaches. Complex RAS models of allocation may not work for all client groups, especially where people have multiple complex needs, or where needs are comparatively costly to meet, such as in the case of deaf-blind people. It is important that these factors are taken into account, and that a 'one size fits all' approach to resource allocation is not taken. If a RAS model is being used, local authorities should consider alternative approaches where the process may be more suitable to particular client groups to ensure that the personal budget is an appropriate amount to meet needs" (Ombudsman's emphasis added. *Care and Support Statutory Guidance 2014, 11.23*)

Complaints procedure

18. Councils should ensure complaints are dealt with efficiently. (*Local Authority Social Services and National Health Service Complaints (England) Regulations (2009) reg 3*)

How we considered this complaint

19. We produced this report after speaking to Mrs N. We asked the Council for its relevant files and documents. We gave the complainant and the Council two confidential drafts and invited comments. We took their comments into account before finalising the report.

Investigation

Background

20. Mr and Mrs N have an adult son, Mr P, who has complex needs. He has severe learning difficulties and epilepsy. He has always lived at home with his parents.
21. Mr P needs constant care. He is doubly incontinent, incapable of speech and has severe cognitive impairment. Mrs N says she sleeps lightly because of concerns about his epilepsy. He is often awake through the night. Mrs N describes herself as 'close to breaking point'.
22. Recently, Mr N has also become disabled. He can only walk short distances and had to take early retirement. Mrs N acts as carer to both Mr N and Mr P. At her request, the Council pays her via direct payments to be Mr N's carer.
23. Since leaving school, Mr P has attended a day care facility within the Council's area on week days. He has attended the same respite centre for many years. The Council has provided transport for him to day care. It also provides residential respite care. The family lived, until 2016, in a house about 10 miles from the day care centre.

Council's transport duty

24. The Council must provide transport to adults in need of social care where this is necessary for them to receive care. It assesses eligibility for such transport according to the *Eligibility Criteria for Community Care Transport* document (2005). This states:
- *'The test of eligibility is 'Would the failure of the Council to provide transport result in an eligible need for services going unmet'*
 - *The Council would not normally provide transport for individuals in receipt of a Motability payment.*
25. For many years, the family has had a Motability vehicle to help with Mr P's transport. Nonetheless, the Council did not expect Mrs N to drive Mr P to and from day care.

The Matrix Assessment Tool

26. The Council adopted its 'Matrix Assessment Tool' ('MAT') in 2007. Its stated purpose was to *'ensure limited resources could be fairly allocated to families based on need'*.
27. The Council's document *'The Matrix Assessment – How it Works'* (*'How it works'*) explains the process. There are four stages:
- a. **Stage one:** assess applicant's need for respite care. The MAT allocates a score in various categories to reflect the applicant's level of disability or need.
 - b. **Stage two:** assess the 'current provision of service'. This provides a second score which must be subtracted from the 'need' score.
 - c. **Stage three:** assess 'the carer's situation'. The 'carer's score' is then added to the previous total.
 - d. **Stage four:** The Council assesses those requiring respite care and lists applicants according to their scores. The Council then calculates the number of respite beds available. It then divides the number of beds available by the number of beds required. This calculation creates the 'coefficient'. The Council then multiplies the score of each service user by the coefficient. This produces a number which will be the number of nights' respite he will receive that year.
28. *How it Works* contains a specimen calculation; the Council has 1400 bed nights available and the demand is for 2750 bed nights. The Council has half the number of beds it needs which produces a coefficient of 0.5. With this coefficient in place, an applicant with a score of 160 would receive 80 nights respite care (160 multiplied by 0.5).

Introducing reductions gradually

29. *How it Works* contains the following guidance; *'Some people will have allocated levels below their current level of service. To avoid causing sudden drops in service levels, it is intended that any gap will not be greater than 80% of the current level.'*

For example

Current level = 75 nights

Assessed level = 59 nights

gap = (75 – 59) 16 nights

80% of 16 = 13

actual level = 59 + 13 (72) nights’.

30. *‘Each year the level will be reduced by a further 20% until the assessed level is reached, or if individual needs change, a re-assessment indicates a new assessment level’.*
31. The wording used in *How It Works* is somewhat ambiguous. However, by following the calculations, it is clear that only 20% of any proposed reduction should be made each year.
32. Until 2016, the Council funded four consecutive nights of respite care every other week. (104 days respite care per year).
33. In 2013, the Council carried out a comprehensive assessment of Mr P’s needs. His eligibility level under the prevailing criteria were recorded as:
 - Managing behaviour and actions – critical
 - Managing personal care – critical
 - Access, mobility and transfers – critical
 - Nutritional needs – critical
 - Running and maintaining your home – critical
 - Keeping safe – critical
 - Making decisions and organising your life – critical
 - Community life, work and learning – critical
 - Family relationships – critical
34. The Council accepts Mr P’s needs have not changed since 2013.

Review 2015

35. In April 2015, the Care Act came into force. The Council reviewed Mr P’s needs. The review took some time because Mr P was ill. The review document stated his needs could be met by an indicative budget of ‘£1000 to £2000 a week’. The Council has told me the indicative budget figure in the April 2015 review document was a misprint and should have read ‘£700 to £1000 a week’.

House move

36. In late 2015, Mr and Mrs N decided to move. Mrs N was very keen that Mr P should keep his existing care package at their new home.

37. The Council's records show Mrs N emailed the Council in December 2015 saying; *'Good morning, my son uses adult care services in the [local town] area, receiving transport to and from [Mr P's] day care centre. Could someone make contact with me please as we have now sold our house and need to know if the house we are about to offer on is still [in] the catchment area'*.
38. A few days later, the Council wrote back saying the house was *'in our catchment area'*.
39. Mrs N wrote again saying *'we have tried to get some guide lines as to where we can move to whilst keeping [Mr P's] all-important care package and understood, as long as we didn't move to [local village] which we understood was the boundary, we should be fine'*. There is no record of the Council's response.
40. Mr and Mrs N bought the property. In January 2016, she contacted the Council to give the new address. The Council asked her to tell them when they moved. Mrs N then emailed back asking if he could keep the same escort *'to give [Mr P] some continuity when he most needs it'*.
41. Mrs N says she saw these conversations as assurances she would retain the same services at the new house.
42. The Council says Mrs N was not justified in this belief. It says; *'It is quite a different thing for the Council to say that Mr P would continue to receive support to whether Mr P would continue to receive support at a particular service'*.
43. *'None of the contemporaneous recordings support Mrs N's version of what was said. In the Council's view, what Mrs N asserts was said would be contrary to section 27 Care Act as a change of address would be a change of circumstances that would require a review of the care and support plan'*.

Review of transport/respice care

44. In June 2016, Mrs N spoke to another parent at the day care centre who told her the Council had withdrawn or limited the transport provision of many of the centre's users. Mrs N contacted the Council to ask if it intended to cut Mr P's transport funding.
45. Not long afterwards, the Council told Mrs N it had decided to cut Mr P's transport funding and to ask Mrs N to provide two journeys a week between home and day care. She could either pay the Council £30 a trip or provide the transport herself.
46. The Council said it had also decided to cut respice care from 104 nights per year to 68 nights per year. The Council said it had calculated the new level using the MAT.
47. Mrs N complained about these decisions. With regards to the transport, she said she had to care for her husband. The round trip to and from the day care centre could take her three hours, including getting Mr P in and out of the car. This would leave Mr N at home, uncared for. The Council says Mr N does not require constant care.

Council's explanation for transport cut

48. The Council said, *'the eligibility for transport explains we do not offer transport for anyone who has access to their own mobility vehicle. However, there is no expectation that a carer should have to drive more than 100 miles per week.... The cost of transport is approx £60 a day from your current home address. If your son was to return his mobility car it is likely the money he receives instead ... will only cover the cost of one day and the Council would have to provide transport for the additional 4 days. Therefore, as an alternative ... you could either provide one day of transport or purchase one day of transport instead. I understand the mornings can be a difficult time for you and as a solution I would suggest transport is provided two afternoons instead'*.
49. The Council now says the cost of transporting Mr P from the new house to the respite centre is £90 per day.

Assessment September 2016

50. In September 2016, the Council conducted a review of Mr P's needs. In the summary, it said, *'all support needs are being met – no change required...., 'Mrs N is happy to continue as Mr P's main carer and for him to reside in the family home (respite, day care and transport arrangements need to remain unchanged to continue to support)'*.
51. Mr P's eligibility for services remained unchanged. His wellbeing outcomes remained unchanged. Mr P's indicative budget was, however, recorded as *'£700 to £1000 per week'*, a reduction from the level set at the previous assessment.

Respite care

52. Mrs N said she needed the respite care to remain at its current level. She said she wanted to care for Mr P but could not do so without respite.
53. The Council said it had carried out a fresh calculation of the family's respite care entitlement. It said it had applied the provisions set out in the MAT. It had assessed Mr P's and Mrs N's needs against the MAT framework and awarded a score of 167.
54. It had then, it said, multiplied this figure by a coefficient of 0.5 to produce 68.47 thereby making the family eligible for 68 days respite care per year. (It had, in fact, used a coefficient of 0.41. It has done so ever since it introduced the MAT).
55. It said Mrs N had been receiving a level of respite care above that which it gave in similar cases. It said the change would be introduced 'gradually' and would be fully in place by April 2017
56. After a lengthy email exchange, and several meetings, during which a range of options, including options for Mr P's respite, were discussed, the Council informed her it would impose the changes to transport and respite.
57. The transport changes were introduced immediately. The Council said it would introduce the reduction in respite 'gradually' between December 2016 and April 2017.

58. In response to our enquiries, the Council wrote *'The support being offered to the family is in line with the individual's needs as assessed by Adult Care Services; is in line with the Council's policies and procedures; and in line with the Care Act 2014, the legislation that the Council is required to consider when assessing and meeting the unmet eligible needs of each person. The level of support being offered is in line with others who have similar assessed needs.'*
59. *'Mrs N has stated that she and [Mr N] have recently made decisions regarding where within [the council area] they live, ensuring they stay within the county boundary. However, they are residing in an area much further away from the services that her previous assessment noted, contributing to some of the increases in costs of the services Mr P receives. The Council believes it has tried to explore and offer a range of options to assist Mrs N and her family maximise the personal budget they are eligible to receive, but Mrs N has consistently refused to explore these options insisting that she and Mr P only receive the services in the way they have previously.'*
60. We asked the Council to restore respite care during our investigations into the case. It responded *'...The allocation of support being provided is at the top level...therefore I am not able to agree funding a person above the amount the council deems appropriate.'*

Current situation

61. Mrs N says she wants to remain as Mr P's main carer. However, she believes she will not be able to do so unless her previous level of respite is restored.
62. The Council says it wants Mrs N to allow Mr P to attend day care in a facility closer to the new house. It says this will be cheaper. Mrs N refuses to allow this. She says the Council assured her she could move to the new house and continue to use the same day care centre. She says this is 'non-negotiable'.
63. Mrs N cares for her husband and says this has increased her need for respite at a time when the Council has cut it. She says she is exhausted as Mr P often keeps her up for hours. She says she sleeps poorly anyway as she is worried about the possibility of Mr P's sudden death from epilepsy. For this reason, she will not take sleeping pills.
64. Mrs N says she is being treated by her doctor for chest pains. She says she is frequently distressed, *'tearful and unsettled'*. She has been offered antidepressant medication by her GP but has refused it.
65. Mrs N was unhappy with the Council's responses to her complaint, so she complained to the Ombudsman

Conclusions

66. The Council was at fault for the way in which it reduced both the level of respite care and the transport provision. The reasons why are set out below.

Funding limits

67. The Council says the family is receiving care '*at the top level*'. This approach does not accord with the Care Act which requires councils to assess and meet eligible needs. The Council cannot set maximum budget levels. The Act says eligible needs must be met, no matter what the cost.
68. The Council says the indicative weekly budget set at the April 2015 review was wrongly recorded as £1000 - £2000 a week. It says it should have been £700 - £1000. This is immaterial. The only question is whether the Council is meeting eligible needs.
69. The Council has provided me with its bandings. It says Mr P's disability falls into a certain band and therefore his funding cannot exceed a certain level.
70. Again, this approach does not accord with the Care Act. The Council may use bandings as a guide but, as the Care and Support Statutory Guidance states, such systems are unlikely to work in complex cases like Mr P's.
71. The Council has provided evidence that the cost of transport from the new family home is much higher than before. It says there is alternative provision closer to the new house and it wants Mr P to go there. Mrs N is adamant this should not happen.
72. Mrs N cannot, in the end, insist on the location of care. Nor can the Council cap care on the basis of cost. The Council must use its professional judgment to decide where care is provided. Mrs N may have a strong preference for a certain day centre but the Council does not have to provide care at that centre.
73. The Council may, however, have created an expectation that Mr P's care and respite would continue unchanged if the family moved. This may give Mrs N grounds to resist any such change. We make no finding on this though please see paragraphs 96 and 97 for our views on the evidence

Decision to ask Mrs N to fund/provide one day of transport

74. The Council's decision to ask the family to either fund or provide one day's transport per week appears to have been part of a general withdrawal of provision and a cost cutting exercise. It was not based on assessments of need and was therefore in breach of the requirements of the Care Act and was fault.
75. In Mrs N's case, asking Mrs N to provide the transport would have resulted in Mr N's needs going unmet. Mrs N is his carer too. Asking Mrs N to provide one day's transport per week for Mr P would result in Mr N being left alone for six hours.
76. The Council's guidance on transport says; 'The test of eligibility is 'Would the failure of the Council to provide transport result in an eligible need for services going unmet?'. Clearly, in this case, it would.

77. The Council also has a Care Act duty to consider the wishes of those involved; service users and carers. It cannot force an unwilling carer to provide care she reasonably states she cannot give.
78. The Council also relied on its rule, not contained in the policy, that no-one should have to drive more than 100 miles per week. The Council suggested Mrs N should drive 100 miles, not in a week, but in one day or two (two round trips of fifty miles).
79. There is no evidence the Council considered whether Mrs N, who complains of sleepless nights looking after Mr P, would be able to provide this transport. The Council was at fault, therefore, for failing to follow its own guidance, to comply with the Care Act and for applying an unwritten criterion with no basis in the assessment of eligible needs.
80. For the reasons given, the Council was at fault for the way in which it reduced the funding for transport. This fault has caused injustice. Mrs N has been required to pay £60 per week towards the cost of transport when she should not have been.
81. The Council has agreed to repay her for this but it argues this figure should be reduced by the Council's weekly transport contribution (payable by all users) multiplied by the number of weeks reduction.
82. The Council charges all transport users £3.70 a day (£18.50 a week). We accept this request as fair. The Council has agreed to repay Mrs N £747.50.

Use of the Matrix Assessment Tool (MAT)

83. The MAT predates the Care Act. Its purpose is to ration available resources. The Care Act requires councils to meet eligible needs. It does not allow rationing for any reason. If a council cannot meet an eligible need, it must pay someone else to meet it.
84. The MAT is, therefore, incompatible with the Care Act. The Council is at fault for continuing to use it. If the Council has used the MAT in other cases, this will also be fault. We shall return to this point in our recommendations.
85. The Council was at fault in reducing the family's care as it did and Mrs N has suffered injustice. She says she cannot cope without the respite care and the cut has caused her great distress. She says she has been treated by her doctor for this.
86. The Council accepts it did not use the MAT as prescribed in its own guidance. It accepts its failure to recalculate the coefficient has reduced the MAT's effectiveness as a tool.
87. It maintains the MAT was effective in informing care and support planning but accepts the approach does not accord with the guidance and has agreed to stop using it.

Failure to apply MAT guidance on reducing care gradually

88. The Council was also at fault for introducing the reduction in care as quickly as it did. The cut in care was calculated using the MAT and the MAT guidance is clear that only 20% of any respite reduction should be introduced each year. This should have meant a reduction of 6 nights in year one, from 104 nights per year to 98 nights per year.

89. In practice, the entirety of the reduction was made immediately. The Council cut the respite care by 36 days in year one and reduced her respite care from four days every two weeks to three days every two weeks with immediate effect. The family has had three days respite per week ever since.
90. Even if any reduction could be justified by the current law and guidance, it was not introduced in line with the Council's own guidance set out in *How It Works*. Nor was it introduced 'gradually' as the Council said.
91. The Council said, in response to the first draft of this report, '*the reduction had no connection to the possible uses of the MAT when it was introduced by the Council in 2006. The Council has never changed the coefficient that would lead to a deduction in support to all those using respite services*'.
92. This argument does not help the Council. The reduction was calculated using the MAT and, if the reduction was to be introduced, it should have been introduced at the rate set out in the MAT guidance. The failure to do so was fault.
93. Further, the Council never calculated the coefficient during the period it used the MAT. This too was fault. The coefficient was intended to represent the ratio of available beds to demand. Because the Council never calculated it, it did not do so. It should have been calculated at least once a year.
94. In any event, the MAT is incompatible with the Care Act. The Act states that the Council must assess eligible needs and meet them. It cannot ration care on the basis that it does not have sufficient capacity.
95. This fault caused Mrs N and her family additional injustice. Mrs N says she has not been able to cope and has suffered a great deal of distress because of the reduction in the respite care which was calculated erroneously and introduced immediately.

Assurances about moving to new house

96. I find, on a fair reading of the Council's records, Mrs N was asking about retaining Mr P's current provision and not continuing to be eligible for support from the Council. She speaks of a desire for '*continuity*' and the '*need to retain the all-important care package*'.
97. Mrs N believes the Council assured her she would retain the existing care package if she moved. I find the notes support her claim. Whether knowingly or not, the Council created an expectation that Mr P would retain his existing service after moving.

Two stage complaints process

98. *In December 2016, the Council responded to Mrs N's "stage two complaint". Since April 2009 The Local Authority Social Services and National Health Service Complaints (England) Regulations (2009) and the Department of Health Listening, Responding, Improving (2009) guidance require a "proportionate, achievable and cost-effective" investigation. This has been interpreted to mean a one stage, rather than a multi stage, procedure for all adult social care complaints.*

99. The Council's website says it uses a one stage process. The Council seems to have put Mrs N's complaint through two stages. The Council is at fault for failing to follow its own procedures, and for not complying with the intention of the regulations and guidance. The Council has accepted it was at fault.

Decision

100. The Council was at fault both for reducing the respite care and for asking Mrs N to contribute towards the transport. This fault caused injustice. In particular it caused her stress and affected her wellbeing. We have suggested a remedy to reflect this.

Recommended actions

101. We welcome the Council's agreement to our recommendations.
102. The Council will consider the report at its full Council or Cabinet or other appropriately delegated committee of elected members and confirm within three months the action it has taken or proposes to take. We will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
103. In addition to the requirements set out above the Council has agreed to take the following action to remedy the injustice identified in this report. The Council will:
- Apologise to Mrs N;
 - Restore the previous level of respite care pending a re-assessment compliant with the Care Act 2014;
 - Confirm it will offer her 24 days respite care to be taken at a time of her choosing in recognition of the respite care wrongly withdrawn;
 - Pay Mrs N £747.50 in recognition of money she paid the Council for transport;
 - Pay Mrs N £500 in recognition of distress and time and trouble;
 - Review its policy and procedure on respite care to reflect the requirements of the Care Act 2014;
 - Review other files for evidence of use of the MAT. It should write promptly to anyone similarly affected and review their cases;
 - Review the files of anyone whose transport was cut to ensure these cuts were compliant with the Care Act;
 - Inform the Ombudsman of the numbers of people involved and undertake to review all cases within a further three months;
 - Ensure all staff receive training in the requirements of the Care Act and the relevant guidance; and
 - Review all relevant documents to ensure they reflect the current law.

The Council has already ceased using the MAT. It has also accepted that its complaints procedure was faulty in this instance.