

Report by the Local Government Ombudsman

Investigation into a complaint against

Essex County Council

(reference number: 14 012 127)

2 February 2016

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.

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Contents

Report summary.....	1
Introduction	2
Legal and administrative background	2
How we considered this complaint.....	3
Investigation	3
Conclusions.....	7
Decision	9
Recommendations	9

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

Mr P – the complainant who has since died

Mr Q – the complainant’s nephew and representative

Mrs R – the complainant’s friend

Report summary

Adult Care Services – Safeguarding

Mr P was discharged from hospital to a care home where his needs would be assessed. During his stay there, his nephew, Mr Q and other members of his family became increasingly concerned that he was being financially abused. Mr Q complains the Council failed to respond properly to their safeguarding concerns.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the avoidable injustice caused, within two months of this report's publication, and in addition to the offer the Council has already made to pay Mr Q £250, reimburse care home charges from April to August 2012 and reimburse withdrawals from Mr P's account from December, it should:

- pay Mr P's estate £4,285.03 which equals the unexplained regular withdrawals taken from his bank account between November 2012 and February 2013;
- provide Mr Q with a written apology for the fault identified; and
- pay Mr Q £150 for the distress caused and the considerable time and trouble to which he was put pursuing this complaint.

Introduction

1. Mr P's nephew, Mr Q, complains on his late uncle's behalf that the Council failed to respond properly when alerted to safeguarding concerns his family and a care home had after a woman, Mrs R, befriended him.

Legal and administrative background

The Ombudsman's role and powers

2. The Ombudsman investigates 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)*)

The law and mental capacity

3. A person is presumed to have capacity to make a decision unless it is established that he lacks capacity. (*section 1(1) Mental Capacity Act 2005*)
4. A person is not to be treated as unable to make a decision merely because he makes an unwise decision. (*section 1(4) Mental Capacity Act 2005*)
5. A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself because of an impairment of, or a disturbance in the functioning of, the mind or brain. (*section 2(1) Mental Capacity Act 2005*)
6. A person is unable to make a decision for himself if he is unable to:
 - understand the information relevant to the decision;
 - retain that information;
 - use or weigh that information as part of the process of making the decision; or
 - communicate the decision. (*section 3 Mental Capacity Act 2005*)
7. An assessment of a person's capacity must be based on their ability to make a specific decision at the time it needs to be made. (*paragraph 4.4 Mental Capacity (Code of Practice) 2007*)
8. The Court of Protection may appoint deputies to make decisions for people who lack capacity to make those decisions or make the decision on behalf of the person who lacks capacity. (*section 16(2) Mental Capacity Act 2005*)

The Council's guidance on mental capacity

9. The Council published a guide for those working with adults who may need to assess the capacity of those who may lack capacity (*The Southend, Essex & Thurrock (SET) Procedures for Mental Capacity Act 2005 & Deprivation of Liberty Safeguards*). This explains the procedures to follow when there are concerns about a person's capacity:
 - If there are concerns that a person over 16 may not have capacity to make a specific decision, the assessment of capacity must be conducted and documented in both the individual's case notes and on their electronic record.
 - A 'significant decision' is being made if there are concerns the individual may not have the capacity to manage their property or financial affairs. The assessments of capacity in these cases must be recorded on form MCA2.
 - The assessment must be recorded or written up at the time the assessment is made. A completed signed MCA2 must be recorded in the individual service user's electronic record and their written case record no later than 48 hours after the assessment.
 - All MCA2 assessments must be quality monitored by the team manager. A copy of the completed assessment must be sent to the named professional for mental capacity assessments or the safeguarding team for monitoring and governance purposes.
 - An application for an order from the Court of Protection can be made if an individual can no longer manage their financial affairs and has no capacity to do so and has not set up a Lasting Power of Attorney.

How we considered this complaint

10. This report has been produced following the examination of relevant documents provided by the Council and Mr Q, an interview with a relevant employee of the Council, and telephone discussions with Mr Q.
11. Mr Q and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Investigation

12. Mr P, who was in his 80s, lived alone in the house he owned. He had a friend, Mrs R, who was about 20 years younger. In March 2012, Mr P was admitted to hospital following a collapse at home. He was suffering from dehydration, hypertension, and confusion.
13. A few days later, he was temporarily transferred to a care home. This was to allow an assessment of his needs and to decide whether he could return home with a package of support. In these circumstances, there is no charge for the first six weeks in the care home, after which support is means tested. After six weeks, although the Council failed to carry out a review because of what it says was the high demand on its social care team at the time, it began to charge Mr P for his stay.

14. Mr Q says that during visits by the family, his uncle, Mr P, told them his house had burned down. Later on, he told them that it was Mrs R's house that had burned down. He said she was waiting for an insurance payment and he had loaned her more than £60,000. Mr P later told his family she had repaid this money to him. There was no evidence of any loan or any repayment.
15. Mr Q says the family grew suspicious of Mrs R. He says he alerted the Council about his concerns before his uncle went in to hospital, but there is no documentary evidence of this. Nor is there evidence of the care home contacting the Council with any concerns about Mrs R.
16. In July, the Council allocated Mr P's case to a social worker from its social care team. She says her supervisor told her it needed an urgent review because the case had been waiting for some time. In August, she carried out a review of Mr P's needs at the care home. Mrs R, Mr Q, and Mr P's cousin were present. The review notes:
 - Mr P had loaned Mrs R his car as she needed it more than him;
 - Mrs R's farm had burned down;
 - Mr P allowed Mrs R to stay in his house up to a couple of nights a week to help with housekeeping;
 - Mr P was managing his finances with Mrs R's help;
 - There was an atmosphere between Mrs R and Mr P's cousin. His cousin told the social worker that Mrs R pretended she got on better with the family than she did, and the family was not pleased with their relationship. She referred to Mrs R's insincerity, the family's suspicions of her, and that she had not known Mr P for the 13 years she claimed.
17. The social worker told my investigator she recalls Mr P's involvement during the meeting and that he said he trusted Mrs R 'with his life'.
18. The outcome of the review was that Mr P would remain at the care home for a further period because of his high level of needs. The social worker recorded in the review notes that she would carry out a mental capacity assessment because of his 'confusion and vulnerability'. She noted it would be done at a later date when Mr P 'is well enough to fully participate to determine if he is able to manage his finances and regarding accommodation'.
19. The social worker says while she felt people at this stage of their life, particularly when they had been unwell or in hospital, were often confused and vulnerable, she had no doubts at all about Mr P's capacity. She says her record about carrying out the mental capacity assessment probably did not properly reflect her intentions. She would only do the assessment if she went on to develop concerns about his capacity. She says what she recorded was more of an 'aide memoire'.

20. In the notes of the review, the social worker also records Mrs R saying she would continue to help Mr P look after his property and other interests. Case notes show the social worker decided there was a need for a financial assessment to establish whether Mr P would need to pay towards his care charges.
21. In October the social worker spoke to the care home manager on the telephone. The manager explained the home had not received any payments for Mr P for five months. The same month the social worker's review recorded the financial assessment she had requested in August was not done. Mr P agreed to the Council contacting Mrs R to help complete the financial assessment. The social worker recorded Mr P's mental capacity assessment would be done when he was fit and well enough.
22. In November the finance team carried out the financial assessment. Mrs R said she had lived in the house with Mr P for about eight years because he needed help and assistance. She claimed she was his carer. She said her own property had burned down and would be rebuilt in 'due course' and she would remain living in Mr P's property until then, which might take some time.
23. The finance team contacted the social worker about what Mrs R had said. She had wanted them to disregard the value of Mr P's property in their calculations by claiming to be his live-in carer. But Mr P had lived in the care home since March and it contradicted what Mrs R had told the social worker during the review in August, about staying in his house for one or two nights a week.
24. The social worker carried out a mental capacity assessment in December because of the care home's contact about non-payment of charges and the finance team's query. She also wanted to assess his capacity to make decisions about his finances and where he would live, and to make his placement at the care home permanent.
25. The records of this assessment show:
 - Mr P confirmed Mrs R could draw money from his bank account for which she had 'carte blanche';
 - Mrs R did not need to tell him about withdrawals which she can do 'within reason';
 - Mrs R did not need to show him copy bank statements;
 - Mr P was unaware of unpaid care costs;
 - Mr P could not recognise the denomination of money.
26. The outcome of the assessment was that Mr P did not have capacity to reach decisions about his finances or where he would live. Nor did he have a realistic view of his level of care needs. He needed to remain at the care home as he was dependant on the care provided. The social worker told Mr Q the Council would apply to the Court of Protection to ensure Mr P's best interests were protected and to have his finances managed.

27. The social worker says she contacted an organisation which provides professional services to deal with the financial affairs for those who no longer have the mental capacity to do so. They can apply to the Court of Protection to become a person's deputy and so manage the person's property and affairs. The social worker understood the organisation refused to accept any referral because there was no diagnosis of a mental impairment. There is no record of this contact. The Council says a referral should have been made.
28. At the end of January 2013, Mr P's health deteriorated and he returned to hospital. The same day, Mr P's granddaughter telephoned the social worker. She said she had been told Mrs R was living in Mr P's house with a man, and neighbours had heard a rumour that Mrs R was planning to sell it. The social worker called Mrs R who said she was driving and would call her back, but she did not do so.
29. During the first few days of February the social worker tried to speak to Mrs R. She was reluctant to meet and the social worker recorded she sounded agitated. She told the social worker to stop disturbing her and hung up during calls on a couple of occasions.
30. The social worker called Mr P's cousin and told her that following the mental capacity assessment, the Council needed a formal diagnosis from the hospital to help get guardianship. She also visited Mr P's house, but nobody was home. A neighbour told her that Mrs R had lived in the house since March 2012 and was now living there with a man and two dogs. The same day, following advice from the social worker, Mr P's granddaughter raised a safeguarding alert about possible financial abuse and theft.
31. The following week, a safeguarding officer requested the involvement of the police. She discussed the case with the social worker and discovered the social worker had failed to write up the mental capacity assessment.
32. On 18 February, the safeguarding officer visited Mr P with Mr Q. Mr P told her that Mrs R dealt with all his finances and he trusted her. He told the safeguarding officer his home was uninhabited. When she explained it appeared Mrs R and a man were living there, he said that was fine. The safeguarding officer decided another mental capacity assessment was needed because the previous one was not up-to-date.
33. Sadly, just over a week later, Mr P died. The same month, the Council referred the case to the police.
34. With help from the solicitor who acted as his executor of his will, after Court proceedings led to Mrs R's eviction from his house, Mr P's family gained access to it seven months after his death. On gaining access, the family says they found it ransacked and documents were missing. It was only at this point that they had access to Mr P's bank statements and financial affairs.
35. Copy bank statements Mr Q provided show the withdrawal of regular sums from Mr P's bank account over a seven month period. These amounted to over £10,000.
36. Mr Q says the police searched Mrs R's own house but found no evidence to show she had taken money from Mr P. He says the police found evidence Mrs R had forged Mr P's

signature, to transfer his car into her name. Mr Q is upset that Mr P was in a care home for 10 months before he died with no access to his own clothing, money, or mail. He says he left him money so that he could get his hair cut, for example. The social worker says she assumed Mrs R was taking him clothes and personal items as she said she would do during their first meeting.

37. The social worker says she did not have regular supervision meetings because the department was 'stretched'.
38. Following a complaint from Mr Q, the Council accepted the record keeping was poor and the 'general level of practice displayed by our social worker was below that which we would expect'. The Council also accepted that, when it identified Mr P did not have capacity to manage his property and financial affairs, it had a responsibility to safeguard him from abuse. It agreed at this point correct procedures were not followed. It offered to pay £250 to Mr Q; reimburse the financial contributions Mr P paid for the care home charges made between April and August 2012; and to reimburse the sums taken out of Mr P's bank account from December 2012 apart from those for legitimate expenses.

Conclusions

39. There was a delay of about four months before the Council allocated Mr P a social worker following his discharge from hospital to the care home, and no review was undertaken. This was fault.
40. There was a three month delay taking action on the social worker's request for a financial assessment. This was fault.
41. We are concerned the social worker's notes for August 2012 about mental capacity raise some doubts as to whether there should have been an assessment then. Nevertheless, we cannot say on the balance of probability there was fault here. Although the record keeping was poor, the social worker appears to have accepted that Mr P was at that time capable of making decisions about his finances. We cannot question that decision.
42. By November, however, the Council should have had serious concerns about Mr P's vulnerability and possible financial abuse by Mrs R and taken steps to safeguard him. This is because:
 - he was confused, at least part of the time;
 - Mrs R apparently living at his property with no plans to leave was a new development;
 - the care home had not been paid;
 - Mrs R's claim she had lived with Mr P as his carer for eight years was untrue and the information provided by her was contradictory; and

- the family had previously raised concerns about the length of time she claimed to have known him.

43. Mrs R had control of Mr P's finances and it was fault not to initiate a safeguarding investigation at this point. There was also a delay of almost three weeks from getting information of concern from the finance team before the mental capacity assessment was undertaken. This too was fault. Considering the short time frame between receiving information from the finance team and the decision on the mental capacity assessment we consider, on the balance of probability, that Mr P did not have capacity in November either. When the mental capacity assessment was done, there was a failure to follow procedure:

- it was not written up within 48 hours as required;
- a copy was not passed through to the named person or the safeguarding team;
- there was no record of contact with the organisation dealing with the financial affairs of those who no longer have mental capacity. Nor was a referral made to the organisation.

This was all failure to take action to safeguard Mr P.

44. Had the social worker been subject to regular supervision sessions, some of these faults may not have occurred. It is fault not to have appropriate management measures in place.

45. It is to the Council's credit that it acknowledged fault and offered to remedy the injustice caused by its failure to carry out a review and financial assessment of Mr P once he had stayed in the care home for more than six weeks. But there is unredressed injustice because, between November 2012 and February 2013, regular sums which have not been accounted for were withdrawn from Mr P's bank account.

46. It is also to the Council's credit that to ensure these failures are not repeated it:

- provided external training for social workers and occupational therapy staff about safeguarding, deprivation of liberty, and assessments done under the Mental Capacity Act 2005 and Care Act 2014;
- arranged for the professional organisation providing services to those who lack mental capacity to carry out training for staff to ensure officers are aware of the Council's roles and responsibilities as well as their own responsibilities for safeguarding;
- increased the number of team managers within service areas. This increases the capacity to supervise officers; and
- participated in a peer review with other local authorities to review its safeguarding practice and procedures. The findings will help it make improvements.

Decision

47. Fault found causing injustice and recommendations made.

Recommendations

48. To remedy the avoidable injustice caused, within two months of this report's publication, and in addition to the offer the Council has already made to pay Mr Q £250, reimburse care home charges from April to August 2012 and reimburse withdrawals from Mr P's account from December, it should:

- pay Mr P's estate £4,285.03 which equals the unexplained regular withdrawals taken from his bank account between November 2012 and February 2013;
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- pay Mr Q £150 for the distress caused and the considerable time and trouble to which he was put pursuing this complaint.