

**Complaint reference:**  
15 018 265

**Complaint against:**  
Bracknell Forest Council

## **The Ombudsman's final decision**

Summary: Faults in the Council's single assessment of a child's needs in 2014 led to inaccuracies in that assessment. The Council offered to re-assess or amend the assessment but the parent did not take up this remedy. The Council investigated safeguarding concerns without fault. Respite care remains available subject to a satisfactory assessment.

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## **The complaint**

1. In summary the complaint is when managing services to meet a child's needs the Council failed to:
  - Properly carry out an assessment of a child's needs;
  - Properly consult with all parties before starting a safeguarding investigation;
  - Provide its reasoning for continuing with the safeguarding investigation up to a child protection conference;
  - Explain its reasons for not fully upholding all the findings of the independent investigator's stage 2 report.
2. The complainant, whom I shall refer to as Miss X, says this caused distress and a loss of confidence in the Council causing her to cancel 35 hours of respite care it previously provided. Miss X says her son, who I shall refer to as AB, has suffered through a loss of this service.

## **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. 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**

4. In considering this complaint I have:
  - Spoken with Miss X;
  - Researched the law, put enquiries to the Council and reviewed its response;
  - Shared with Miss X and the Council my draft decision and reflected on comments received.

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## **What I found**

5. The Council uses a case management system in which it records workflow and case notes. It uses a second case file system to which it uploads and stores casework documentation such as assessments.

### **Child in Need**

6. Under the government's guidance Working Together to Safeguard Children 2013 councils undertake a single assessment of a child's needs using a child centred approach. The Council has a duty to promote the welfare and safeguarding of Children designated as a Child in Need. The Council has 45 days in which to complete the single assessment process. Once complete the Council must decide how to meet the assessed needs. The Council's proposal on how to meet the needs may go to a Panel for approval.
7. The Council then offers the services to meet the needs to the family. The family decide whether they want the service offered by the Council or prefer to use direct payments to buy in the suitable service. If not happy with the process the family may complain to the Council through the statutory complaints procedure under the Children Act 1989. If unhappy with the decision at the end of that procedure, they may ask the Ombudsman to consider their complaint.

### **Section 47 Investigations**

8. Section 47 of the Children Act 1989 imposes a duty on councils to investigate any concerns that a child may be suffering, or at risk of, significant harm. And decide if it should take action to safeguard or promote the child's welfare.
9. The Council may call on other agencies such as the Police, mental health services or education professionals to help with its Section 47 enquiries. Following an assessment a multi-agency strategy meeting decides whether the concerns are substantiated. If it decides they are the Council must call a Child Protection Conference.
10. The Child Protection Conference decides what action to take to safeguard the child. This may include recommending the child should be placed on a Child Protection Plan. The Council will call Review Child Protection Conferences to consider progress on action taken to safeguard the child and whether to continue with the Child Protection Plan.

### **What happened**

11. Miss X provides full-time care for her son AB. For many years ending in 2015 AB's needs have been met through a care package funded via direct payments. This enabled Miss X to choose and fund services for AB. He has complex needs and had a Child in Need plan with an assigned social worker. The Council reviewed AB's care package every six months.
12. Miss X says AB presents with very challenging behaviour needing careful control. Miss X says she has always followed the advice of mental health and other professionals in handling AB and putting in place the controls he needs. AB experienced a period of crisis leading to an increase in the controls. To an outsider without any knowledge of AB's condition some of these controls may seem excessive. Miss X says they are necessary for both AB's protection and those around him. This resulted in AB not attending school full time. He receives care from Miss X, relatives and friends who understand his needs.
13. The Council says it had concerns Miss X's decisions may be impacting on AB's health and development. The Council says Miss X has a tendency to exaggerate

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incidents about AB's health and well being. It says he has few opportunities to meet people outside his family or Miss X's circle of friends, because he rarely attended school.

14. In the Council's judgement AB does not need to remain at home or out of mainstream schooling. Its assessment of his needs and provision reflect that.

#### **Single Assessment of AB's needs**

15. At a meeting on 24 July 2014 to consider a care programme the Council agreed to look for continuing care funding (provided by the National Health Service) for extra respite care for AB. The Council referred AB to continuing health care because in its view he needed specialist health services. The Council did not increase direct payments to allow Miss X to pay for extra services. It says the local adolescent unit said it could not meet AB's needs. Therefore he needed a more diverse care package to help him develop. These services the Council felt it could identify and fund relieving Miss X of needing to source specialist care and fund it through direct payments. The Council considered it needed to manage the care package directly or have the NHS do so through its continuing health care.
16. Continuing health care assessed AB and awarded him funding for further services.
17. The Council conducted a Single Assessment of AB in August 2014. Miss X disagreed with aspects of the Council's assessment and on the case management system the Council recorded Miss X's complaint. The notes say the complaint "...should be read in conjunction with this assessment and can be found in AB's [casework documentation file]" The Council says that it retained copies of the assessment and Miss X's disagreement with its findings on her complaint on the casework document system. In commenting on my draft decision the Council told me these disagreements over accuracy had no bearing on the care package for AB.
18. The Council says this means any new social worker coming to the case will see not only the assessment but Miss X's disagreement with it. The Council says its Children's Social care officers try to always work in a child centred way. At the heart of this issue in the Council's view is a parent who has a tendency to prioritise her own needs. She places her faith in her own judgement and tries to replace the independent professional view with them. It is the Council's view Mrs X wants to replace its professional assessment with her own assessment of AB's needs with the Council funding care through direct payments. This resulted according to the Council in it proving difficult to work with Mrs X in a collaborative way. Even though the Council offered to amend some parts of the assessment the Council says Miss X did not take up this offer. She did not take up the Council's offer to carry out a new single assessment. Miss X says this is wholly untrue and the Council underestimates her respect for the professional judgement of many medical and mental health professionals involved in AB's care. She says she has always carried out their instructions and followed their guidance.
19. The Council says it did not provide extra funding through direct payments because it believes these are not the most appropriate or aspirational alternatives for AB. In the Council's view AB needs a more diverse care package than it can provide through direct payments to help AB develop peer relationships and have time away from home. The Council says this drew on direct requests made by AB.

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20. Miss X says in pursuit of this aim the Council proposed AB attend a boarding school without any consultation. In response the Council says it considered this suggestion as an alternative for discussion. It says AB expressed such a wish. When referring AB to the local Adolescent Unit AB's social work manager asked if he could attend the unit as a resident. The unit could not offer AB a suitable peer group and so the proposal could go no further. The Council says it would not have taken the proposal further without engaging with Miss X and discussing any concerns. It considered it as part of its duty to consider what AB needed to meet his assessed needs.
  21. The Council says Miss X and the Council have different views on what direct payments should be used for. It believes they should include services that offer opportunities for social stimulation and integration with mainstream schooling.

### **Section 47 safeguarding investigation**

22. In 2014 the Council decided to enquire into concerns under Section 47 of the Children Act 1989. In its letter to Miss X dated 29 September 2014 the Council explained:

“As you are aware [AB's Consultant Child and Adolescent Psychiatrist] is the critical lead professional for [AB] and we do not feel simply increasing the services we currently have in place take into account his recommendations from the Care Programme Approach Meeting...Therefore because...there is reasonable cause to be concerned about [AB] and we do not have a plan which you are in agreement with to manage/reduce those concerns, we have... [decided]...to initiate a Section 47 enquiry”
23. The Council explained this is a multi agency procedure and that it would take Miss X's views and AB's views into account. The Council spoke with professionals involved with AB and decided to call a Child Protection Conference.
24. Both its assessment of AB's needs and the Section 47 inquiry outline concerns about how Miss X managed and presented AB's needs. The Council became concerned when Miss X reported an incident as concussion when the hospital discharge letter referred to AB's injury as a 'trivial head injury' not concussion. On another occasion the Council says Miss X told the school to give AB his medication in a way contrary to his Doctor's advice. It says these concerns led to the Section 47 enquiries.
25. The Minutes of the Child Protection Conference show that both AB's Consultant Child and Adolescent Psychiatrist (the lead professional) and AB's Clinical Psychologist had no concerns about Miss X's parenting or exaggerating concerns.
26. The Child Protection Conference on 23 October 2014 did not recommend a Child Protection Plan. Therefore AB remained as before, on a Child In Need Plan reviewed every 6 months. Miss X says there should not have been a Child Protection Conference and the Council failed to discuss its concerns with her before convening the conference. The Council says it met its duty to consider concerns raised by those working with AB. This resulted in no formal action.

### **Respite Care**

27. Before September 2015 when Miss X withdrew from Council services she received funding through direct payments for respite care of up to 35 hours a month. However, the Council says relatives provided respite care. Most people are entitled to use direct payments but there are controls where the payments are

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intended to pay relations for care work. It is only in exceptional circumstances that family members should be used and where all other options are considered not appropriate. The Council wanted Miss X to consider alternative carers and options for respite but she did not want to do that. In the Council's judgement use of family members did not meet the exceptional circumstances criteria because not all options had been properly considered or tried. Miss X says the Council did not want to provide respite care on financial grounds. She says the Council believed mental health services should provide at least some of the funding for respite. When the NHS took over AB's care it funded all respite provision. Miss X does not want any services provided by the Council having lost confidence in the Council.

### **Services received by AB**

28. The NHS currently supports AB through services it funds for him. The Council does not provide any direct services. At the time the NHS took responsibility for supporting AB, the Council considered the services offered by these alternative agencies met AB's needs. Since taking responsibility in 2015 the NHS and Miss X have not referred AB to Children's Social Care.
29. On closing the case in September 2015 the Council decided since AB's needs were being met properly it would accept Miss X's decision to withdraw from the direct payments for respite care. It encourages families to cope without needing services from the Council. However, if she believes AB needs that respite care it will consider offering such a service following a fresh assessment of his needs. It could not guarantee that assessment would decide he needs the same respite care as before.
30. In its view the Council acted without fault in accepting Miss X's decision not to take up respite care and therefore closed the case. The possibility of respite care from the Council is open should she wish to apply for it. Miss X receives respite from the health service provision but this took time to set up and she says that means she spent many months without respite options.

### **Complaint to the Council**

31. The Council considered Miss X's 23 complaints under the statutory complaints process. Not satisfied with the Council's response at stage 1 Miss X took the complaints to stage 2. The independent investigation issued a report on the Stage 2 investigation upholding fully or in part all but two of the complaints. In upholding complaints about inaccuracies in the assessment the investigator found the Council had failed to complete the single assessment process without fault. As a result the investigator recommended that:

“...it would seem appropriate to support [Miss X's] request that the single assessment is rewritten by an independent worker. However, in view of the time that has lapsed and the assessment which have been written since, that have also included some of the disputed information, it needs to be fully considered with [Miss X] whether or not changing or rewriting the single assessment is actually the best outcome when looking forward”
32. The report notes that despite earlier complaints being upheld the Council had not recorded them on AB's electronic file and the investigator recommended the records be updated.
33. The investigator concluded that “...it may be in [Ms X's] and [AB's] best interests to consider a multi agency case management review so that the history and

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current information...by all agencies, can be properly collated and fed into a comprehensive multi-agency plan for [AB's] future.”

34. In her final recommendation the investigator said a clear written agreement should be entered clarifying the roles and expectations of all those involved in care planning for AB.
35. The independent investigation rejected two complaints namely:
  - Miss X's complaint about the decision not to amend the assessment to reflect her comments on the section entitled “Manager”;
  - Miss X's complaint about the process followed leading to the Section 47 investigation and child protection conference.
36. I have considered the complaint about the process leading to the safeguarding investigation.

### **Analysis – is there fault leading to injustice?**

#### **Upheld complaints**

37. The Council did not complete the single assessment in 2014 without fault as shown by the independent investigator's findings in the Stage 2 report. This upholds fully or in part 21 of the 23 complaints. The Council acknowledged the inaccuracies found by the investigator. The Council has complied with the investigator's recommendation to keep a copy of Miss X's views on the assessment with the copy of that assessment. That will enable anyone involved in AB's care to see diverging opinion. It is an improvement on previous record keeping in 2009 where the Council failed to show it had kept copies of Miss X's disagreement with its assessment.
38. Rewriting the assessment would not achieve anything because continuing care is now being provided by the NHS. A completely new assessment will be needed if the Council is to provide or review current services. Too much time has now elapsed to rely on the earlier disputed assessment.

#### **Section 47 Investigation**

39. Having read the information on the Section 47 investigation I am satisfied the Council considered information from all appropriate professionals involved in AB's care. The decision by the Child Protection Conference not to place him on a protection plan or take further action means AB remained as before. He continued on a Child in Need plan until it ended in 2015. There are no findings against Miss X. Having been 'cleared' Miss X questions why the Council undertook the investigation and called a child protection conference. She believes the Council had no grounds on which to initiate it. The Council did so because the Council had concerns. It has a duty to review those concerns with other professionals involved with AB through the safeguarding investigation process. It is the purpose of the investigation and child protection conference to decide if those concerns are well founded. In this case the conference decided it did not need to take any action. I cannot criticise the Council for carrying out its duty to consider any child safety concerns even though it is difficult for anyone who is the subject of such enquiries.

#### **Single Assessment**

40. The Council accepts faults in its completion of the single assessment in 2014 resulted in inaccuracies in that assessment. Miss X did not take up its offer to amend the assessment or to complete a new assessment. A re-assessment

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would be the remedy I would recommend. However, unless AB is referred to Child Care Services a new assessment is unnecessary. The Council no longer provides services to AB these are now provided under continuing health care provided by the NHS. Given the passage of time any needs over and above those being provided for by the NHS need proper fresh assessment by the Council. When commencing such a review the Council should consider entering a written agreement explaining what it must do to complete the assessment and what it expects of Miss X.

41. I cannot see any benefit to Miss X, AB or the Council in rewriting the single assessment of 2014. Provided on its records there is a clear record of the inaccuracies accepted by the Council, the Stage 2 investigation and a copy of any comments Miss X has or wishes to make on it. Those should be kept with the assessment and read together.

### **Direct payments and respite care**

42. Ms X decided not to take up the 35 hours respite care the Council offered. She withdrew from the service in September 2015. In deciding to withdraw Miss X reflected on the difficulties experienced with the Council over use of direct payments. In commenting on my draft decision Miss X says she wants no further services from the Council. Continuing health care provides respite so she has no need of this service although for some time she had no respite at all.
43. The Council says continuing health care best meet AB's needs. These complex services could not be managed through direct payments. Additionally the Council says Miss X used some relatives to deliver care. Guidance on direct payments says they can only be used to pay relatives in exceptional circumstances. It is for the Council to decide if AB's situation meets the criteria.
44. The care identified and paid for by direct payments did not in the Council's view offer sufficient external stimulus for AB. In commenting on my draft decision Miss X provided evidence of the ways in which she sought to provide external stimulus for AB. It is a judgement call which the Council must make and I cannot challenge. It shows however, the diversity of opinion between Miss X and the Council on what best met AB's needs.
45. The Council is willing to assess AB to see if he currently needs respite care. It accepted Miss X's decision to withdraw from the service it offered previously. While I understand her reasons it is not through any fault of the Council that she did not use the respite offered. The service subject to assessment is still available.

### **Final decision**

46. The Council failed to complete the single assessment in 2014 without fault leading to inaccuracies in that assessment. It offered a suitable remedy which Miss X did not take up. I cannot offer any further remedy for that. The Council investigated the safeguarding concerns without fault. Respite care remains available subject to a satisfactory assessment and that is in my view an apt remedy.

### **Investigator's decision on behalf of the Ombudsman**