

Report

on an investigation into
complaint no 11 021 923 against
Southampton City Council

1 October 2012

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

| | | |
|------------------|---|--|
| Mrs Moore | - | The Complainant |
| Mrs Elliott | - | The Service User |
| Care Homes A & C | - | Care Homes visited by the complainants |
| Care Home B | - | The care home Mrs Elliott moved to |

Report summary

Subject

Mrs Elliott's family complained that Southampton City Council's "usual rates" for providing care home placements were unreasonable. Mrs Elliott's daughter (Mrs Moore) stated they could not find a care home place at the Council's usual rates that met Mrs Elliott's assessed needs. This meant the family had to pay "top up" fees.

Finding

The Ombudsman found there was maladministration causing injustice.

Remedy agreed

The Council agreed to:

- Meet the full cost of Mrs Elliott's care in Care Home B from 31 July 2011 (less the assessed contribution Mrs Elliott needed to pay).
- Refund the top up fees Mrs Elliott's family had paid from 31 July 2011 and pay them interest on those payments at the Council's standard interest rate.
- Pay Mrs Elliott's family £500 to recognise the time, trouble and distress caused to them.
- Review the Council's guidance for staff regarding the availability of services at the Council's "usual rate".
- In the short term, to negotiate access to placements at the Council's "usual rate" with key care home providers. In the medium term, to hold discussions with care home providers to develop an agreement on fee levels.

Introduction

1. Mrs Moore complains that the Council failed to provide appropriate support to her family to enable them to find a care home for their mother at local authority rates.

Legal and administrative background

2. Local Authority Circular LAC (2004) 20 sets out what individuals should expect from the Council that is responsible for funding their care, subject to the individual's means, when arranging a care home place for them. It states:
 - Para 2.5.4 "One of the conditions associated with the provision of preferred accommodation is that such accommodation should not require the Council to pay more than they would usually expect to pay, having regard to assessed needs (the "usual cost"). This cost should be set by councils...to be sufficient to meet the assessed care needs of supported residents in residential accommodation.... In setting and reviewing their usual costs, councils should have due regard to the actual costs of providing care and other local factors."
 - Para 3.3 "When setting its usual cost(s) a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident and third party contributions did not exist."
 - Para 3.4 "...Where there are no placements at the Council's usual rate, councils should not leave individuals to make their own arrangements having determined that they need to enter residential accommodation and do not have care and attention otherwise available to them. In these instances, councils should make suitable alternative arrangements and seek no contribution from the individual other than their contribution as assessed under the National Assistance (Assessment of Resources) Regulations 1992."

Investigation

Key Facts

3. Mrs Moore told me her mother (referred to in this statement as Mrs Elliott) was admitted to hospital after a stroke on 22 June 2011. Prior to this Mrs Elliott had lived in a care home which provided residential dementia care.
4. Unfortunately while Mrs Elliott was in hospital, her husband died, leaving the family home empty.

5. Due to Mrs Elliott's stay in hospital, her previous care home place had been cancelled by the Council. The Council told me this was because the placement no longer met Mrs Elliott's assessed needs.
6. I understand Mrs Moore and her family were first made aware they needed to find a nursing home placement to enable Mrs Elliott to leave hospital on 8 July 2011.
7. Mrs Moore told me, following her mother's stroke, Social Services initially considered dementia care would no longer be necessary. Mrs Elliott's family felt dementia care was necessary and they say Mrs Elliott's previous care manager agreed with their view.
8. Mrs Moore says Social Services agreed that nursing and dementia care was needed at a meeting on 12 July 2011. The Council says beyond the need for nursing care rather than residential care, it has no record of any change of decision regarding the type of care required.
9. The Council recommended Care Home A on 12 July 2011 and family members visited it that afternoon. They say they left contact details but no place was offered and costs were not discussed.
10. On 14 July 2011 Mrs Moore says the family received calls from the hospital and Social Services asking for an update regarding a placement for Mrs Elliott as they needed to discharge her from hospital.
11. Mrs Moore says family members visited three further care homes on 15 July 2011. One of the homes was discounted as it did not provide suitable care. The other two had rooms available at higher rates than the Council would meet. The first home cost £900 per week, the second (referred to as Care Home B) was £765 per week.
12. On 20 July 2011 members of the family visited another care home. It cost £850 per week but it had no rooms available.
13. Mrs Moore's family asked the Council for a list of homes which met the Council's usual rates. The Council could only advise them of one, Care Home C. The family visited Care Home C on 27 July 2011.
14. Mrs Moore's family complained to the Council that it had only been able to suggest one home in the area which met Mrs Elliott's needs at the Council's usual rate.
15. The Council's response to my investigator's enquiries stated it had searched providers to find the nearest placement available. On the day of the search Care Home C was deemed to have availability because it offered to carry out an assessment for Mrs Elliott. However, Mrs Moore provided me with written confirmation from Care Home C which stated no place was available at the time of their visit.

17. The Council says Care Home C's records show the family cancelled an assessment for a place. It considered Mrs Elliott's family had rejected Care Home C because of the distance for family members to travel to visit her.
18. Mrs Moore says they eventually accepted a place at Care Home B because it was the cheapest home with availability at that time. Mrs Elliott was assessed and moved into Care Home B on 31 July 2011.
19. The Council wrote to Mrs Moore about her complaint on 10 October 2011. It stated when the family reached the decision to place Mrs Elliott at Care Home B, it was made clear they could continue to assess other care homes, at rates the Council would usually pay. It stated that the Council suggested continuing the search because places became available on a day to day basis.
20. Mrs Moore says the family felt pressured by Social Services and the Hospital into accepting the place at Care Home B to enable Mrs Elliott to be discharged. They say they were also advised to move quickly to ensure they did not lose the place available. The Council disagreed that pressure was placed on Mrs Elliott's family.

Financial details at the time of the placement

21. Mrs Moore says the hospital care team agreed a £15 reduction to the cost of Care Home B to £750 per week.
22. Mrs Elliott is entitled to £108.70 per week of NHS funded nursing care. This sum is paid direct to the care home. This leaves care costs of £641.30 to be paid.
23. I understand the Council's "usual rate" for nursing care at the time of the placement was £453.74 per week. Mrs Elliott is required to make a financial contribution towards the cost of her care. Mrs Elliott's assessed contribution at the time of the placement was £149.36. This is paid to the Council.
24. Because there is a difference between the net cost of the care (£641.30) and the amount the Council would pay for care (£453.74), Mrs Elliott's family paid a "top up" payment for the difference of £187.56 per week.

Conclusions

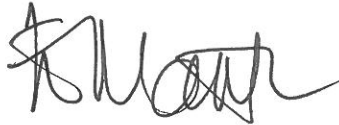
25. Government guidance states councils should set their "usual rates" at a level sufficient to allow them to meet assessed care needs and to provide residents with the level of care services required. The Council says it sets its "usual rates" annually but it has regular weekly contact with care homes in its area to assess care availability and pricing.
26. It seems clear a suitable care home place was not available at the Council's usual rate when Mrs Elliott needed to be discharged from hospital.

27. Government guidance states that where a home is not available at the Council's usual rates, it should make suitable alternative arrangements and seek no contribution from the individual other than their assessed contribution. So it seems to me Mrs Elliott's family should not be paying the additional top up cost of £187.56 per week.
28. I recognise the Council's view is that a place was available at Care Home C. So, it felt Mrs Elliott's family actively chose more expensive accommodation at Care Home B. In fact, Care Home B was the least expensive accommodation available at the time. It seems to me the family reached their decision because there was no availability at the Council's usual rate, at a time when they needed to find suitable accommodation for Mrs Elliott. The complainants were conscious of the need to free up Mrs Elliott's hospital bed.
29. In my view, because no accommodation was available at the Council's "usual rate", the Council should have paid to accommodate Mrs Elliott in suitable accommodation elsewhere and it should not have sought additional top fees beyond Mrs Elliott's assessed contribution. Therefore the Council should pay the full cost of Mrs Elliott's care in Care Home B less her assessed contribution.
30. Given the apparent lack of accommodation in the Council's area at the Council's "usual rate", I asked the Council to comment on the appropriateness of its current fees. I asked the Council to review whether there was a need to change the rate to reflect the market conditions in its area.

Finding

31. For the reasons given in paragraphs 26 to 30 above I find there has been maladministration causing the injustice outlined in paragraph 27.
32. The Council accepted my findings and it agreed to:
 - Meet the full cost of Mrs Elliott's care in Care Home B from 31 July 2011 (less the assessed contribution Mrs Elliott needed to pay).
 - Refund the top up fees Mrs Elliott's family had paid from 31 July 2011 and pay them interest on those payments at the Council's standard interest rate.
 - Pay Mrs Elliott's family £500 to recognise the time, trouble and distress caused to them.
 - Review the Council's guidance for staff regarding the availability of services at the Council's "usual rate".
 - In the short term, to negotiate access to placements at the Council's "usual rate" with key care home providers. In the medium term, to hold discussions with care home providers to develop an agreement on fee levels.

33. I welcome the action agreed by the Council. I consider they were reasonable steps to take to address the issues raised by the complaint. But I have gone on to complete my investigation and issue a report because councils across the country are faced with similar situations and I consider that there is public interest in doing so.



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