

Local Government
OMBUDSMAN

6 December 2011

Mr Karl Hevera
1 Camborne Mews
London
W11 1QA

Our ref: 11 000 364

(Please quote our reference when contacting us and, if using email, please put the reference number in the email subject header)

If telephoning please contact: 020 7217 4627
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Dear Mr Hevera

Complaint against Royal Borough of Kensington & Chelsea

I refer to your complaint against the Council and have now been able to consider all the information I have received. The enclosed statement sets out my provisional view and explains my reasons for it.

I should welcome any comments on what I have said, before I make a final decision on this matter. If you do wish to respond, please do so by 23 December 2011, but if you need longer than this, please just let me know. It is important that you respond at this stage if you disagree with what I have said. The final decision will normally only be reviewed if, within three months of the decision date, you find new evidence that is directly relevant and could lead to a different outcome.

The LGO has the power to publish information in finalised statements but, if we did so, we would always carefully review the information to protect the anonymity of complainants. As such you are not named and I have referred to you as Mr A in the attached statement.

Yours sincerely



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Investigator

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Jane Martin
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Provisional view

Complaint ref: 11 000 364

Council: The Royal Borough of Kensington and Chelsea

Date: 6 December 2011

Complaint

1. The complainant (Mr A) says that the Council:
 - did not carry out his needs assessment in line with current guidelines; and
 - assessed his needs as low. As such, he does not meet the eligibility criteria for care services as the Council only meets 'moderate' needs or above. The Council's weekly contribution of £43.02 towards the cost of his care has been stopped.
2. In making this complaint Mr A seeks to have his funding reinstated and backdated to 13 January 2011. He would like to be reassessed by a health professional. In addition he would like others' assessments to be independently reviewed in order to ascertain whether they were carried out in accordance with current guidelines.

The role of the Ombudsman

3. The Ombudsman's role is to consider complaints of service failure and maladministration causing injustice. The Ombudsman must consider whether the council has acted reasonably in accordance with the law, its own policies and generally accepted standards of local administration. Where a council has acted with maladministration, the Ombudsman considers whether injustice has arisen, and any appropriate remedy for that injustice.

Investigation

4. As part of the investigation, I have:
 - considered the complaint and the documents and comments provided by the complainant;
 - made enquiries of the Council and considered the comments and documents the Council provided.

Key facts and background to the complaint

5. Prior to the matters complained about Mr A received funding via direct payments from the Council towards the cost of his home care package.
6. The Council wrote to Mr A on 13 December 2010 informing him that following his reassessment the panel had found his needs to be 'low' and as such he did not meet the

Council's eligibility criteria under Fair Access to Care Services (FACS).

7. In response to Mr A, the Council wrote again on 11 January 2011 informing him that the information from the FACE assessment had been presented to panel and that the panel found it clear that he did not have needs which would be deemed as 'moderate' or above according to the FACS criteria. It said the panel's decision was based on his current assessed social care needs, however if he disagreed with the outcome then he could ask the panel to review the decision. It invited Mr A to submit any further information which might demonstrate that his needs were greater than set out in the assessment. The Council sent a further letter on 25 February 2011 inviting him to provide further information in support of his view that his care needs had not been properly assessed.
8. Mr A complained to the Ombudsman as he was dissatisfied with the outcome of the Council's consideration. As the matter had not been considered through the Council's complaints procedure it was referred back to the Council for it to respond. The Council gave its response by letter dated 4 May 2011. In summary, it commented as follows:
 - The Department of Health guidelines at (paragraph 77) apply to initial assessments, however Mr A's October 2010 assessment was a review/reassessment.
 - In May 2010 the contributions policy was changed and so a separate financial reassessment was carried out for all service users. This was not linked to the assessment of his care needs.
 - When the reassessment was carried out Mr A's social worker would have considered all the information already held on file. The FACE assessment document used by the Council to assess care needs is a nationally recognised and accredited tool for people over the age of 65.
 - Its assessment was based on care needs he might have as a result of his medical conditions. Given that his health needs are well managed he was not assessed as having care needs which were eligible under its FACS criteria.
 - It explained that the FACS bandings are based upon the eligibility framework and not the medical diagnosis of the person. The criteria describe the seriousness of the risk to independence and well-being if care needs are not addressed. It considers that its assessment of his care needs as low was correct at the time it was made.
 - Mr A had been given the opportunity to provide further supporting information at the time of the assessment and again when he complained.
 - All service users are informed of the complaints procedure and given a complaints form when they start receiving a service from the Council. Service users are free to complain to their social worker or any member of staff and have recourse to the statutory complaints procedure.
9. Mr A was dissatisfied with the Council's response and so complained further to the Ombudsman. Mr A set out the points where he considers that the Council did not act

according to the Department of Health Guidelines: 'Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care, Guidance on Eligibility Criteria for Adult Social Care, England 2010' as follows:

- I. The assessment was carried out on the social worker's second visit to Mr A. Mr A considers this to be contrary to paragraph 63;
- II. Mr A was not given the opportunity to complete his own assessment, contrary to paragraph 84;
- III. The assessment did not include discussions with family or carers, contrary to paragraph 85;
- IV. The Council did not obtain relevant information from Mr A's GP or medical specialist about his condition, contrary to paragraph 86;
- V. The Council did not properly inform Mr A of the reasons why the service was withdrawn, contrary to paragraph 106;
- VI. The Council did not give Mr A the right to challenge the decision, contrary to paragraph 107.

Provisional view

10. I have considered the points Mr A raised in relation to how the Council's assessment fits with the Department of Health Guidelines. Paragraphs 63, 84, 85 and 86 do however refer to 'Response to first contact and assessment' rather than to reviews which are dealt with in paragraphs 141 to 151. This was clearly a review rather than a new assessment and so the Council already was in possession of historical information regarding Mr A's health condition and care needs.
11. With reference to paragraphs 106 and 107 of the guidance, I can see from the information available that the Council did inform Mr A that his needs had been assessed as low, and as a result he was no longer eligible for services. I would agree that it would have been helpful if a fuller explanation had been provided by the Council in its letter of 13 December to Mr A however this would not have altered the outcome for Mr A.
12. The Council has now on a number of occasions invited Mr A to provide further information if he wishes to challenge the outcome of the assessment. This was initially offered in the Council's letter of 11 January 2011. As such I cannot see that Mr A has been denied any opportunity to challenge or complain about the decision. This offer remains open to Mr A should he wish the Council to reconsider its assessment. The Council has confirmed that it would review its decision if the medical evidence provided indicated that Mr A could not do as much as set out in the supported self assessment and the FACE assessment.
13. The opportunity to complain or appeal has not been lost and so I do not consider that there has been any injustice to Mr A in relation to this point of complaint.

14. Mr A provided further documentation resulting from information requests to the Council as to the qualifications of persons carrying out these assessments. Mr A considers that only people with medical/physiotherapy/occupational therapy qualifications are fit to carry out these assessments. The Council informed Mr A that the social worker who carried out his review has a DipSw and BA Hons Applied Social Studies and is registered with GSCC. Mr A does not consider that the social worker was fit to carry out his assessment as he does not have any of the medical qualifications he set out above.
15. Mr A considers that the panel's grading of his needs as low means that the officers are ignorant of the basic facts of his health condition. He does not consider that the assessment has been carried out by a competent professional as the decision that he is not eligible for services implies that his health condition has regressed and that is not possible.
16. Clearly this process was an assessment of social care need and not a medical assessment. The four eligibility bands describe the seriousness of the risk to independence and wellbeing or other consequences if social care needs are not addressed. It is not an assessment of health and it is not assessed on the basis of the seriousness of a person's health condition. The Council has clearly set out that it is the role of social workers to carry out such assessments and that they are appropriately trained to do so. Having carefully considered the way in which the Council has carried out this review I have not identified any administrative fault in the review process in this regard.
17. The Ombudsman appreciates that individuals may well have differing views to those of the officers who carry out assessments. However it is the role of social workers to carry out assessments and reach a view on these matters. By law, the Ombudsman may consider only the administrative process by which the Council has reached a decision; she may not question the merits of decisions taken without administrative fault. As I have not identified fault in the process I may not comment on the merits of the decision.
18. In summary, having carefully considered the Council's actions here I have not identified any administrative fault in the way it considered Mr A's review. I am satisfied that it was completed and considered in line with the Department of Health guidelines. I noted above that I consider it would have been helpful if the Council has given a more explicit explanation in its initial letter to Mr A however. As I have not identified any fault I cannot see any grounds to ask the Council to backdate and reinstate the funding. Mr A said he would like to be reassessed, and this offer from the Council still stands. It has explained that this would be carried out by a social worker able and qualified to carry it out.
19. I also note the point that Mr A raises in relation to not specifically being told of his right to appeal or complain in this letter. However, I cannot see that there was any injustice caused to the complainant on this point. As soon as Mr A informed the Council he was dissatisfied with the outcome it invited him to provide further information and said it would reassess him on this basis of any supporting information provided. This was set out in the Council's letter to Mr A dated 11 January 2011 and repeated in later correspondence.
20. Mr A has chosen not to appeal or to provide further supporting information to date. This is of course a matter for Mr A to decide, however I cannot see how the Council might come to a differing view unless it is provided with further information in support of his view that he is

eligible.

21. As I have not identified any administrative fault causing injustice to Mr A, my provisional decision is that I will discontinue the Ombudsman's investigation into the complaint. I will provide Mr A with a copy of this provisional decision and invite further comment before I proceed to my final decision.

Emma Kennedy
On behalf of the Local Government Ombudsman