

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

**Investigation into a complaint about
Leeds City Council & Indigo Care Services Ltd
(reference number: 20 013 485 & 21 017 365)**

5 August 2022

The Ombudsman's role

For more than 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.

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 B	The complainant
Mrs C	Her mother

Report summary

Adult Care services – residential care provided on behalf of the Council and charging

Mrs B complained about the care her mother received while she was resident at Paisley Lodge, a residential care home operated by Indigo Care Services Ltd using the trading name Orchard Care Homes. The placement was arranged and part-funded by the Council before Mrs C went on to self-fund for a time. Part of Mrs B's complaint is also about charges made for care.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The Council should also:

- apologise to Mrs B confirming it accepts the findings of this investigation;
- pay Mrs B £300 to recognise her distress, time and trouble;
- pay Mrs C's estate £200 for her lost clothing (unless Mrs B can provide any receipts to show a greater value); and
- pay a refund to Mrs C's estate of £173 a week for the time Mrs C entered the care home until 8 November 2020 less the nine weeks when this charge was not made (this is the difference between £796 and £623 a week).

The Care Provider should:

- apologise to Mrs B confirming it accepts the findings of this investigation;
- pay Mrs B £300 for her distress and inconvenience;
- ensure Mrs C's estate receives a payment of £100 for the loss of her possessions on moving; and
- ensure Mrs C's estate receives a refund of a minimum £33 a week for each week after 8 November 2020 for which the Care Provider charged for her care (the difference between £796 and £763 a week).

The Council should also end the practice of allowing care providers to enter contracts with clients (or their relatives) to make additional charges for care that run concurrently to contracts the Council has entered with the same care provider to provide the clients' care at a lower cost.

The Care Provider should also review its standard terms and conditions to insert a clause that where it charges fees in lieu of a resident giving notice, those fees will be reduced in the event it re-lets the resident's room within the period of that notice.

The Care Provider should also review its standard terms and conditions to remove or revise a clause that refers to a shortfall between the rate paid by the local authority and the Care Provider's "full amount of charges".

The complaint

1. We have called the complainant 'Mrs B'. Her complaint concerns the care received by her mother 'Mrs C' between June and November 2020. During this time, the Council arranged for Mrs C to receive care at Paisley Lodge, a residential care home operated by Indigo Care Services Ltd which uses the trading name Orchard Care Homes ('the Care Provider'). Mrs B complained:
 - Mrs C received an unacceptable standard of care at the care home. In particular, she says the Care Provider delayed in registering Mrs C with a local GP practice; failed to ensure Mrs C maintained an acceptable standard of appearance; failed to facilitate in person visits and lost items of Mrs C's clothing. We have recorded this as a complaint against the Council as it had contracted with the Care Provider to provide Mrs C's care when these events took place;
 - the Care Provider failed to ensure Mrs C was ready to move to another care home in November 2020 despite Mrs B arranging this in advance. She lost possessions as a result. We have recorded this as a complaint against the Care Provider as at this time the Council's contract with the Care Provider had come to an end and Mrs C was funding her own care (with Mrs B acting on her behalf using a Power of Attorney);
 - that the charges made for Mrs C's stay have been confusing and difficult for Mrs B to understand. We consider this a complaint against both the Council and the Care Provider as they have each written to her about this matter; and
 - the Care Provider acted unreasonably in charging Mrs C a 28-day notice period after she moved to another care home. We recorded this as a complaint against the Care Provider.
2. Mrs B says because of the above she:
 - was put to time and trouble arranging repeat medication for Mrs C;
 - was caused distress when she saw her mother's appearance and by not being able to visit her;
 - incurred unnecessary costs in replacing Mrs C's clothing and possessions and in the cost of a taxi on the day Mrs C moved to another care home; and
 - does not know if the Council and Care Provider correctly charged for Mrs C's care.

The Ombudsman's role and powers

3. We investigate complaints about Council '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*)
4. We also investigate complaints about adult social care providers and decide whether their actions have caused an injustice, or could have caused injustice, to the person making the complaint. In this report, we again use the word fault to refer to these. If an adult social care provider's actions have caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 34B, 34C & 34H(4)*)

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- 5. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
 - 6. This complaint involves events during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether councils and care providers followed the relevant legislation, guidance and our [published “Good Administrative Practice during the response to Covid-19”](#).
 - 7. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Care Quality Commission (CQC), we will share our final decision with the CQC.

Relevant law and guidance

The fundamental standards

- 8. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2014 Regulations) set out the requirements for safety and quality in care provision. The Care Quality Commission (CQC) issued guidance in March 2015 on meeting the regulations (the Fundamental Standards). We consider the 2014 Regulations and the Fundamental Standards when determining complaints about poor standards of care.
- 9. Regulation 10 says that users of services must be treated with dignity and respect. Guidance from the CQC says that people who use services must be offered support to maintain their autonomy and independence in line with their needs and stated preferences. When offering support, staff should respect peoples expressed wishes to act independently but also identify and mitigate risks to support their continued independence as safely as possible.
- 10. Regulation 17 covers good governance which includes record keeping. CQC Guidance says that providers should maintain accurate, complete and contemporaneous records for all users of services, including a record of the care and treatment they receive.

The Care Act and statutory guidance

- 11. The Care Act 2014 and accompanying statutory guidance set out how the council must assess an individual's care needs. That assessment must decide what care needs the council must meet. The council must then prepare a care and support plan which explains how those needs will be met. The care and support plan will include a personal budget which will be an amount calculated by the council for the cost of that care.
- 12. Councils can make charges for care and support services they provide or arrange. A council must assess a person's finances to decide what contribution he or she should make to a personal budget for care. The council can take a person's capital and savings into account subject to certain conditions. If a person has capital or savings of more than £23,250 then they will not receive any financial support from the council. This is referred to as the 'upper capital limit'.
- 13. Someone who has capital and savings above the upper capital limit and arranges their own care (or for whom care is arranged by someone lawfully entitled to act on their behalf such as someone acting with a Power of Attorney) is referred to as a 'self-funder'.

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14. However, there are still some circumstances where a council may arrange care for someone with capital above the upper capital limit. This could be:
- where it is initially unclear if someone has capital above that limit and it has not been able to undertake a financial assessment to determine this;
 - where a person does not have capacity and has no-one to make arrangements on their behalf;
 - where someone needs residential care in an emergency and the council arranges this to meet their needs (*see Care Act 2014, Section 19*);
 - in non-emergency circumstances where someone asks the council to arrange their care and it agrees to do so.
15. In these cases, the council may charge the person for the full cost of their care and support. Government guidance says “*the person remains responsible for paying the cost of their care and support, but the local authority takes on the responsibility for meeting [...] needs*”. (*Care and Support Statutory Guidance; para 8.63*).
16. In these cases, the council will contract with the care provider. Government guidance says “*where a local authority is meeting needs by arranging a care home, it is responsible for contracting with the provider. It is also responsible for paying the full amount [...] in doing so it should remember that multiple contracts risk confusion and that the local authority may be unable to assure itself that it is meeting its responsibilities [...]*”. (*Care and Support Statutory Guidance; para 8.33*)
17. The guidance and the Care Act also say the only costs the council can recover are the costs it incurs. The only exception to this rule is where a council charges an administration fee to cover the costs of arranging care for users of services with capital above the upper capital limit. (*see Care Act 2014, section 14 and Care & Support Statutory Guidance section 8.15*)
18. Guidance accompanying the Care Act 2014 also says that where the care planning process has determined that a person’s needs are best met in a care home, the council must provide for the person’s preferred choice of accommodation, subject to certain conditions. It says the council must ensure the person has a genuine choice of accommodation. It must ensure that at least one accommodation option is available and affordable within the person’s personal budget. (*see Care and Support Statutory Guidance Annex A*)
19. The guidance also says “*the personal budget is defined as the cost to the local authority of meeting the person’s needs which the local authority chooses or is required to meet. However, the local authority should take into consideration cases or circumstances where this ‘cost to the local authority’ may need to be adjusted to ensure that needs are met*”. The guidance makes clear that councils cannot set arbitrary amounts or ceilings for the cost of accommodation. And that a person must not be asked to top-up the cost of their accommodation as a result. It says: “*if no preference has been expressed and no suitable accommodation is available at the amount identified in a personal budget, the local authority must arrange care in a more expensive setting and adjust the budget accordingly to ensure that needs are met*”.
20. Further guidance explains that only where a person has actively chosen more expensive accommodation than that offered by the council, they can (or someone on their behalf) be asked to pay a top-up.

Competition and Markets Authority (CMA) Guidance

21. The CMA issues advice to care homes on how they can meet their obligations under consumer law. In providing information about fees, it says:
- “*Where a prospective resident is wholly or partly state-funded, it is important you give these residents and their representatives relevant information to help them make informed decisions*”. (paragraph 3.8)
 - “*A resident’s funding status may not be clear when they first arrive in your home, or they may be initially funded by the state, but will pay their own fees later. People in these circumstances also need up-front information so that they can make informed decisions about their long-term care*”. In a footnote the guidance gives as an example of this scenario where “*a self-funder’s placement is arranged by the local authority*” or “*where a financial assessment has been delayed*”. (paragraph 3.9)
 - “*Where you accept state-funded residents there will be a placement contract between you and the public funding body, which will determine the terms of the resident’s placement. However, these residents and their representatives will still need to understand the terms and conditions of their stay [...] this should include [...] clear information about who is responsible for payment of fees, the parties rights and obligations and the terms and conditions of your service, so they can make informed decisions about their care*”. (paragraph 3.30)

Care Provider Policies

Standard terms and conditions of residency

22. The Care Provider provided us with a copy of its terms and conditions sent to Mrs B, when Mrs C entered its care. It also provided us with a copy of its resident’s guide, which has a summary of some of the key terms and conditions. Of relevance to this complaint, we note the following, that the Care Provider:
- asks that clothing be “*clearly named*”; it is only responsible for the loss or damage of clothing if this arises because of its “*act or omission*”;
 - will not cover the cost of resident’s personal possessions under its insurance policy unless they are kept in its safe;
 - says that if a resident moves from the care home they must give four weeks’ notice or pay for four weeks care in lieu of giving notice;
 - says the fees it charges will depend on the resident’s needs and the type of facility they need; and
 - says that: “*if the local authority has agreed to pay our charges on your behalf for a temporary period while your property is being sold (or for any other reason) and there is a shortfall between the amount the local authority pays and the full amount of our charges, unless otherwise agreed, you will be asked to pay us the shortfall*”.

Care Provider policy on lost, stolen or damaged policy

23. The Care Provider has a policy in addition to the terms and conditions above. It says that its staff should record all residents’ possessions on an inventory which should then be regularly checked and updated. If a resident reports an item missing the care home staff should look for it. While the Care Provider expects residents to insure their own possessions, it does have discretion to replace lost items. It says this will be appropriate if care home staff or another resident is responsible for loss or damage.

How we considered this complaint

24. Before issuing this report we considered:
 - Mrs B's written complaint to us and any additional information she provided;
 - correspondence Mrs B had with the Council and Care Provider before making her complaint to us where she raised her concerns;
 - information provided by the Council and Care Provider in reply to our enquiries; and
 - relevant law and guidance where referred to in the text above.
25. Mrs B, the Council and Care Provider all had an opportunity to comment on a draft report. We considered any comments made before issuing this final report.

What we found

Background

26. Before June 2020, Mrs C lived with her husband 'Mr C' in their own home. Mrs C had dementia and needed more support in meeting her needs. Mrs B agreed her parents could move in with her.
27. In June 2020, around two weeks after this move took place, Mrs B contacted the Council to say the family were struggling to meet Mrs C's needs.
28. The Council agreed to assess Mrs C's care needs. Its assessment found that Mrs C had multiple care needs and these would be best met in a residential care setting. Mrs B agreed with this assessment.
29. The Council drew up a care and support plan and set a personal budget of £27,000 a year for Mrs C's care (£519 a week).
30. The Council contacted five care homes to see if they had placements available. Its records say that two did not respond to enquiries, a third had no vacancies and a fourth quoted a price for care much higher than the Council was willing to pay. But the Care Provider was willing to meet Mrs C's needs and entered a contract with the Council that it would charge it £623 a week for Mrs C's care. At the same time the Care Provider asked Mrs B to sign an agreement saying the cost of Mrs C's care would be £796 a week. We explain more about these arrangements in the section of this statement headed 'funding arrangements' below.
31. The Council reviewed Mrs C's placement in mid-August 2020 and agreed she should remain permanently in residential care.

The complaint about delay in notifying a GP

32. In July 2020 the Council recorded Mrs B contacting it to say that she had concerns the Care Provider had not arranged repeat medication for Mrs C. Mrs B had arranged for Mrs C to enter the care home with around five weeks of medication but this had now run out. Mrs B said she had to arrange further medication. The social worker spoke to the Care Provider about this and it did not contradict Mrs B's account. A further note kept in early August 2020 said the matter was now resolved.
33. Later, when Mrs B made a complaint about the time Mrs C spent at the care home, the Care Provider apologised for the delay in registering Mrs C with a local GP and arranging Mrs C's medication. It said it had subsequently introduced a checklist for new residents entering its care home. This specifically requires care home staff to check a resident's GP registration and prescription medication

requirements. We confirmed during this investigation there was no record of such a checklist being completed on Mrs C's admission.

The complaint about visiting and Mrs C's standard of appearance

34. The Care Provider completes various care planning documents for each resident. These were completed for Mrs C on admission and reviewed monthly. We noted the care planning documents referred to Mrs C liking to wear smart clothing and that she took care with her appearance. The plans said Mrs C could carry out personal care tasks such as washing and dressing independently, although she may sometimes need prompting.
35. As well as the care plan reviews, we reviewed daily care logs for Mrs C's stay at the care home. These showed that Mrs C showed differing levels of independence with personal care tasks; sometimes completing those without assistance or minimal assistance. On other occasions she needed more support. Care home staff also reported that Mrs C would sometimes refuse support with personal care. For example, Mrs C would say she had already washed when they went to assist her even though this was not the case.
36. The Council sent us a series of letters produced by the Care Provider which explained how it had approached the issue of visiting during the COVID-19 pandemic. We noted that at the end of June 2020 the Provider had begun reviewing its policy at each of its care homes and set out some general principles for when it decided to allow visits again. It said visits would depend on its care homes being free of any COVID-19 cases for 14 days; that all visits would be subject to a risk assessment and that any visit would be for only 30 minutes and no more than once a fortnight.
37. It confirmed its intention to allow some limited visiting in a further letter dated early August 2020 noting the Government had now published guidance which aligned with its suggested approach. But in that letter the Care Provider said it did not yet have enough COVID-19 testing kits to allow much visiting to take place.
38. In mid-August 2020 the Care Provider wrote again and said notwithstanding the shortage of testing kits it would resume visits in a "*sensible and controlled way*". It said they must be pre-booked, would be restricted to one visitor and for 30 minutes only.
39. Four weeks later, in mid-September 2020 the Care Provider said visiting continued in some of its homes. But it noted increasing COVID-19 cases in Leeds and said it was suspending visiting to its care homes in that area.
40. Mrs B wanted to visit Mrs C in person. But by the time her arranged visit took place in mid-September, the care home was only allowing window visits. Mrs B said that her mother looked unkempt and had food stains on her clothing. In its reply to her complaint the Care Provider said this fell "*below the standard of care [we] expect and has been addressed with the staff team*".
41. We noted that in the Care Provider's care logs from around this time there was only limited reference to this visit. But on the day in question Mrs C had reported to staff she had undertaken her own dressing and personal care. The previous day, staff had reported Mrs C refusing assistance with personal care.
42. As part of her complaint to the Care Provider, Mrs B also expressed her dissatisfaction about not being able to see Mrs C in person. The Care Provider apologised that there had been no face-to-face visits. It said that in cancelling face-to-face visits in September 2020, it was acting on advice received from the

Council at a time when the local authority area was experiencing an increase in COVID-19 cases.

The complaint about loss of clothing

43. Mrs B told us Mrs C's clothes were not labelled on entering the care home. Mrs B says she was assured by the then care home manager not to worry about this.
44. In mid-August 2020 the Council social worker kept a note of a conversation with Mrs B where she reported the Care Provider had lost clothes belonging to Mrs C.
45. The Care Provider says it should complete an inventory of personal possessions, including clothing, when a resident moves into its care home. But it has not located any inventory being completed on Mrs C's admission.
46. In comments the Care Provider said that it had considered making a payment to Mrs B for Mrs C's lost clothing. But that it wanted her to provide receipts for their value. It had previously invited her to do this, but she had not done so.

Complaint about moving accommodation and loss of possessions

47. In mid-November 2020 Mrs B told the Care Provider she had arranged for a different care home placement for Mrs C.
48. Mrs B recognises that she did not give the care home four weeks' notice on behalf of Mrs C when she arranged the move. She said she wanted Mrs C to move to the new care home as soon as possible. In practice this took around ten days as the new care home wanted first to ensure Mrs C did not have COVID-19 and so she had to take a test and await the result.
49. There is no record the Council was aware of Mrs B's intention to arrange a different care home placement for Mrs C until shortly before the move took place. As noted above she had made it aware of her concerns about the care home's delay in registering Mrs C with a GP and loss of clothing. But in August 2020 the Council had separately recorded Mrs B saying such matters were minor concerns and that she was generally happy with the care Mrs C received (we note Mrs B disputes the accuracy of this record). In September 2020 Mrs B had also expressed disappointment to the Council about the limited opportunity she had to see Mrs C, being restricted to window visits only.
50. On the day of the move, Mrs B arranged for a taxi for Mrs C. Mrs B says when it arrived Mrs C was not ready to move and none of her possessions had been packed. The taxi had to wait and this increased the cost of the journey. The care home agreed to forward items in Mrs C's room. However, not all items were forwarded. The Care Provider acknowledges it did not forward a clock or blanket belonging to Mrs C. It has offered to reimburse the cost of these if Mrs B provides receipts showing their value.

The complaint about funding arrangements

51. The Council and Care Provider entered a provisional care home individual service agreement when Mrs C entered the care home. This identified the cost of care would be at 'the local authority rate' of £623 a week. The Council says these agreements are provisional until it has completed a financial assessment. At which point it either replaces the provisional agreement with a final agreement or cancels the agreement.
52. Discussions the Council had with Mrs B in June 2020 established that Mr and Mrs C owned their own house. Also, that Mrs C possibly had other savings above the upper threshold. The Council said Mrs C was therefore a 'self-funder'. It also

established Mrs B (along with her brother) held a Power of Attorney to manage Mrs C's financial affairs.

53. The Council sent an email to the Care Provider saying that it was "*very important that you notify the resident / representative of your private contractual rate as soon as they are admitted.*" And that: "*You should make it clear that the contract will only come into effect in the event that the resident does not qualify for assistance. You should also make it clear that your private rate will be backdated to the date of admission in such cases*".
54. The Care Provider followed this advice. So, when Mrs C entered the care home it asked Mrs B to enter a written agreement that the cost of Mrs C's care would be £796 a week. Separately, the Council told Mrs B that Mrs C "*would pay the [Care Provider's] respite rate in the first instance*". During this investigation we were told the Care Provider's 'permanent rate' for care was £763 a week. The Council says that since June 2019 it has been its policy to permit care providers to have separate agreements with users of services or their families of this type. It says that previously users of services in Mrs C's position would enter care homes with no written agreement at all, until a financial assessment had been completed. Meaning several weeks or months could pass with care homes receiving no income for the resident and uncertainty over who was responsible for the bill.
55. When Mrs C entered the care home the Council asked Mrs B to arrange to pay £148 a week on an interim basis as a contribution towards her care. It explained that when it completed the financial assessment she may have to pay more. The Council had an arrangement for the Care Provider to collect those contributions. We note that as a result of another Ombudsman investigation the Council is ending the practice of asking care providers to collect client contributions on its behalf.
56. The Council completed the financial assessment in mid-October 2020. It recorded:
 - that for the first three weeks of her stay, Mrs C's savings and capital exceeded the upper capital threshold. So, Mrs C could not receive any financial help from the Council towards her care costs for that time;
 - for the next nine weeks of her stay Mrs C's capital fell below the upper threshold, so she could receive some financial help from the Council for those weeks. The Council assessed she should contribute £181 a week for those weeks;
 - after that time Mrs C's capital again exceeded the upper threshold and the Council assessed she could not receive any financial help towards her care.
57. The Council therefore terminated the individual agreement it had with the Care Provider on 8 November 2020 and stopped paying anything for Mrs C's care after that date.
58. The Council told the Care Provider that moving forward it could charge Mrs C the private contractual rate for her care. It told the Care Provider that it would invoice Mrs C for any balance of money owing between what it had paid the Care Provider up to now (the local authority rate of £623 less the £148 a week interim contribution) and the assessed amounts. The Council wrote to Mrs B and said this figure would be around £5,700.
59. However, the Council invoiced Mrs B incorrectly. It asked her to pay around £1,600. It did not spot this error until August 2021, at which point it invoiced Mrs B

for approximately a further £4,100. It apologised for any inconvenience caused by this error. This invoice has remained unpaid to await the outcome of this investigation.

60. In the meantime, Mrs B had also received invoices from the Care Provider. Its invoices said Mrs C was charged £796 a week for the period after the Council terminated its agreement (i.e. from 8 November 2020 onward). Mrs B also understood the Care Provider charged four weeks payment at this rate to cover the notice period at the end of Mrs C's stay.
61. The Care Provider also invoiced Mrs C £173 a week to cover the difference between the 'local authority rate' and the 'private contracted rate' for those weeks when Mrs C was not eligible for any financial support from the Council (i.e. it did not ask for the difference to be paid for the nine weeks that Mrs C's capital fell below the upper threshold).

Findings

The complaint about delay in notifying a GP

62. As both the Council and Care Provider have acknowledged, the Care Provider was at fault here. When Mrs C entered the care home the Care Provider should have noted that she needed to register with a local GP. It failed to do so because at the time its admission procedure did not include completing a checklist to record this information. Access to GP services will be something essential for all users of residential care. So, we consider this oversight a fault. It also calls into question whether the Care Provider kept adequate records in line with the fundamental standards at that time.
63. The fault caused Mrs B some injustice. She was put to some time and trouble in helping arrange for her mother's medication, after she had moved to the care home. She also had to raise the matter with both the Council and Care Provider before it was resolved. However, it is to the Council's credit that when it did become aware of this matter in July 2020 its intervention appears to have led to the Care Provider resolving this issue. We also recognise the Care Provider belatedly addressed the oversight in its procedures and ensures such a check is now completed for new residents.
64. We set out proposals below for how the Council can remedy any remaining personal injustice caused to Mrs B.

The complaint about visiting and Mrs C's standard of appearance

65. We find the care records reflect that when Mrs C entered the care home, the provider knew she had always taken pride in her appearance and dress. It must have caused Mrs B distress that when she saw her mother in September 2020, after a break of several weeks, that she appeared unkempt.
66. We consider the reasons why Mrs C appeared this way could be due to her resistance to personal care at that time, something often recorded in the Care Provider's notes. We do not underestimate the challenge this may have posed for the Care Provider. Because the fundamental standards make clear that it must strike a balance. On the one hand it must take account of the independence of the user of services, who may decline personal care. But on the other it must maintain their dignity which is linked to their appearance.
67. The Care Provider accepts that on this occasion it did not get that balance right. And as a result Mrs C's appearance on the date of Mrs B's visit was

unacceptable. This was a fault that caused Mrs B injustice in the form of some avoidable distress. We set out proposals below for how the Council can remedy this injustice caused to her.

68. We understand Mrs B will have a concern her mother's appearance on that visit may not have been a 'one off'. However, we consider there is insufficient evidence to find fault beyond that visit. Overall, we found the Care Provider kept adequate records showing how it attempted to meet Mrs C's care needs. These included monthly reviews of her care plan where it recorded her need for personal care increasing and the challenges posed by her sometimes refusing it. The evidence is insufficient to form the view that it consistently failed to meet those challenges.
69. Turning more widely to the issue of visits, we recognise that Mrs B will have been distressed that she was unable to visit Mrs C more while she was in the care home. We understand it will also have been distressing that Mr C did not have such an opportunity. However, we do not find fault in the Care Provider's face-to-face visiting policies which were consistent with Government guidance and local public health advice relevant to the time Mrs C was in its care. We note there were only around four weeks in August and September 2020 when face-to-face visits could take place. We cannot say it was possible for Mrs B to visit Mrs C in person at this time as there is no evidence to show what, if any, requests were made for a visit nor how the Care Provider responded within that limited timeframe.

The complaint about loss of clothing

70. We note Mrs B has said the Care Provider told her there was no need to label Mrs C's clothing on admission. This would be contrary to the Care Provider's normal practice. But it does not contradict Mrs B's account. We note Mrs C's placement took place as a matter of urgency in the unprecedented conditions of a pandemic. We consider either of these factors could account for the Care Provider agreeing to waive its usual practice.
71. Further, we note that whether Mrs C's clothes were labelled or not, the Care Provider should still have recorded them on an inventory in line with its policy on resident's possessions. This it failed to do. That was a fault.
72. The injustice caused by this poor record keeping is that when Mrs C's clothes were subsequently lost it became a lot harder to identify exactly what items were missing.
73. The Care Provider has accepted some fault here. It appears willing to make a discretionary payment to recognise the loss in line with its policy. But it expects Mrs B to provide receipts to show the value of the lost clothing. While the Care Provider can ask for receipts it is fault for it to condition any payment for their loss on Mrs B producing these. Because there is nothing to say that Mrs B purchased the clothes for her mother, or if so when, or with any expectation she may enter residential care. We make proposals therefore for how the Council can also ensure a remedy for Mrs B's injustice here, without this requirement.

The complaint about moving accommodation and loss of possessions

74. The Care Provider acknowledges that two items belonging to Mrs C were lost when she moved to another care home in November 2020. This was fault and Mrs C's injustice was the loss of those possessions. We welcome the Care Provider's offer of reimbursement, but it follows from what we have said above that the Care Provider is making an unreasonable demand of Mrs B to produce

receipts for those items. We make proposals therefore for how the Care Provider can also ensure a remedy for Mrs B's injustice here, without this requirement.

75. This loss of items was against the backdrop of Mrs B's description of a chaotic moving day for Mrs C. It is not disputed the Care Provider had not packed Mrs C's possessions in advance despite knowing of the move. While it was given only short notice, the Care Provider did not suggest at the time that it would not be able to support Mrs C with the move. So, while the short notice may have contributed to the chaotic nature of the move it would not excuse it. The Care Provider was at fault therefore.
76. The injustice this caused Mrs B is as she has described. That she incurred extra expense in the form of the taxi costs. She was also caused some avoidable distress. We make recommendations below for how the Care Provider can remedy this injustice.

The complaint about funding arrangements

77. We have set out above the circumstances of Mrs C's admission to the care home. To summarise:

- it was an emergency placement made when Mrs B struggled to meet the needs that Mrs C had arising from her dementia after she moved into Mrs B's home;
- the Council assessed Mrs C needed care in a residential care home and it set a personal budget of £519 a week for what this would cost. But it could not find a residential care home that would contract with it to provide Mrs C's care at that cost;
- so, it entered a contract with the Care Provider to meet Mrs C's care at a higher cost - in effect it increased her personal budget to £623 a week. This was lower than what the Care Provider would charge a self-funding resident for respite or permanent care;
- at the time she entered residential care, it was unknown if Mrs C had savings or capital above the upper capital threshold, at least until such time as her marital home was sold or 12 weeks elapsed from her moving into care (at which point the marital home would count as capital if unsold). That could not be determined until there was a financial assessment which was not completed until October 2020;
- that when the financial assessment was completed it was found Mrs C, at that point, had capital above the upper threshold and so the Council could end its contract with the Care Provider.

78. There is no fault in any of this. It is regrettable there was such a delay in completing the financial assessment, but we recognise the Council was operating under exceptional pressures at the time and Mrs C's financial position was relatively complex.
79. Where we have a concern is that while the arrangements described above pertained (between June and 8 November 2020) the Council considered it permissible for the Care Provider to have a second contract with Mrs B, to run concurrent with its own. That second contract permitted the Care Provider to charge Mrs C the self-funding rate for care for any weeks she was not entitled to support from the Council while its contract with the Council was also in force. This way, if it transpired there were any weeks when Mrs C had capital above the upper threshold, the Care Provider could seek the balance of fees from Mrs C

between the contracted cost of care with the Council and what it would charge a self-funder. This is something it went on to do.

80. We recognise this arrangement had advantages to both the user of services and the care provider over that which pertained before June 2019. We also consider it was reasonable for the Council to caution that Mrs C might need to pay the full cost of her care based on what it knew of her finances. The Council could also explain that when its contract with the Care Provider ended, the Care Provider could charge more based on its self-funding rate. The Care Provider could also prepare Mrs B for that event. But while the Council contracted with the Care Provider, it could only expect Mrs C to pay the cost of care that it agreed to pay. That was £623 a week.
81. To have a second contract that might require Mrs C to pay more, even if it was not the Council asking Mrs C to pay more, was inherently flawed. Because where the Council maintains responsibility for meeting a person's care needs (for so long as it is contracting with a care provider to do so), it is responsible for securing the placement within the person's personal budget. This is something which also applied in 2019, meaning the arrangement the Council had in place at that time was also flawed. There is no provision the Council can require the person needing care to pay more than the personal budget unless they are exercising a choice to do so. This would be in circumstances where the person has found another, more expensive, care home they prefer and they enter a deferred payment arrangement with the Council. Or, where a third party is willing to pay a top-up. Those circumstances did not apply here. Because Mrs C had no choice of care home.
82. Mrs B was also given no choice but to sign the separate contract with the care home as a condition of it accepting Mrs C's placement – something which the Care Provider did with the full knowledge and encouragement of the Council. This meant the Council and Care Provider required Mrs B to enter a contract at a time when she was not responsible for arranging Mrs C's care, as responsibility rested with the Council.
83. This arrangement was therefore incompatible with the statutory guidance. It is also not something envisaged in the CMA guidance which explains that when a Council arranges and funds a placement, a care provider's contract is with it and not the resident. Although that guidance foresees circumstances where that contract will end following a financial assessment and the resident must be prepared for that.
84. It was fault therefore for the Council and Care Provider to expect Mrs C to pay more than £623 a week for her care before 8 November 2020, when the Council's contract to fund Mrs C's care ended.
85. After that point we accept the Care Provider could reasonably charge Mrs C its usual private contracted rate for care. However, we note here the discrepancy between the £796 a week charged ('the respite rate') and the £763 which is the Care Provider's 'permanent rate'. Given that Mrs C's stay in the care home became permanent from August 2020, any self-funded care she had to pay for, should have been charged at the lower of these amounts. So, we find the Care Provider charged too much for Mrs C's care after 8 November 2020.
86. The injustice caused by these faults is two-fold. First there is the straight-forward overcharging causing a loss to Mrs C's finances. But second there is the distress

that arises from the Council and Care Provider making an arrangement that caused unnecessary confusion and frustration to Mrs B.

The complaint about charging for 28 days care fees in lieu of giving notice

87. Mrs B knew she needed to give the Care Provider 28 days' notice if Mrs C moved to an alternative care home. It was Mrs B's choice to move Mrs C more urgently and not give such notice.
88. We note the notice clause in the Care Provider's terms and conditions contains a potential flaw. It is incompatible with the guidance given by the CMA on fairness in contract terms. That suggests that while it is reasonable to require a 28 day notice period it may be unfair to charge the resident the full period in the event their room is re-let within that period. This is not something currently addressed in the Care Provider's contract.
89. However, we are satisfied we do not need to investigate the potential consequences of this flaw in this instance. This is because on reading the invoices sent to Mrs B, we find the Care Provider did not charge Mrs C for any care after she left the care home. Mrs B misunderstood the invoices. This is understandable given the funding arrangements we explained above. But there is no further fault by the Care Provider in respect of this matter.

Recommendations

90. We have set out above where faults by the Council or Care Provider caused injustice or potential injustice to Mrs B and/or Mrs C. We therefore set out below a series of recommendations we want the Council and Care Provider to carry out to provide a fair remedy for that injustice. In making these recommendations we have taken account of our published guidance on remedies. We have also taken account that during this investigation Mrs C sadly died. We are grateful that in their responses to the draft of this report, both the Council and the Care Provider indicated their willingness to accept our findings and carry out these recommendations. But we have published this report because we consider it in the public interest to do so, given the injustice caused to the complainants and the wider systemic problems around charging the complaint has revealed.
91. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
92. To remedy the personal injustice caused to Mrs B and Mrs C the Council has agreed to:
 - apologise to Mrs B confirming it accepts our findings;
 - pay Mrs B £300 to recognise her distress, time and trouble – this is made up of £50 to recognise the time and trouble Mrs B was put to in having to arrange Mrs C's repeat medication; £50 to reflect her distress at Mrs C's appearance on the date of her visit in September 2020 and £200 to recognise the distress caused by the faults around charging in this case;
 - pay £200 to Mrs C's estate for her lost clothing (unless Mrs B can provide any receipts to show a greater value);
 - pay a refund to Mrs C's estate of £173 a week from the time Mrs C entered the care home until 8 November 2020, less the nine weeks when this charge was not made (this is the difference between £796 and £623 a week).

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93. To remedy the personal injustice to Mrs B and Mrs C the Care Provider has agreed to:
- apologise to Mrs B confirming it accepts our findings;
 - pay Mrs B £300; made up of £100 to recognise her taxi costs and inconvenience on the day of Mrs C's move to another care home and £200 to recognise the distress caused by the faults around charging in this case;
 - ensure Mrs C's estate receives a payment of £100 for the loss of her possessions on moving (unless Mrs B can provide any receipts to show a greater value);
 - ensure Mrs C's estate receives a refund of a £33 a week for each week after 8 November 2020 for which the Care Provider charged for her care (the difference between £796 and £763 a week).
94. The payments to Mrs C's estate set out in paragraphs 92 and 93 can be offset against the outstanding invoice for her care charges issued in August 2021. The Council should re-issue the invoice once those adjustments have been made.
95. In carrying out the recommendations at paragraph 92 above the Council can liaise with the Care Provider to decide if the Care Provider should contribute to the cost of those actions. But as the Council was responsible for Mrs C's care at the time any injustice arose, such liaison must not delay any remedy for Mrs B, for which the Council is ultimately responsible to provide. This is because when a council commissions another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them.
96. We also want the Council and Care Provider to learn wider lessons from this complaint. So, they should also carry out the following service improvements.
- The Council should end the practice of allowing care providers to enter contracts with clients (or their relatives) to make additional charges for care that run concurrently to contracts the Council has entered with the same care provider to provide the clients' care at a lower cost. The client should only be exposed to the self-funding rate of care where the Council is arranging care if the Council itself agrees to fund care at that rate or at the point the Council contract ends.
 - The Council should review its current practice of financial assessment to see if there is scope to avoid delays for those whom it places in residential care in an emergency. We note here the statutory guidance envisages financial assessments will usually be carried out at the same time as an assessment of need. The guidance recognises this will not always be possible in an emergency. So, the Council will always be funding care for some individuals at a full-cost (or potential full cost) basis who are later confirmed as self-funders following a financial assessment. However, it is inherently unsatisfactory if this situation pertains for longer than necessary as it creates uncertainty for Council, care provider and the user of services alike. Therefore any delay in financial assessment, while sometimes unavoidable, should be avoided if possible.
 - The Care Provider should review its standard terms and conditions to insert a clause that where it charges fees in lieu of a resident giving notice, those fees will be reduced in the event it re-lets the resident's room within the period of that notice.

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- The Care Provider should also review its standard terms and conditions to remove or revise that clause that refers to a shortfall between the rate paid by the local authority and the Care Provider's 'full amount of charges'. While it is contracting with a local authority for care, the Care Provider cannot expect a user of its services to pay more for that care than it charges the local authority.

Decision

97. We find fault by the Council and Care Provider causing injustice to Mrs B and Mrs C. We recommend the Council and Care Provider should take the action described above to remedy that injustice.