

Cabinet – 30 April 2014

Local Government Ombudsman- Report on an investigation into complaint no 11 022 479 against Walsall Metropolitan Borough Council

Portfolio: Councillor Barbara McCracken

Related portfolios:

Service: Social Care & Inclusion

Wards: All

Key decision: No

Forward plan: No

1. Summary

The Local Government Ombudsman has issued a report of maladministration following a complaint relating to adult social care. The Ombudsman's report is attached for Members' consideration.

Section 30(3) of the Local Government Act 1974 requires the Ombudsman to issue reports such as this without naming or identifying the complainant or other individuals. Likewise the report does not include details which might risk the identification of the complainant's home address or other details which might risk identifying individuals who have had an involvement in these matters. Some Members may know, or may recognise, some details set out in the report; however, in considering the present report tonight, they should avoid revealing details which the Ombudsman has anonymised in her report.

2. Recommendations

- 2.1 That Cabinet consider the content of the Ombudsman report and note her recommendations.

3. Report detail

- 3.1 The Ombudsman has summarised the case in the following terms, that.

“the Council failed to adequately consider alternative housing options for a disabled man before offering him a place at an extra care housing scheme. The scheme was a ‘poor fit’ as it required the complainant to pay care charges provided as part of the scheme, even though the complainant preferred to receive personal care through an informal arrangement with a friend. The Council did not adequately ensure the complainant understood all the charges he would

face and the charging structure for the scheme did not accord with Government guidance. In particular, in conflating charges for an 'on call' service (a 'well being charge') with charges for assessed personal care needs. The Council previously agreed to review the scheme's charging arrangements in 2011 but had not done so".

3.2 The Ombudsman has summarised the complaint as follows: that

"[the complainant] complains about the charges made by the Council for care services. [He] does not receive care from the Council. But it expects him to pay care charges as he lives in an extra care housing scheme ('the housing scheme'). [He] complains the Council did not give him alternatives to moving to this housing scheme and did not explain charges associated with this accommodation before he moved. [He] does not use the care services provided by the Council at this housing scheme so he says it is unfair he is expected to pay for those. He also says it is unlawful for the Council to consider he can use Disability Living Allowance (DLA) to pay for care. [He] refuses to pay the charges and has accrued around £9000 arrears in unpaid care charges."

3.3 The Ombudsman service advised the Council that they were investigating this complaint in January 2013. At that stage, the Ombudsman summarised the complaint as being that the Council was unreasonably seeking to collect from the complainant a 'well-being' charge, connected to his extra care housing tenancy.

3.4 In carrying out the investigation the Ombudsman considered the written complaint and evidence sent through to support it, and made written enquiries of the Council and considered the responses given. The council's initial written response was made on 27 February 2013, and further details provided on 21 March 2013. A draft report detailing the Ombudsman's findings was shared with the Council, and with the complainant, in September 2013, and the council's comments upon the draft report were provided on 31 October 2013. In January 2014, the Ombudsman contacted the council again, seeking clarification on a number of points, which was provided on 13 February 2014.

3.5 The Ombudsman issued her final report on 20 March 2014, finding fault in relation to the consideration by the Council of alternative housing options before pursuing the option of extra care housing; the information and explanation given to the complainant of charges he would be expected to pay prior to his move to extra care housing; the calculation of the 'well-being' charge; the arrangements for charging for personal care; and also the failure to fully carry out the remedy it had agreed in relation to a previous complaint about charges made by the Council for residents of extra care housing.

3.6 The Ombudsman has concluded that as a result of maladministration by the Council the complainant has been caused injustice. The Ombudsman has concluded that on balance the complainant would not have moved to the extra care housing scheme if given choice about his housing options and had he understood all the charges he was liable for. The Ombudsman has also concluded that the Council charged him unfairly for personal care services he did not need or want both directly as a 'care charge' and included within its 'well-being' charge. The Ombudsman considers that the complainant has been

caused unnecessary distress and subject to excessive demands for money as a result.

3.7 The Council has agreed to the remedy proposed by the Ombudsman. Paragraphs 45 and 46 of the Ombudsman's report notes that the Council has agreed to:

- a) write off 50% of the 'well-being' charge the Council has made to [the complainant] since he moved to the extra care scheme;
- b) write off all 'personal care' charges made in addition to its 'well being' charge since [the complainant] moved to the extra care scheme;
- c) offer and complete a review of [the complainant's] housing needs if he wants this; if [he] wants to move it should identify and secure suitable alternative housing for him as soon as practicable;
- d) complete its review of the charging model it uses for extra care housing in line with this decision and that reached in January 2011; the review will address the existing conflation between 'well-being' charges and care charges; it will specifically address what is fair for residents who do not need or want personal care from the Council beyond the insurance of a 24 hour care service being 'on call';
- e) cap future 'well-being' charges to [the complainant] at 50% and not make any further personal care charges to [him] until the review at d) completes and so long as he does not receive the care services provided by the scheme; the Council may review the charges made to [him] when implementing any changes made to its charges arising from the review at d) above; this being conditional on [the complainant] wanting to remain at his current accommodation and in circumstances where re-housing is not being actively sought arising from the action at c) above; and
- f) review the written information it gives to prospective residents of extra care schemes to ensure all residents receive clear and transparent information on charging and are clear about what it covers; the Council should ask prospective residents to sign to say they understand their liability for such charges and signpost them to alternative housing options if they do not wish to assume such liability; financial assessments for care charges in extra care housing schemes should take place before a resident signs a tenancy agreement unless they agree to waive this requirement.

3.8 In relation to bullet points (a) and (b), I can confirm that the council has written off 50% of the well-being charges from the commencement of the complainant's tenancy of extra care housing to the present date. The sum written off in this way is £3795.05. In addition, the council has written off all additional personal care charges made by the council, amounting to a further £4105.60.

3.9 In relation to bullet point (c) I can confirm that a review of the complainant's housing needs has been completed which determined that he wanted to move. Suitable alternative accommodation has been secured which meets the complainant's needs and preferences. The complainant has been fully involved in the review and the identification of suitable alternative accommodation. The complainant has now moved into his new property.

- 3.10 In relation to bullet point (d) Social Care and Inclusion is currently working to complete its review of the charging model used for extra care housing, in line with the Ombudsman's comments, conclusions and remedy in this case, and also the conclusions of a previous investigation concluded in January 2011. As agreed with the Ombudsman, the review will address the existing conflation between 'well-being' charges and care charges, and will specifically address what is fair for residents who do not need or want personal care from the Council beyond the insurance of a 24 hour care service being 'on call'.
- 3.11 Likewise, in relation to bullet point (e), Adult Social Care is working to complete a review of written information provided to prospective residents of extra care housing, to include clear and transparent information on charging and what it covers. The service will work with housing colleagues to ensure written information includes information on alternative housing options.
- 3.12 In line with the Ombudsman's recommendation (bullet point f), as agreed, the Council will in future ensure that prospective tenants of extra care housing understand their liability for charges, and sign to confirm that they understand this, prior to signing a tenancy agreement. Also financial assessments in relation to care charges in extra care housing schemes will take place prior to a prospective tenant signs a tenancy agreement, unless the individual specifically agrees to waive this requirement. Steps will be taken to ensure that staff working in this area are fully aware of these changes.
- 3.13 As noted above, the Council has already agreed to this remedy. The council must now take action to implement the different parts of the remedy within 3 months of the publication of the Ombudsman's present report, by mid June 2014.

4. Council priorities

- 4.1 One of the Council's priorities relates to improving health and well being, including independence for older people. This report provides some important learning relevant to this key priority.

5. Risk management

- 5.1 Arrangements for considering and responding to complaints about council services, both the council's internal complaints procedures and externally through the Ombudsman, provide a means of reviewing our services, and of learning from complaints.
- 5.2 In order to ensure that the changes identified through the current investigation and set out in this report are fully and effectively implemented, staff training and briefing sessions will be undertaken for frontline staff and managers across the service.

6. Financial implications

- 6.1 As noted above, the Council has agreed to write off personal care charges and 50% of 'well-being' charges raised to date relating to the complainant. The total financial implication of this is a write off of £7,901.10.

- 6.2 Additionally Social Care and Inclusion are currently working to review the charging model used for extra care housing going forward. At present the 'well-being' and personal care charges for these extra care establishments generate around £800k of income per year. Therefore any review of charging will need to analyse the financial impact on this position, and if this results in a pressure, identify how this will be funded.

7. Legal implications

- 7.1 The Ombudsman service was established by the Local Government Act 1974, to investigate complaints about council services by service users.

When a report is issued, the council concerned must place a notice in the local press advising residents that the report has been published and is available for inspection, and must arrange for the report to be submitted for Member consideration. Notices were placed in the Walsall Advertiser and Walsall Chronicle on 27 March 2014 indicating that the report would be available to view and read at the First Stop Shop on the ground floor of the Civic Centre, and at Walsall Reference Library until 2 May 2014. The report is also available on the Ombudsman's web site www.lgo.org.uk. The Ombudsman has been advised that the report would be submitted to a meeting of Cabinet for consideration.

The Monitoring Officer has a personal duty under s5 and 5A of the Local Government and Housing Act 1989 to prepare a report to the relevant committee of the authority, namely council or cabinet depending upon the function where a proposal, decision, or omission by the authority, by any committee, or by any person holding any office or employment under the authority, has given rise to or is likely or would give rise to any such maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974. As this is an executive function this report should go to cabinet.

Where the Local Government Ombudsman reports that there has been maladministration in connection with the exercise of the authority's administrative functions, a failure in a service which it was the function of an authority to provide, or a failure to provide such a service, the report shall be laid before the authority concerned. It shall be the duty of that authority to consider the report, and within the period of three months beginning with the date on which they received the report, or such longer period as the Local Ombudsman may agree in writing, to notify the Local Ombudsman of the action which the authority has taken or proposes to take.

The Council delegated authority to officers to settle complaints arising from reports of the Ombudsman on 13 September 2010. It is important to effect speedy resolution of complaints in the interests of both the council and complainants, and this accords with the principles of natural justice and good practice. Ombudsman guidance also advises that the anonymity of the report as issued should be respected by the parties to the complaint.

8. Property implications

- 8.1 None

9. Health and wellbeing implications

- 9.1 Extra care accommodation plays a valuable role in assisting vulnerable people to live in the community and maintain their independence. This complainant has been enabled to exercise choice in meeting his needs following the complaint.

10. Staffing implications

- 10.1 Members of staff will be briefed on any changes in procedures arising from the present investigation and the terms of the agreed remedy.

11. Equality implications

- 11.1 None

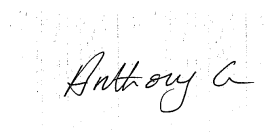
12. Consultation

- 12.1 The Ombudsman service, through one of their team of investigators, has liaised closely with officers of the council, and with the complainants, throughout the investigation of this complaint. The Council was consulted on the draft report, and given the opportunity to correct any factual errors.

Background papers

None

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Keith Skerman
Interim Director
22 April 2014



Councillor M Bird
Leader of the Council
on behalf of the Portfolio Holder
22 April 2014

Report

on an investigation into
complaint no 11 022 479 against
Walsall Metropolitan Borough Council

12 March 2014

Investigation into complaint no 11 022 479 against Walsall Metropolitan Borough Council

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<p>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.</p>

Key to names used

Mr X, the complainant

Mr Y, the complainant's carer

Report summary

Adult Care Services

The Council failed to adequately consider alternative housing options for a disabled man before offering him a place at an extra care housing scheme. The scheme was a 'poor fit' as it required the complainant to pay care charges provided as part of the scheme, even though the complainant preferred to receive personal care through an informal arrangement with a friend. The Council did not adequately ensure the complainant understood all the charges he would face and the charging structure for the scheme did not accord with Government guidance. In particular, in conflating charges for an 'on call' service (a 'well being charge') with charges for assessed personal care needs. The Council previously agreed to review the scheme's charging arrangements in 2011 but had not done so.

Finding

Maladministration causing injustice

Recommended remedy

The Council agrees to waive all personal care charges accrued by the complainant and 50% of the accrued 'well being' charges.

Within the next three months the Council will complete a review of the current charging structure used by the scheme and will change the information it gives to prospective tenants of the scheme before they move. It will also offer to review the complainants' housing needs and identify suitable alternative housing for him if he wants this. The Council will also cap its care charges to him at 50% of the 'well being charge' until its charging review completes.

Introduction

1. Mr X complains about the charges made by the Council for care services. Mr X does not receive care from the Council. But it expects him to pay care charges as he lives in an extra care housing scheme ('the housing scheme'). Mr X complains the Council did not give him alternatives to moving to this housing scheme and did not explain charges associated with this accommodation before he moved. Mr X does not use the care services provided by the Council at this housing scheme so he says it is unfair he is expected to pay for those. He also says it is unlawful for the Council to consider he can use Disability Living Allowance (DLA) to pay for care. Mr X refuses to pay the charges and has accrued around £9000 arrears in unpaid care charges.

Legal and administrative background

2. The Ombudsman investigates complaints of maladministration causing injustice. When I find maladministration causing injustice, I can ask the Council to take action to remedy that injustice.
3. When a person applies to a council for accommodation and it has reason to believe they may be homeless or threatened with homelessness, a number of duties arise:
 - to make enquiries;
 - to secure suitable accommodation for certain applicants pending the outcome of the enquiries; and
 - to notify the applicant of the decision in writing and the right to request a review of the decision.¹
4. Walsall Council also has its own housing allocations policy. The policy is administered by a social landlord on behalf of the Council. In line with the law the policy gives additional priority to certain groups of people on its housing register in need of housing. These include homeless people and people whose housing accommodation is having a negative effect on an existing medical condition.²

¹ Housing Act 1996, Sections 184 and 202

² Housing Act 1996, Section 167

5. Extra care housing describes specialised housing for adults with varying care needs. Extra care housing schemes can take various forms. But the key features are that residents will live in their own self-contained units and will have a care team on site 24 hours a day, seven days a week. Schemes also provide communal facilities such as restaurants or activity rooms.
6. The Government recommends the main source of guidance for extra care housing schemes as that published by the Housing Learning and Improvement Network (LIN). This is a national 'knowledge hub' for housing, health and social care professionals and formerly responsible for managing the Department of Health's Extra Care Housing capital programme. The LIN produces a factsheet for extra care housing providers on care charges within such schemes.³
7. The responsibility for commissioning and funding care services in extra care housing schemes rests with councils. The Council may contract with a care provider, but it will be responsible for collecting any care charges paid by residents. The guidance suggests that all residents will generally be responsible for their housing costs and for service and support charges with assistance from benefits where applicable.⁴ Service and support charges should generally be shared equally among residents of the scheme regardless of the use individuals make of the services. But it suggests care charges "will more often apply only to those using care services". Residents with assessed care needs may pay a flat rate, an hourly rate for the care they receive, or be charged a 'banding rate'. LIN guidance says "in schemes where all residents have to have a minimum care requirement to be eligible for admission the flat rate may also include a basic number of care hours".
8. The Council and a social landlord provide in partnership the extra care housing scheme where Mr X lives. The social landlord charges rent for accommodation and charges for communal services such as maintaining common areas and gardens. These charges are eligible for housing benefit if a tenant qualifies. It also charges for utilities and "housing related support services including housing related support staffing costs and warden call alarm". These charges are not eligible for housing benefit.

³ LIN Factsheet 19 "Charging for care and support in extra care housing"

⁴ LIN Factsheet 19 Section 4

9. The Council then collects charges which do not form part of the resident's tenancy agreement. There are two charges. First, it charges all residents a 'well being' charge. The Council calculates this charge as being equivalent to 80% of Attendance Allowance (a state benefit paid to those who need help with personal care for adults aged over 65). During the events covered by this complaint this charge was around £62 per week.
10. Second, the Council applies a 'banded' care charge. There are three bands of charges, the lowest being for four to seven hours of care a week. An individual's ability to pay these charges is subject to financial assessment, in line with fairer charging guidance (see below). During the events covered by this complaint the low banding care charge was around £42 per week.
11. Government guidance known as fairer charging guidance says care charging policies should be "demonstrably fair and should not undermine the social care objectives of promoting independence and social inclusion".⁵ It says "the Government's view is that charging models which take no account of a user's means are not acceptable".
12. Where individuals are assessed to see if they can pay towards personal care, fairer charging guidance says that Councils can consider the care component of Disability Living Allowance as part of their income. Councils should also consider an individual's disability related expenses.
13. LIN guidance recognises charges for extra care housing schemes can be "particularly complex" and "in order [...] to make a fully informed choice around their housing and care options [users] need to know in advance the approximate costs involved". So it recommends information on such schemes is "comprehensive and integrated", "clear and understandable" and "transparent".⁶
14. In January 2011 I made a decision on a complaint made about care charges for an extra care housing scheme in the Council's area. My investigator found fault with the Council's model for charging. The investigation noted the Council's model required all residents to pay care charges regardless as to whether they had personal care needs or the Council was providing care. The investigation

⁵ See Department of Health "Fairer Charging Policies for Home Care and other non-residential Social Services – Guidance for Councils with Social Services"

⁶ LIN Factsheet 19, Section 5

found this was not 'demonstrably fair'. To remedy the complaint the Council agreed, among other measures, to review its extra care charging policy, to "remove any element of cross-subsidy"⁷ (i.e. where those not receiving personal care were charged for it).

15. My investigator also found the Council did not provide enough information on charges to prospective residents of extra care housing. The Council agreed to review its procedures to "ensure prospective tenants are informed in writing of the charges for which they will be liable".⁸

Investigation

16. Mr X is a single man in his mid-sixties. He has had strokes caused by cerebral vascular disease. He also has diabetes, hypertension, ischaemic heart disease and epilepsy. He has no speech, ability to swallow or co-ordination. So he needs help with all personal care needs. Mr X also says he becomes confused and forgetful because of the brain damage caused by his strokes. Mr X has an arrangement with a friend, Mr Y, to provide him with all personal care needs including feeding via a peg tube.
17. Mr X became known to the Council in May 2011. The Council received a report from police that Mr X's then carer (not Mr Y) financially abused him. By June 2011 Mr Y was supporting Mr X's care. The Council also arranged for carers from its re-enablement team to support Mr Y but Mr X cancelled that arrangement after approximately one week.
18. Mr X applied for re-housing in June 2011. He needed to move in October 2011. First, Mr Y was due to be away for around three months from then and so would not be able to meet Mr X's care needs for a time. Second, Mr X considered he remained at risk of financial abuse in his current accommodation.
19. Council officers visited Mr X at home in August and September 2011. With the aid of Mr Y and his social worker Mr X completed a 'self directed assessment questionnaire' which set out his care needs. The possibility of extra care housing was discussed. The Council identified a placement in one scheme in its Borough that has around 50 rooms.

⁷ Unreported decision January 2011

⁸ Ibid

20. Mr X says the Council did not present him with any alternatives. The Council produced records to show it had also contacted the social landlord responsible for administering its housing allocation scheme, four other extra care housing schemes and spoke to its housing advisers with responsibility for discharging the Council's duty towards homeless households. However, it pursued none of these options. The social landlord told the Council it had no suitably adapted properties and that in any event, Mr X did not have the highest priority to be re-housed. There are records the Council challenged the priority given to Mr X's case by the social landlord but not that it received a reply.
21. The alternative extra care housing schemes could either not accommodate Mr X's needs or had no vacancies. The Council's housing officers advised Mr X's social worker how to search for properties online and also that a joint visit would be arranged to see if Mr X was homeless and was owed any duty under the Housing Act 1996.
22. The Council wrote to Mr X on 25 August 2011 saying it had referred his case to "Walsall Adapted Housing Service" as 'critical'. It said this service would liaise with the Council's 'homeless team'. But there is no record any visit took place to establish if Mr X was homeless or in priority need. There is no record the Council wrote to or spoke to Mr X again about obtaining a suitably adapted property other than as part of the chosen extra care housing scheme. The Council says that by the time Mr X would have been made homeless by his circumstances (October 2011) his need for accommodation would have passed as by then the Council had identified the extra care scheme which met his housing need.
23. My investigator asked the Council about how it explained its charges for extra care housing to Mr X. It said Mr X "will have had the charges explained to him". It pointed to notes kept by an officer assigned to assess Mr X's needs in September 2011. The officer's notes of meeting with Mr X say they "explained that charging for [housing] as well as possible care-package once he moves. [Mr X] first said that he isn't happy with paying 80% of DLA. He however later accepted this". Mr X says he never agreed to the charges.
24. The Council also says the officer gave Mr X an "explanation sheet". This says it will charge all extra care tenants a well-being charge "irrespective of care needs". The sheet says this is to "fund staff on site who are available to ensure your well

being and to provide support and assistance when required 24 hours a day 7 days a week". In comments on the complaint the Council says this is a "safety net service" potentially available to all tenants. The Council says "if it is counted as a personal care cost, in schemes where care charges are only levied on those with an assessed care package, then other residents without an assessed care package will in effect have access to the service for free". The Council also quotes the LIN guidance referred to in paragraph seven above.

25. The explanation sheet goes on to explain further care charges. It lists the banding charges "for personal care provided on site and not included within the well-being charge". The sheet says "the requirements are that if you are assessed as needing care you should: agree to receive the care [and] pay the assessed charge applicable for your level of care and financial circumstances". The sheet says residents will have a means test assessment. Separately the sheet also explains the accommodation charges made by the housing provider.
26. Mr Y went away as expected in early October 2011. Mr X remained at his previous address and received support from District Nurses for around three weeks.
27. In late October 2011 Mr X moved into the extra care housing scheme. He continued to receive daily visits from District Nurses. Until the middle of December 2011 a carer from the scheme would make one 'pop-in' visit a day. Mr X refused any personal care offered during these visits.
28. In November 2011, the Council carried out a financial assessment of Mr X's ability to pay the 'low band' personal care charge. It found he could afford to pay this nearly in full (asking for around £38 a week towards the £42 weekly charge). In its assessment the Council allowed the cost of the 'well-being' charge as a disability-related expense. It also allowed a small amount for water rate charges and writing paper (as Mr X can only communicate in writing). The Council did not include the cost of the alarm call service provided by the housing provider as a disability related expense. Its assessment form asked if Mr X had a "community care alarm not covered by housing benefit" and the answer circled "no". Mr X signed the financial assessment but cannot recall doing so.
29. The Council proceeded to invoice Mr X for its 'well-being' charge and 'low band' personal care charge. He complained and lengthy correspondence followed.

30. Mr Y returned to the Walsall area in December 2011. He has met Mr X's personal care needs since this time.
31. In December 2011 the Council offered to discuss with Mr X the possibility of moving to an adapted flat as an alternative to remaining in the extra care housing scheme. In March 2012 the Council said it would "facilitate this transition". However, Mr X remains living in the extra care housing scheme.
32. The Council provided records to show that since April 2012 Mr X has been registered with the local social landlord which manages its allocations policy. However, Mr X's case does not have the highest priority and no offers of suitably adapted accommodation have been made. The Council has also provided records showing it has discussed the prospect of Mr X moving in with Mr Y, whose house he visits during the week. But Mr Y's property would need adapting and his tenancy amending for Mr X to live there permanently. There is no record Mr Y provided consent for this from his landlord as required. The Council considers Mr X may now regard himself as 'settled' in the extra care housing scheme and does not know if he would want to move at this time.

Conclusion

33. First, I considered the circumstances where Mr X moved to extra care housing. Clearly Mr X needed to move. But it is not clear to me that he had any choice about the accommodation he could move to. In moving to an extra care housing scheme the Council expects a resident to agree to pay charges for care. And it is implicit the resident is willing to accept the care service on offer at the scheme in return for those charges. The evidence suggests such a scheme was never likely to be a good fit for Mr X. As it is evident he is someone who wants choice over who provides his care and wants this to be Mr Y.
34. I accept the Council considered alternatives to extra care housing for Mr X. But it did so without reference to its housing allocation policy. The Council itself had responsibility for ensuring questions about Mr X's priority were answered even though it delegates that responsibility to a social landlord. It also had a duty to consider if Mr X was homeless and owed him a duty of re-housing. The records suggest its social care staff did not understand the Council's responsibilities in these areas and were let down by the replies they received to enquiries. I am therefore not satisfied the Council adequately considered alternative housing

options for Mr X before pursuing the option of extra care housing. This was a fault.

35. Second, I considered the information the Council gave Mr X about the charges it makes for extra care housing. I considered first its officers notes. These do not indicate a thorough explanation of the 'well-being' and care charges. The officer's notes said it was 'possible' Mr X would be billed for care charges. This implied an element of doubt. While I accept any invoice will depend on a financial assessment, the explanation sheet makes clear that anyone in Mr X's circumstances who needs personal care will incur care charges in addition to the 'well being' charge. But it was implied in the Council's notes that any charge to Mr X would be capped at 80% of his DLA, equivalent to the 'well-being' charge only.
36. While Mr X may have been provided with the 'explanation sheet' I am not satisfied the Council explained to him the above or ensured he understood. There is no record to confirm Mr X received the 'explanation sheet' or that he received anything else in writing before moving that explained the charges he would personally be expected to pay. I note the financial assessment which would in part determine this, only took place after Mr X moved and signed for his tenancy. On balance therefore I find the Council did not explain the charges it expected Mr X to pay in a clear, understandable and transparent way before he moved to the extra care housing scheme. This was a fault.
37. Third, I considered the nature of the charges the Council asked Mr X to pay. The principle that the Council charge all tenants something towards a 24 hour 'on call' care service that is often a feature of the extra care model is one accepted in the LIN guidance. A flat-rate 'well-being' charge to all residents can therefore be justified to cover the cost of this 'on call' service whether in practice residents use it or not.
38. However, the Council is conflating the cost of the 'on-call' service with charges for personal care. The banded care charges begin where an individual is assessed as needing a minimum four hours per week care. This implies the 'well-being' charge includes at least three hours a week personal care. The Council acknowledges this 'cross subsidy' of personal care continues.

39. The Council has defended its position with reference to LIN guidance. But it quotes that out of context, as it is not a requirement of this extra care housing scheme that all residents have a minimum care requirement. In addition, its policy is contrary to government 'fairer charging' guidance that says it is "not acceptable" for councils to seek flat rate charges for personal care that take no account of means. Taking all the above into account I find the calculation of the Council's 'well-being' charge is flawed and that is a fault.
40. Turning to the separate banded personal care charges, the Council says it is a 'requirement' that residents of extra care housing who need personal care pay for the care offered on site whether they use it or not. I have explained above why I do not consider Mr X had enough awareness about this 'requirement'. But there are also wider issues raised by this policy. Imposing such a requirement runs contrary to government objectives to promote independence and choice in personal care. I also question if it can ever be "demonstrably fair" to ask someone to pay for personal care who does not want or use that service. I find therefore the Council's current arrangements for charging all residents for personal care are flawed. That is a fault.
41. Where a resident receives personal care at an extra care housing scheme I accept the Council can charge for this and should assess the resident's ability to pay referring to fairer charging guidance. In doing so it would be legitimate for the Council to consider any income the resident receives from the care component of Disability Living Allowance. So I do not agree with Mr X that in principal this is unlawful. I note the Council's assessment of Mr X did not include the alarm charge as a disability related expense. I draw this to the Council's attention as for schemes of this nature I consider this should be regarded as such an expense, as it is not a charge eligible for housing benefit.
42. Finally, as noted above this is the second time I have investigated a complaint about the charges the Council makes for residents of extra care housing schemes in its Borough. I find the Council did not fully carry out the remedy it agreed to the previous complaint. It improved some of the information it provides about charges. However I remain concerned whether enough has been done here and concerns remain about the charging structure used in this housing scheme, which the Council said it would review but has not done so. Failure to carry out this agreed remedy was a fault also.

43. In comments on a draft of this report the Council acknowledges it failed to act further to my previous investigation and the concerns I expressed in January 2011 which mirror those set out in paragraph 37 to 42 above. The Council apologises and I welcome that. It also says it will now review the charging structure for extra care housing schemes in its Borough, in conjunction with the social landlord which is its partner in such schemes.

Finding


44. I find fault causing injustice to Mr X. On balance I do not consider Mr X would have moved to the extra care housing scheme if given choice about his housing options and had he understood all the charges he was liable for. I also find the Council charged him unfairly for personal care services he did not need or want both directly as a 'care charge' and included within its 'well-being' charge. He has been caused unnecessary distress and subject to excessive demands for money as a result.

Recommended Remedy

45. I recommend that within three months of the issue of this report the Council:
- a. write off 50% of the 'well-being' charge the Council has made to Mr X since he moved to the extra care scheme;
 - b. write off all 'personal care' charges made in addition to its 'well being' charge since Mr X moved to the extra care scheme;
 - c. offer and complete a review of Mr X's housing needs if he wants this; if Mr X wants to move it should identify and secure suitable alternative housing for him as soon as practicable;
 - d. complete its review of the charging model it uses for extra care housing in line with this decision and that reached in January 2011; the review will address the existing conflation between 'well-being' charges and care charges; it will specifically address what is fair for residents who do not need or want personal care from the Council beyond the insurance of a 24 hour care service being 'on call';

- e. cap future 'well-being' charges to Mr X at 50% and not make any further personal care charges to Mr X until the review at d) completes and so long as he does not receive the care services provided by the scheme; the Council may review the charges made to Mr X when implementing any changes made to its charges arising from the review at d) above; this being conditional on Mr X wanting to remain at his current accommodation and in circumstances where re-housing is not being actively sought arising from the action at c) above; and
- f. review the written information it gives to prospective residents of extra care schemes to ensure all residents receive clear and transparent information on charging and are clear about what it covers; the Council should ask prospective residents to sign to say they understand their liability for such charges and signpost them to alternative housing options if they do not wish to assume such liability; financial assessments for care charges in extra care housing schemes should take place before a resident signs a tenancy agreement unless they agree to waive this requirement.

46. I welcome that the Council has agreed these recommendations to remedy the complaint and expect it to confirm it has taken the action agreed within three months of the issue of this report.



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12 March 2014