

Report by the Local Government Ombudsman

Investigation into a complaint against Kent County Council (reference number: 14 015 230)

7 June 2016

The Ombudsman's role

For 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.

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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

C - The complainant's son

Report summary

Children's services

Mrs B complains the Council refused to consider her need to work when assessing her son's care needs. Mrs B complains the Council failed to consider awarding direct payments to provide for care of her son while she is at work. Mrs B also complains the Council delayed responding to her complaint.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused the Council should:

- pay Mrs B £1,000 to reflect the time and trouble she had to go to pursuing her complaint, the added stress she was under during the period and the uncertainty about whether the Council would have provided additional support if it had considered her case properly;
- revise its direct payments policy;
- review the sufficiency of childcare and range of short breaks available for older disabled children; and
- provide training for officers and managers carrying out social care assessments and dealing with direct payments.

The Council has agreed to these recommendations.

Introduction

1. Mrs B complains about how the Council assessed her and her son's needs. The areas of complaint can be summarised as:
 - refusal to consider Mrs B's need to work when assessing her son's care needs;
 - fettering the Council's discretion when considering what direct payments can be used for;
 - discrimination against a working carer;
 - failure to understand the impact on her caring relationship with her other child;
 - failure to consider Government legislation and guidance; and
 - delay considering her complaint.

Legal and administrative background

2. The 1974 Local Government Act says the Ombudsman investigates complaints about '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)**)
3. The Children Act 1989 requires councils to safeguard and promote the welfare of children who are in need and so far as possible to promote their upbringing within the family unit by providing a range of services suitable for those children's needs. A child is in need if he or she is disabled. The Council is required under the Act to undertake an assessment of the child's needs followed by a decision on whether services are called for to meet them and, if so, how they will be provided.
4. The Department of Health publication in 1990, *Community Care in the Next Decade and Beyond*, advised that community care assessments and care plans must take account of the disabled person's and the carer's own preferences and that they "must feel that the process is aimed at meeting their wishes". The guidance stresses the "preferences of carers should be considered and their willingness to continue caring should not be assumed". The guidance says the disabled person's "care plan should be the result of a constructive dialogue between service user, carer, social services staff and those of any other agency involved".
5. The Carers (Recognition and Services Act) 1995 requires social service authorities, when requested, to carry out an assessment of a carer's ability to provide and to continue to provide care for a disabled person or child at the same time as the needs of that child are assessed.

6. The Community Care (Direct Payments) Act 1996 gave local authorities the power to make cash payments directly to an individual, or another on his behalf, to purchase care services which the authority was, for whatever reason, not in a position to provide.
7. The Carers and Disabled Children Act 2000 gave carers the right to ask for an assessment of their needs. Following an assessment local authorities have the power to provide certain services to meet the carer's needs and help the carer to care. The services to be provided are not defined. Section 2 of the Act says that services are those which the council sees fit to provide and which, in the council's view, help the carer to care for the person cared for.
8. The Carers (Equal Opportunities) Act 2004 inserted some further paragraphs into the Carers (Recognition and Services) Act 1995 and Carers and Disabled Children Act 2000. The extra paragraphs introduced a requirement for a carers assessment to include consideration of whether a carer worked or wished to work.
9. In 2000 the Department of Health introduced the Practitioners Guide to Carers' Assessments under the Carers and Disabled Children Act 2000. The guidance said the intention of the carer's assessment was to:
 - determine whether the carer is eligible for support;
 - determine the support needs of the carer (ie what will help the carer in their caring role and help them to maintain their own health and wellbeing); and
 - see if those needs can be met by social or other services.
10. The guide stated it was important the assessment process does not assume the carer wants to continue to provide care, or should be expected to. The guide says there should be no assumption carers will give up work to care and that the assessment should consider what the options are.
11. The Childcare Act 2006 requires local authorities to secure sufficient childcare to meet the requirements of parents in their area to enable them to work, or to take up training and educational opportunities which could lead them to work.
12. In 2007 the Government issued a publication: *Aiming high for disabled children: better support for families*. That publication set out actions required to improve outcomes and equality of opportunity for disabled children and their families. The publication said local authorities were required to analyse the gap between demand and supply of childcare for disabled children who need special care. Local authorities were then required to publish assessment documents and keep them under review at least every three years. The publication said this was a first step towards fulfilling the local authority's duty to secure sufficient childcare to enable parents to work or to undertake educational training leading to work. The publication said in order to meet that duty local authorities must have particular regard to the provision of childcare which is suitable for disabled children.

13. In February 2007 the Welsh Ombudsman issued a report about refusal to provide direct payments for care of a disabled child while the parent was at University. The Welsh Ombudsman decided the Council was wrong to say direct payments were not available in those circumstances. The Welsh Ombudsman pointed out the Carers (Equal Opportunities) Act 2004, referred to in paragraph 7, placed an obligation on the Council to consider the complainant's circumstances so he should not be disadvantaged in pursuing education or training any more than other parents. The Welsh Ombudsman decided if the Council had dealt properly with the case direct payments could have been available to the complainant shortly after he asked for a carer's assessment in February 2004.
14. The Breaks for Carers of Disabled Children Regulations 2011 requires local authorities to provide a range of short break services. That should include:
 - day-time care for disabled children;
 - overnight care for disabled children;
 - provision which will enable disabled children to participate in educational and recreational activities; and
 - emergency care, for example, due to illness in the family.
15. The Council has produced a short breaks statement detailing its provision and support for short breaks for parents and carers of disabled children.
16. The Council's Disabled Children and Young People Direct Payments policy states that to be eligible for a direct payment a child must be disabled and meet the criteria as a child in need. The policy says a direct payment can only be made once an assessment is completed, along with a child in need plan. That plan should identify the child's assessed needs and how those needs are to be met. The Council's policy says that in considering how to meet the assessed needs the social worker should always offer a direct payment. The policy states that when a direct payment is going to be made the child in need plan should include:
 - the child's identified needs;
 - the level of services required to meet the assessed needs;
 - the needs that will be met through direct payments; and
 - those services that will be provided by some other means.
17. The policy says the direct payment relates to the child's needs and cannot, therefore, be used to fund a parent who wishes to go out to work. The policy goes on to say that where it is difficult to provide a service through a direct payment the social worker should consult further. The Council will then consider whether it is appropriate to continue to offer a direct payment or whether the child/family's needs can be met in some other way.

18. The Council amended its policy on direct payments in 2015. Although the wording of the policy remains the same, the document provides a list of the needs that can be met via the use of direct payments. The document also lists services that may not be purchased using a direct payment, which includes funding a parent who wishes to go out to work.

How we considered this complaint

19. This report has been produced following the examination of relevant files and documents.
20. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Investigation

Description of the main events

21. Mrs B is a single parent of two children. Mrs B works full time and the nature of her work means she is out of the house for around 11.5 hours a day Monday to Friday. Mrs B's younger child has mild disabilities. The older child, C, who is the subject of this complaint, has more significant disabilities and needs almost constant supervision. At the time of the complaint to the Council C was 16 and then 17 years old.
22. Until 2013 Mrs B received a significant package of care for C via a direct payment. That included 19 hours per week support for 52 weeks of the year and 13 overnights for short breaks. At the time that was awarded C lived at home full time. In January 2008 C became a weekly boarder at school. C became a fortnightly boarder at school in March 2008. During that time Mrs B continued to receive the same package of care. Mrs B says she "banked" the hours accrued during the weeks C was at school. Mrs B then used the hours for extra support during school holidays because she did not have enough annual leave to cover those periods.
23. The Council began a reassessment in September 2012. As part of that the Council asked Mrs B to provide her payroll records for the direct payments made to C's personal assistant. When Mrs B provided those the Council wrote to her on 20 December 2012 to tell her it was suspending her direct payments. The Council said it had done that because the payroll records did not reflect the time C was at school. The letter told Mrs B she had potentially breached the Community Care (Direct Payments) Act 1996. The letter told Mrs B the Council would arrange to visit her to discuss the matter further.
24. Mrs B expressed concern about the content of the Council's letter. Mrs B stressed she had always paid C's personal assistants a regular amount every month and accumulated the hours to be worked when needed, including during holidays. Mrs B pointed out the Council had checked her direct payment accounts twice a year without saying there was a problem. Mrs B agreed to meet to review the care package and asked for a carers assessment.
25. Council officers met with Mrs B on 25 January 2013.

26. The Council completed its assessment of C in February 2013. The new assessment provided for:
- 13 nights respite;
 - eight bridging hours;
 - four hours direct payments for Saturdays when C is at home;
 - four hours direct payments for the Sundays when C is at home; and
 - an extra six hours direct payments a week for holidays.
27. Following that assessment the Council reinstated Mrs B's direct payments.
28. Mrs B contacted the Council on 20 February 2013 to ask whether she could use the hours given for weekends during the school holidays instead to cover when she was at work. Mrs B also asked whether she could use the direct payments to cover an overnight stay for a course she was due to attend during the school holidays. In response the Council told Mrs B she could appeal.
29. The Council began the carer's assessment on 21 March.
30. Mrs B contacted the Council again on 2 April to ask for clarification about what she could use her direct payments for. The Council responded later that day and told Mrs B it had agreed for her to use one of the annual 13 nights respite to enable her to attend a course during the school holidays.
31. The Council completed the carer's assessment on 17 May. The assessment recorded Mrs B gets satisfaction from her work, which gives her respite from family life. The assessment says Mrs B did not consider there was suitable support available for a working, single parent. The assessment records Mrs B asked for direct payments to cover care for C while she is at work. The assessment records direct payments legislation says direct payments cannot be used for childcare.
32. In November 2013 the Council wrote to parents and carers to explain the changes to how the Council would assess and review care packages. Mrs B responded to that on 22 November, asking whether future care packages would consider the support needed when parents are at work. Mrs B explained that because she is a single parent with two children with health issues she needs support to care for C in the school holidays. Mrs B said that was because she has to take a significant proportion of her annual leave to attend health, education and social service related appointments for both children.
33. The Council wrote to Mrs B on 7 January 2014. The Council said assessments should consider the needs of parents and carers and it would arrange for a new assessment as C was due for an updated assessment. The Council said it expected parents of all children to organise their work responsibilities around the needs of their children. The Council said it could not provide extensive support during school holidays. The letter said it was not the responsibility of the Council to provide direct payments solely to enable

parents to work. The letter said there was no reason why Mrs B could not use the respite breaks she received to enable her to work.

34. On 11 February 2014 Mrs B asked the Council for an emergency care package of 55 hours to cover the February half term holiday as she had no annual leave remaining. She also asked for an extra 15 hours support to cover to the end of March to reflect times when she was at work. Mrs B estimated she needed an extra 95 hours to cover C's support needs over the next six weeks.
35. On 14 February the Council told Mrs B it could not recommend an overall package until it had completed an assessment. The Council told Mrs B it would agree an extra 10 hours for the half term holidays as an emergency measure.
36. On 15 February Mrs B said she wanted C to move to a school or college with residential provision outside of term times because she had inadequate support. The Council said it would arrange a review of the current package of care for C.
37. The Council carried out a reassessment of C's needs, which it completed on 23 July. The new assessment recommended:
 - 13 overnights with eight hours bridging;
 - five hours Saturday activity for those weekends C was home to enable one to one community activity; and
 - an extra 16 hours a week to enable one to one community activity during non term time, except for those weeks where C would access a play scheme.
38. The assessment recorded Mrs B expressed concern she did not have enough support in the summer holidays due to C's needs and her need to work. The assessment did not recommend a residential school.
39. The Council also completed a carer's assessment. The assessment recorded Mrs B was out at work between 7am and 6:30pm Monday to Friday and provided an on-call service. The assessment recorded Mrs B was also studying for a professional qualification relevant to her job. The assessment recorded Mrs B had not been able to attend the required six weeks residential learning for her course due to her caring role. The assessment recorded Mrs B felt she was constantly engaged in a battle for services and there was a significant impact on her health due to high stress levels. The assessment recorded there was a recent period when Mrs B did not have a full break from work and caring for six weeks, which resulted in her becoming short tempered with her son. The assessment recorded Mrs B wanted support with C's care during the hours she is at work and he is not boarding at school. The assessment also recorded Mrs B wanted accelerated transition planning for when C turned 18 and more support during the summer holidays.
40. C has now turned 18 and his case has been transferred to adult services.

Complaint process

41. Mrs B put in a complaint on 4 April 2013. In its response the Council said it could not award direct payments to fund the care of a child or young person to allow a parent or carer to work. The Council said if Mrs B chose to work during her short break that would be her personal choice and the Council would not seek to recover the direct payment used.
42. Mrs B put in a further complaint on 17 February 2014. Mrs B said the Council's decision not to provide care for C while she was at work was contrary to legislation and discriminated against her. Mrs B said it was unsatisfactory for the Council to say she could choose to work during her short break as that was at the cost of her assessed need for respite. Mrs B said the Council's assessment did not reflect C's needs and her needs as carer. When the Council acknowledged the complaint it told Mrs B it was not the Council's responsibility to fund childcare so parents can work.
43. The Council provided a complaint response on 7 April. In that response the Council said the Breaks for Carers of Disabled Children Regulations 2011 did not require the Council to provide support to enable parents to work. The Council pointed out Mrs B had a legal right to ask for flexible working arrangements to meet her caring responsibilities.
44. Mrs B contacted the Council again on 20 April to express dissatisfaction with the complaint response. Mrs B asked that the Council transfer her son to a college with a residential facility. Mrs B said if the Council refused she wanted her complaint to go to the next stage. The Council wrote to Mrs B on 22 May to say it would investigate her complaint at stage two. The Council said it would aim to complete the investigation within 65 working days of the date on which it received her signed, approved list of complaints.
45. The investigating officer and independent officer met with Mrs B in July and the Council received Mrs B's list of signed complaints on 12 August. The complaints included concerns about the Council's refusal to provide a direct payments package to allow Mrs B to purchase care for her son during times when she needs to go to work. Mrs B asked for the Council to refund the amount she had spent on care for C when her direct payment hours ran out. Mrs B also asked the Council to refund the direct payments she used for the weekends her son should have been at school but was not and a reassessment which considered C's care needs during times when Mrs B has to work.
46. The Council wrote to Mrs B on 12 August to say it was considering whether it could investigate her complaint given she had put in an appeal about the Council's refusal to provide residential provision for her son, which would be considered by a tribunal.
47. On 5 September the Council wrote to Mrs B to say it would consider her complaints, except for the one relating to a tribunal case. The Council said it would respond to the complaints within a maximum of 65 working days.
48. The investigating officer concluded his report on 5 December 2014. The investigating officer said the Council's decision about the direct payment was appropriate given its policy says direct payments cannot be used to pay for childcare.

49. The Council wrote to Mrs B on 10 December to outline the stage two findings. The Council said although it appreciated Mrs B's right to work and that C has more care needs than many other young people of his age, direct payments should not be used specifically to allow parents to go to work. The Council said the investigation had found the service provided met C's assessed needs. The Council told Mrs B she could ask for the complaint go to the next stage if she was dissatisfied and that she should do so within 20 working days. The Council also said Mrs B could put in a complaint to the Ombudsman.

Stage three complaint

50. Mrs B sent her complaint to us on 16 December 2014. Mrs B said the Council failed to consider her need to work when assessing her son's care needs. Mrs B said the Council's practice not to allow direct payments for care of a severely disabled child during working hours effectively excludes carers from the workplace and is discriminatory. We asked the Council to complete a stage three investigation before we could consider Mrs B's complaint.
51. The Council wrote to Mrs B on 19 January 2015 to ask if she wanted her complaint to move to stage three. Mrs B says she did not receive that letter. When Mrs B did not respond the Council closed the file on 24 February. Mrs B contacted the Council again on 3 March to ask what was happening with the stage three review panel. The Council arranged for a stage three review panel, which considered the complaint on 21 May.
52. At the stage three hearing Mrs B referred the panel members to the legislation she had set out. Mrs B said that showed it was maladministration for an authority not to pay direct payments for childcare. Mrs B said the legislation required support for carers to stay in work or return to work. Mrs B said the legislation showed a risk to employment equated to a critical risk. Mrs B said the Childcare Act 2006 required sufficient childcare to meet the needs of parents in order to undertake training or education or prepare for work.
53. Mrs B told the panel it was only through working that she could afford to keep C at home, afford accommodation appropriate to his needs and care for her other child. Mrs B said she was penalised for working and asked the panel whether the Council could consider residential respite if direct payments were not possible as she was feeling unable to cope. Mrs B said she needed to work for the sake of both of her children as well as her own sanity. Mrs B said that due to the position she held flexible working was not an option, which she would not have wanted to pursue anyway. Mrs B pointed out she now had to ask for 52-week residential provision which would cost the Council £250,000 rather than the £3,000 the Council had saved by reducing her direct payments package. Mrs B said C's needs did not fit easily into a policy statement because he was a healthy child but needed careful watching every moment of the day. Mrs B said what the Council expected of her was not humanly possible. Mrs B said the package set out in the assessment did not match the need identified.
54. In response, the officer representing the Council said the Council's direct payments policy was at the centre of the assessments undertaken. The Council's officer said the policy specifically stated direct payments related only to the child's needs and could not be used to fund a parent who wished to work. The Council's officer said the policy had been

considered by the Council's Legal Department and was not an illegal policy although some of the wording might need amendment. Mrs B told the panel the Council's policy did not take account of national guidance. Mrs B said it was wrong for the Council to work to a blanket policy rather than seek to address the needs of the family.

55. The stage three complaints panel decided the Council had adhered to its direct payments policy and therefore it did not uphold the complaint. However, the panel considered the policy should be reviewed to offer clarity about direct payments supporting parents who wished to work. The stage three panel also recommended a payment of £750 compensation to Mrs B.
56. The Council wrote to Mrs B on 25 June to outline the findings from the stage three panel. The Council confirmed it would pay the financial remedy of £750 and review the wording of the direct payments policy. The letter apologised for the failures identified during the complaints process.
57. The Council later deducted £750 compensation from an overpayment of direct payments. The Council said it would share the lessons learned from the complaint with managers so staff do not make assumptions, recognise when families are in crisis, are clear about policies and are more understanding of the pressures on families when seeking to arrange meetings. The letter told Mrs B if she remained dissatisfied she could complain to the Ombudsman.

Council's position

58. We asked the Council to confirm whether it had reviewed the wording of its direct payments policy, as recommended by the stage three panel. In response, the Council said it had reviewed its policy and decided to make no changes as it considered the wording clear and accurate. The Council points out the stage three panel did not uphold the complaint the Council should have given Mrs B direct payments specifically to pay for childcare when she is at work.
59. The Council says the policy takes into account the changes to the Care Act 2014. The Council says the policy is for direct payments to meet the assessed needs of the child or young person and to give the carer a break from caring. The Council says it is unlikely one of the assessed needs would be to fund a primary carer to work. The Council says it has taken legal advice which confirmed this view is reasonable, provided the Council does not fetter its discretion by applying the policy too rigidly and that it should consider each case on its merits. The Council says it did that in Mrs B's case because the Council agreed she could use her direct payments to employ personal assistants to care for her son to meet his needs while she is at work and this would provide her with her short break from caring. The Council says it has suggested Mrs B could top up her direct payments to cover the rest of the time she is working.
60. The Council says it believes the current direct payments policy states the case clearly because it provides detail of what direct payments can and cannot be used for. The Council says it has not been an issue or caused confusion for other families.

Mrs B's view

61. Mrs B says the Council has discriminated against her as a working carer and has fettered its discretion by simply referring her back to the Council's policy without considering her circumstances. Mrs B says the Council's decision not to provide support for C while Mrs B is at work has had less of a financial impact and more of an emotional impact on her. Mrs B says the Council's actions meant she had to miss out on respite. That is because she had to use her direct payments for respite to provide support for C during holidays when she was at work. Mrs B says this was exhausting and made it difficult for her to do every day activities such as going to the supermarket. Mrs B says this was particularly difficult during March to May 2014 when C was at home for seven consecutive weekends. Mrs B says she struggled to care for C without the help she needed and it also impacted on her ability to spend time with her other son.

Conclusions

62. The Council's position on providing direct payments to cover care for a disabled child when a parent is at work causes concern. The way in which the Council applied that policy fettered its discretion. That is because every time Mrs B asked for extra support during school holidays while she was at work the Council simply referred her to its policy. That policy says the Council will not provide direct payments to fund a parent who wishes to go out to work. The wording of the Council's policy and the way in which it is applied suggests the Council operates a blanket policy of refusing to consider support to carers who work even if it is clear the child that needs support is left without any support while the carer is at work. The Council says its legal department has confirmed the wording of its policy is acceptable provided the Council does not fetter its discretion. However, this is the point. There is no evidence the Council considered Mrs B's circumstances before declining her request for extra support for C during school holidays.
63. The Council uses the term "childcare" when referring to Mrs B's request for extra support for C while she is at work. At the time of the complaint C was 16 and then 17. As Mrs B pointed out, most people would not need childcare for a 16 or 17 year old. Nor would it be likely regular childcare services would provide for care for a 16 or 17 year old. Nor is it likely those services would be suitable for a 16 or 17 year old with C's needs. By using the term "childcare" the Council failed to properly understand C's needs. What he needed was not the childcare any parent would expect to pay for when they are at work. That again is fault. The Council should have considered whether the availability of childcare for a 17 year old with C's needs, along with the availability of benefits to provide childcare, was sufficient to enable Mrs B to continue to work. There is no evidence the Council considered those points. Failure to do that is fault.
64. The Council says it did not fetter its discretion in this case because it allowed Mrs B to use her direct payment to employ a personal assistant when she was at work instead of taking a short break from caring. However, the Council had carried out a carer's assessment which had shown Mrs B needed a break from caring and that provision for respite was needed. So, that was an identified need. It was not enough for the Council to tell Mrs B she could use the money provided for respite to employ a personal assistant to provide

care to C while she was at work during school holidays. The Council should then have gone on to consider the impact on Mrs B of having a reduced respite care budget. That is important in this case because Mrs B also has another son. The carer's assessments completed by the Council recorded respite was an important part of the package for Mrs B. That is because it allowed her to spend time with her other son as well as having a break from caring. By encouraging Mrs B to use her respite hours to cover the time she was at work during school holidays the Council failed to recognise this meant no break from caring for Mrs B to spend time with her other son, which was also part of the assessment. Failure to assess the implications of the reduction in respite is fault.

65. There is an issue with the Council's reasoning for not awarding direct payments for carers who work. The Council's policy says it is not suitable because the purpose of direct payments is to provide for the child's needs. The Council also said in response to our enquiries that it is unlikely one of the assessed needs would be to fund a primary carer to work. The Council has failed to understand the issue here. The child's assessment and carer's assessment are supposed to take place at the same time and feed into each other. The point here is that when assessing C's needs the Council knew he needed constant supervision. The Council also knew Mrs B was in full time employment and out of the house for a significant part of the day as that is recorded in the assessment. In addition, the Council knew the nature of Mrs B's job meant she could not pursue flexible working and did not want to reduce her working hours. These were key factors for the Council to consider when assessing both C's needs and when carrying out the carer's assessment. However, neither the assessment for C nor the carer's assessment properly considered those issues. There is no evidence from the assessments the Council considered C's needs during summer holidays and at times when Mrs B was unable to be at home. Instead, the assessment appears to assume Mrs B will take time off work even though she had made clear she did not have enough leave to cover all the school holidays and could not work flexibly. The Council is at fault here given Government guidance clearly states local authorities should not assume a carer is happy to continue in their caring role.
66. In addition, councils are required to consider whether a carer wishes to work. Carer's assessments completed in 2013 and 2014 record Mrs B's wish to work and her need to work. However, there is nothing in either of those assessments to suggest the Council properly considered the impact on Mrs B if she did not receive support during school holidays. That is a serious failure. That is particularly concerning because both carer's assessments record Mrs B's concern about the impact on her if she did not receive extra support. Because of that the assessments should have gone on to assess the risk to the caring relationship and Mrs B's ability to work if the Council did not provide extra support. Failure to carry out that assessment is fault. It is also clear this led directly to a threat to Mrs B's caring relationship as she told the Council she could not manage both work and caring for C without additional support. She therefore told the Council she needed to consider residential provision for her son. That request was made as a direct result of the Council's refusal to consider additional provision for C during school holidays.
67. The Council did not deal properly with Mrs B's complaints. At each stage of the complaints process the Council simply referred Mrs B back to its policy. That is despite

the fact Mrs B provided details of Government guidance, legislation and a Welsh Ombudsman report which supported her view that the Council should consider her need to work when carrying out its assessments. The Council should have responded to the various points Mrs B put to it. Failure to do that is fault.

68. So, there is fault with how the Council assessed C and Mrs B. It is clear this led to Mrs B having to go to significant time and trouble to pursue her complaint. It is also clear Mrs B felt under great pressure to preserve the caring relationship while also continuing her full time job. That is a serious injustice. It is clear Mrs B's intent in bringing the complaint is less about financial compensation and more concerned with ensuring the Council's policy reflects Government guidance and legislation. However, part of our role is also to consider what remedy is suitable for the fault we have identified. In this case we have to decide whether it is likely, if the Council had considered Government guidance and legislation and carried out the assessment process properly, the Council would have provided extra funds to provide for C's needs while Mrs B was at work.
69. The Council says the stage three panel did not uphold the complaint that the Council should have given Mrs B direct payments specifically to pay for childcare when she was at work. Paragraph 61 recorded concerns about what the Council understood C's needs to be though. In addition, paragraph 65 recorded concern about the failure of the complaint process to address the points Mrs B raised about Government legislation and guidance on supporting carers to work. There is no evidence the stage three complaint panel properly considered whether the Council's policy was suitable and whether the Council had properly considered Mrs B's situation. The Council says this has not been an issue or caused confusion for other families. That argument does not carry significant weight because it is unlikely there are many families with the sole carer working the number of hours Mrs B works in a position where they are not able to work flexibly. It seems likely Mrs B is in a unique position here. That is an important consideration for deciding an appropriate remedy, as is the fact the refusal of extra support led Mrs B to ask for a residential placement. On the balance of probability it is likely the Council would have awarded some extra support during school holidays and times when Mrs B is at work if the Council had properly considered the case and Government guidance. That extra support would have reflected the fact C needs constant supervision and did not have any carer at home to look after him during those times.
70. What we cannot reach a safe conclusion about though is whether the Council would have asked Mrs B to contribute financially towards any extra provision. Mrs B is in full time employment in a professional role. The Government has also provided benefits to enable carers to continue to work, should they choose to do so. It is possible the Council would have decided to carry out a financial assessment to decide whether Mrs B should contribute toward the cost of the extra care. So, while it is likely the Council would have identified the need for some extra provision if it had carried out its assessments properly it does not follow it would have fully funded those extra services. So, the recommended financial remedy does not ask the Council to pay Mrs B an amount to reflect the likely cost to the Council of providing extra services.

71. There were delays dealing with the complaints Mrs B put in. In all, this meant Mrs B did not receive the outcome of her stage three complaint investigation until more than two years after her original complaint. That is not acceptable.
72. The Council was wrong to tell Mrs B she could complain to the Ombudsman when it wrote to tell her of the result of the stage two investigation. The Council knows we normally expect a complainant to complete the Council's complaints procedure before bringing a complaint to us. The Council is also at fault for writing to Mrs B to ask her to confirm whether she wanted a stage three investigation when we referred the complaint back to the Council for consideration at stage three. The Council then closed the file when she did not respond. That was not appropriate. Mrs B had presented a complaint to us and we had referred it to the Council to investigate. There was no reason to ask Mrs B whether she wanted the complaint to go to stage three. The Council's failure to move the complaint to stage three when we referred it is fault.

Injustice

73. The Council's actions have caused an injustice to Mrs B as she had to go to time and trouble pursuing her complaint. Mrs B also had a justifiable sense of outrage the Council did not properly assess her and her son. It is likely, on the balance of probability, Mrs B missed out on some additional support for her son while she was at work.

Decision

74. There was fault by the Council which caused injustice to Mrs B. The Council should take the steps below to remedy that injustice.

Recommendations

75. The Council should pay Mrs B £500 to reflect the time and trouble she had to go to pursuing her complaint.
76. The Council should pay Mrs B an extra £500. That is to reflect the added stress she was under during the period and the uncertainty about whether the Council would have provided additional support if it had considered her case properly.
77. The Council should revise its direct payments policy to reword the section referring to direct payments needed to support a child when a parent is working. That is because the wording of the current policy is likely to be interpreted by service users and Council officers as providing an absolute bar.
78. When carrying out a review of its short breaks statement the Council should review the sufficiency of childcare and the range of short breaks available during holidays for older disabled children.
79. The Council should provide training for officers and managers carrying out social care assessments and dealing with direct payments. That is to ensure they are aware of

Government guidance and legislation about carers who work or wish to return to work and ensure assessments properly consider that.

80. The Council has agreed to these recommendations.