

REPORT TO Corporate Director of Health and Adult Services (HAS) in consultation with Executive Member for Adult Services and Health Integration and the Executive Member for Public Health, Prevention and Supported Housing, including Sustainability and Transformation Plans.

Local Government and Social Care Ombudsman Report

1.0	Purpose of report
1.1	This report informs the Executive of a Public Report from the Local Government and Social Care Ombudsman in respect of Adult Social Care, and the actions being taken to address the recommendations.

Summary

2.0 Background

- 2.1** The Local Government and Social Care Ombudsman (LGSCO) has recently published a report outlining its findings into a complaint about North Yorkshire County Council. The Ombudsman upheld the complaint after it found fault in how the County Council failed to advise of the change in the way it assessed finances, which resulted in the individual becoming responsible for their full care costs.
- 2.2** The Council has accepted the recommendations of the report, and acknowledges that there are improvements to be made in some of the practices and processes, some of which have already been implemented.
- 2.3** In circumstances where the LGSCO concludes that the complainant has suffered injustice as a result of fault, under the 1974 Local Government Act the Local Authority must take the following actions:
- Lay the report before either full Council, Cabinet or another Committee with delegated authority – **HASEX 14th January 2022**
 - Place two public notice announcements in local newspapers/newspaper websites within two weeks of the report being published. Copies of the report should be made available free of charge at one or more Council offices – **Completed**
 - Within three months of receiving the report we must tell the LGSCO the actions we have taken or propose to take – **Completed**

The Case

- 3.0** The detail of the complaint can be found in the attached LGSCO report, but can be summarised as follows:
- 3.1** **Case 1**

Miss X complained on behalf of her mother that the Council failed to advise her of a change in the way it assessed her mother's finances, Mrs Y, which resulted in her Mother becoming responsible for her full care costs, as it meant that the value

of Mrs Y's second property was taken into account, rather than being "disregarded" from the sum of her assets. Miss X also complained that the Council met with her mother to discuss her finances without Miss X being present and persuaded her mother to sign a deferred payment agreement.

Recommendations

The Ombudsman recommended that the Council should:

- a) Provide Miss X and the Ombudsman a copy of the Council's current charging policy for non-residential care
- b) Explain why the Council's approach to the treatment of property within its policy changed, who authorised the change and whether any assessment of the impact on vulnerable service-users was done.
- c) Carry out a review of the decision not to apply the property disregard to Mrs Y's financial assessment, with reference to the Care Act statutory guidance and with properly evidenced reasons for its decision
- d) Apply the new decision to Mrs Y's case from 4th February 2020 (the date it provided an explanation of the charges and information about the deferred payment agreement) and waive the charges before this date.
- e) Confirm whether the deferred payment agreement was finalised, and if so, how will it operate.
- f) Waive £380 costs incurred in this process
- g) Pay Miss X £500 for this distress caused and her time and trouble in pursuing the matter
- h) Identify and review each time it has removed a property disregard from a service user since April 2019. If the Council finds fault similar to that identified in this it should follow the principles that the Ombudsman has set out in the above to remedy any injustice caused. Once the review is complete the Council should produce a report on its findings and send us a copy.

3.2 There are a number of circumstances in which the LGSCO may issue a public report. It has previously indicated that it would like to see more public interest reports published, including cases where no fault has been found. This has been reflected in an increase in the number of reports it has published over the last few years, particularly where they relate to issues of national public interest.

3.3 The LGSCO states there are six key reasons for publishing a report:

- i. Recurrent fault
- ii. Significant fault, injustice or remedy.
- iii. Non-compliance with an Ombudsman's recommendation.
- iv. High volume of complaints about one subject.
- v. Significant topical issue (e.g. new legislation).
- vi. Systemic problems and/or wider lessons.

3.4 Any of these reasons may lead to a public interest report. In conversations with the LGSCO, they have confirmed that the fault in this case was reason ii – Significant fault, injustice or remedy

4.0 North Yorkshire County Council's Response

4.1 The County Council accepts the recommendations in the report. Although the Council had not made any change to its Charging Policy, it did not best explain how it was applying that policy in this instance.

5.0 The County Council's Response to the Ombudsman's Recommendations

<p>a) Provide Miss X and the Ombudsman a copy of the Council's current charging policy for non-residential care.</p>	<p>The Council has provided a copy of its charging policy and confirmed that no changes have been made to it</p>
<p>b) Explain when the Council's approach to the treatment of property within this policy changed, who authorised the change and whether any assessment of the impact on vulnerable service-users was done.</p>	<p>The Council has provided a chronology showing when and how this change in approach was decided, including the briefing notes circulated to staff. It could not assess the impact on service-users as it did not hold information on the numbers of service-users. The new decision framework will now allow us to have a comprehensive record of service users.</p>
<p>c) Carry out a review of the decision not to apply the property disregard to Mrs Y's financial assessment, with reference to the Care Act statutory guidance and with properly evidenced reasons for its decision</p>	<p>This was completed and a letter dated 2nd December was sent to Miss X advising her of the outcome of the review.</p>
<p>d) Apply the new decision to Mrs Y's case from 4th February 2020 (the date it provided an explanation of the charges and information about the deferred payment agreement) and waive the charges before this date</p>	<p>This was completed and a letter dated 2nd December was sent to Miss X advising her of the outcome of the review.</p>
<p>e) Confirm whether the Deferred payment agreement was finalised, and if so, how it will operate</p>	<p>The Council has confirmed the deferred payment agreement was never finalised because Mrs Y did not provide the requested information.</p>
<p>f) Waive the £380 costs incurred in this process</p>	<p>The Council completed this recommendation on 24th September 2021.</p>
<p>g) Pay Miss X £500 for the distress caused and her time and trouble in pursuing the matter</p>	<p>The Council has completed this recommendation and a cheque was sent to Miss X on 24th September 2021.</p>
<p>h) Identify and review each time it has removed a property disregard from a service user since April 2019. If the Council finds fault similar to that identified in this it should follow the principles we have set out above to remedy any injustice caused. Once the review is complete the Council should produce a report on its findings and send us a copy</p>	<p>The Council completed this recommendation on 22nd November and shared its report with the Ombudsman. There was a total of six other cases where we had also removed a property disregard from a service user since April 2019.</p>

6.0 Financial Implications

- 6.1** One of the recommendations in this case requires the County Council to make a payment to the complainant.
- 6.2** One of the recommendations in this case requires the County Council to waive the cost incurred in this process
- 6.3** One of the recommendations was to apply the new decision to Mrs Y's case from 4 February 2020 (the date it provided an explanation of the charges and information about the DPA) and waive the charges before this date – recommendation (d).
- 6.4** In this case the payment of £500 has been made to Miss X – recommendation (g).
- 6.5** In this case the Council has waived the £380 costs incurred in the process by Mrs Y – recommendation (f).
- 6.6** In this case the Council has waived £10,145.00 in charges prior to the 4 February 2020 date as specified by the Ombudsman – recommendation (d).

7.0 Impact on Other Services/Organisations

- 7.1** As previously mentioned, the changes arising from the recommendations have been to internal Health and Adult Services processes.

8.0 Recommendation

8.1 It is recommended that:

(a) The findings and recommendations of the Local Government and Social Care Ombudsman Public Reports in respect of Adult Social Care be noted; and

(b) The actions being taken by Health and Adult Services have been shared with the Executive Member for Adult Social Care and Health Integration.

Richard Webb
Corporate Director – Health and Adult Services

County Hall
Northallerton
20th December 2021

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Presenter of report – Anton Hodge, Assistant Director, Strategic Resources

Background Documents – Report from Local Government and Social Care Ombudsman

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

**Investigation into a complaint against
North Yorkshire County Council
(reference number: 20 002 823)**

17 September 2021

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	The complainant's mother

Report summary

Adult social care

Mrs B complained that the Council failed to properly advise her of a change in the way it assessed her mother's (Mrs C's) finances which resulted in Mrs C becoming responsible for her full care costs. She also complained the Council met with Mrs C to discuss her finances without Mrs B being present and persuaded Mrs C to sign a deferred payment agreement (DPA).

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused we recommend the Council:

- a) provide Mrs B and us with a copy of the Council's current charging policy for non-residential care;
- b) explain when its approach to the treatment of property within this policy changed, who authorised the change and whether any assessment of the impact on vulnerable service-users was done;
- c) carry out a review of the decision not to apply the property disregard to Mrs C's financial assessment, with reference to the Care Act statutory guidance and with properly evidenced reasons for its decision;
- d) apply the new decision to Mrs C's case from 4 February 2020 (the date it provided an explanation of the charges and information about the DPA) and waive the charges before this date;
- e) confirm whether the DPA was finalised and if so how it will operate;
- f) waive the £380 costs incurred in this process;
- g) pay Mrs B £500 for the distress caused and her time and trouble in pursuing the matter; and
- h) identify and review each time it has removed a property disregard from a service-user since April 2019. If the Council finds fault similar to that identified in this case it should follow the principles we have set out above to remedy any injustice caused. Once the review is complete the Council should produce a report on the findings and send us a copy.

The Council has already implemented recommendations a, b and e and has agreed to the other recommendations.

The complaint

1. Mrs B complained that North Yorkshire County Council (the Council) failed to properly advise her of a change in the way it assessed her mother's (Mrs C's) finances which resulted in her mother becoming responsible for her full care costs. Mrs B was unhappy the Council met with her mother to discuss her finances without her present and persuaded her mother to sign a deferred payment agreement.
2. Mrs B also complained that although the Council has dealt with her as her mother's representative for many years, as her mother does not have capacity, it refused to provide her with a copy of the deferred payment agreement or discuss the charges with her.
3. Mrs C went from paying nothing more than her assessed contribution towards her care to paying £3,600 a month. This caused Mrs B and Mrs C significant distress as they cannot afford to pay that much, and Mrs B is concerned she will be made homeless in the future as she lives in Mrs C's property.

Legal and administrative background

4. We investigate 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), as amended*)

Charging for care

5. Local authorities have a duty to arrange care and support for those with eligible needs, and a power to meet both eligible and non-eligible needs. In both cases, a local authority has the discretion to choose whether or not to charge.
6. The Care Act 2014 and the associated Care and Support Statutory Guidance (the guidance) set out the rules the council must follow when undertaking a financial assessment to decide how much a person has to pay towards the costs of both non-residential and residential care.

Treatment of capital

7. The guidance details circumstances when councils should disregard the value of a person's home when carrying out a financial assessment. These include where the person no longer occupies the property, but it has been occupied, since the person went into a care home, by a relative who is either aged 60 or over, under 18 or incapacitated. 'Incapacitated' is not closely defined but is likely to apply where a person receives, or likely to qualify for disability or sickness benefits.
8. The guidance also provides a discretionary property disregard which a council could apply in other circumstances. It states that a council will need to balance this discretion with ensuring a person's assets are not maintained at public expense, but it gives examples where the discretionary disregard may be appropriate. These include where a person has given up their own home to care for the person who is now in a care home or a family member who loses their job and is unable to afford to live in their own accommodation, so they move into the property and it becomes their only home.

The Council's charging policy for community-based services (January 2019)

9. This policy states:
 - the capital value of a property which is occupied by a service-user as their sole or main dwelling will be disregarded;
 - any income from a property (such as rent) will be taken into account;
 - the value of any other property wholly or partly owned by the service-user may be taken into account unless income from that property is taken into account.

Deferred Payments

10. The Deferred Payment Scheme is designed to help residents in care homes who have been assessed as having to pay the full cost of their residential care due to ownership of property and have savings of less than £23,250 but are unable to make payments in full as their capital is tied up in their property. As part of the scheme a council enters into a contract with the care home to pay the difference between the assessed contribution and the full cost and places a charge on the resident's property to recover its costs later when the property is sold.
11. The law also gives councils a discretionary power to offer a deferred payment agreement to people who go into supported living accommodation.
12. The Council's information sheet at that time on deferred payments says that to be eligible for the scheme a person must be entering permanent residential or nursing care in a registered care home.

12-week property disregard

13. The council must disregard a person's property in a financial assessment for the first 12 weeks, where a person is moving into a care home on a permanent basis.

Information and advice

14. The statutory guidance says that councils must provide information about the choices open to individuals and must explain a person's rights under the Care Act. This must include advice and information to help people understand the charges so that they can make informed financial decisions.
15. Once the council has completed a financial assessment, it should explain how the assessment has been carried out, what the charge will be and how often it will be made, and if there is any fluctuation in charges, the reason for that. The council should ensure that this is provided in a manner that the person can easily understand, in line with its duties on providing information and advice.

Enduring power of attorney (EPA)

16. An EPA is a document which gives a person (the attorney) the authority to help make decisions about finance and property on behalf of another person (the donor). An EPA can be used as soon as it is signed if the donor gives their permission. Once the donor loses their mental capacity to make decisions the EPA must be registered with the Office of the Public Guardian.
17. After October 2007 the EPA system was replaced by the Lasting Power of Attorney.

How we considered this complaint

18. We produced this report after examining relevant documents and speaking to the complainant.

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19. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

20. Mrs B's mother, Mrs C, owns a property. In 2013 she was diagnosed with Alzheimer's and she moved into an extra care housing complex with a care package, costing approximately £900 a week. It was not a registered care home. Mrs B has an enduring power of attorney (EPA) since September 2007 for Mrs C, but it had not been registered with the Office of the Public Guardian.
21. Initially Mrs C was uncertain about moving to the supported living accommodation and wanted to be able to return to her home if she did not settle there. The Council assessed Mrs C's finances and disregarded the value of her property, so she only paid the assessed contribution of £57.20 a week towards the cost of her care. It carried out further financial assessments every year, the last one being 27 February 2017.
22. Due to a series of very difficult personal problems, Mrs B moved into Mrs C's property in May 2017. Mrs B was ill and unable to work due to the stress of her situation. She received support from the mental health team and received universal credit with an inability to work allowance until July 2019 when she started a full-time job.
23. In May 2019 the Council wrote to Mrs C as a user of social care services to inform her of changes to some charges. This letter did not mention any change to the way the Council treated property in the financial assessment.

Financial assessment

24. On 16 August 2019 the Council wrote to Mrs B saying that it needed to assess Mrs C's finances as it had not done so since February 2017. Mrs B completed the form and returned it to the Council.
25. The Council's case records show that an officer telephoned Mrs B in September 2019 and explained that the Council had changed the rules around the treatment of second properties and it would now take account of the value of Mrs C's property. This meant Mrs C would have to pay the whole cost of her care package. The officer raised the possibility of a deferred payment agreement (DPA) as a way of paying the charges. Mrs B said she did not think this would be an option. But she said Mrs C had capacity to make decisions about her care, with support, and the officer said it would be Mrs C's decision. The Council said it would send her information about a DPA, but Mrs B states she did not receive anything.
26. The case records say that the finance officer discussed the case with her manager straight after her telephone call to Mrs B and the manager said Mrs C would be liable for the full cost from the date the financial assessment was completed.
27. The finance officer posted a sample DPA application form to Mrs B on 20 September 2019. The form had a hand-written compliment slip attached saying:

I have spoken to my manager and she has confirmed that your mum will be charged at full cost due to her owning a property she does not live in. The applicable date for full cost will be 28 days from the date of the financial assessment.

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28. The Council also enclosed an example of an agreement and an information sheet. The information sheet contained full details of the scheme including the amounts of the administrative charges involved.
 29. On 24 September 2019 Mrs B wrote to the Council requesting written information about the change to the rules in April 2019 which meant her mother was now liable to pay the full cost of her care. She gave details of her background and why she was living in her mum's home and asked the Council to stop the process while she took advice.
 30. Following receipt of this letter, the Council referred the case to a senior manager on 30 September 2019 to make a decision.
 31. On 8 October 2019 the Council wrote to Mrs B to say that Mrs C would be liable for the full cost of the care package from 4 November 2019 because the way the Council treats properties had changed. It said it had given Mrs C a 'grace period' of 28 days before the charges started. It also said information about the DPA was enclosed, including an information sheet and frequently asked questions sheet (FAQs). Mrs B said it was not. The Council also sent the outcome of the final assessment to Mrs B, but this document did not give any figures and just said Mrs C would have to pay the full charge from 4 November 2019. It did not refer to Mrs C's property.
 32. Mrs B told the Council on 17 October 2019 that Mrs C would be coming home as she couldn't afford to stay in the supported living complex. The Council wanted to be sure that was Mrs C's decision and that it was in her best interests, so it carried out a mental capacity assessment. It also made a referral to an advocate for Mrs C.
 33. Mrs C said she liked the supported living complex very much and did not want to live anywhere else or live with her daughter. The Council concluded that Mrs C had the capacity to understand her care and support needs to a basic level and wanted to remain in the supported living accommodation. However, a further capacity assessment would be needed regarding any decision about going to live with Mrs B.
 34. The Council put the advocate referral on hold while it waited for Mrs B to make a decision about the charges and care. It did not inform Mrs B of this fact.

Formal complaint

35. Mrs B made a formal complaint on 4 November 2019. She said the Council had not answered any of her questions about the charges and the matter was now very urgent. She received an acknowledgement from the Council on 11 November 2019, the day the complaint was received.
36. On 16 December 2019 she received a bill for over £3,500 for Mrs C's care with no further explanation. Mrs B wrote a second complaint on 21 December 2019 including questions about the charges. The Council sent a response on 24 December 2019. Mrs B did not receive this until 3 January 2020. The letter contained a DPA application form and an information sheet but not the FAQs.
37. The Council apologised for the delay in responding and acknowledged it must have been a worrying time for them. It confirmed it had changed the way it treated properties with effect from 1 May 2019. It said this was in line with the Care Act 2014 and the Care and Support Statutory Guidance. It said it had offered a grace period of 28 days following the reassessment, but Mrs C was liable for the full cost of her care from 4 November 2019.

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38. It said it might be able to offer Mrs C a DPA, subject to certain criteria which meant that she could defer the cost of care against her property. It said it enclosed an application form and information sheet and offered a visit by an officer to explain the scheme in more detail. It said it was unable to send her a copy of the policy for non-residential charges as it was currently under review.
39. Mrs B was very unhappy with the response and complained again to the Council. She also contacted her MP. He contacted the Council on her behalf. It responded to him on 29 January 2020, saying:

*Given the ongoing and increasing budget pressure and constraints faced by the Council in delivering social care and support, the Council will look wherever possible at taking into account the value of any other property within the financial assessment that is not disregarded... A review of the Council's Charging Policy for Community Based Services has been undertaken and to ensure clarity and consistency, point 3 of the policy has been amended and is awaiting sign-off from the Council's Executive, which when agreed will state: **'The value of any other property wholly or partly owned by the service-user WILL be taken into account unless income from that property is taken into account.'***

Deferred payment agreement

40. The Council responded to Mrs B on 4 February 2020. It acknowledged that the standard, and lack, of communication was not satisfactory and apologised for any distress caused. It said that there had been no specific rule change but due to budgetary pressures the Council will look wherever possible at taking into account the value of other property in the financial assessment. It also provided details of how the charges for Mrs C's care were made up and offered to visit Mrs B to discuss a DPA.
41. Mrs B refused a visit and said she did not wish to discuss the DPA and was taking legal advice. The Council wrote to her on 28 February 2020 to confirm that the outstanding debt was over £10,800.
42. On 27 February 2020 the Council visited Mrs C to carry out a further mental capacity assessment. Mrs C repeatedly said she did not wish to discuss her finances, as her daughter was managing them and she was happy with that. She repeated her view that she was happy at her current accommodation, she didn't want to move and didn't want to move back in with her daughter.
43. In March 2020 Mrs B told the Council that her mother was coming back to live with her. The Council queried this given what Mrs C had told the assessor in February 2020. The Council contacted the advocacy service who advised it to carry out a full mental capacity assessment.
44. The Council visited Mrs C again on 19 March 2020 to assess her capacity to make decisions about her financial situation including deferred payments and using the value of her property to pay her bills. The Council was satisfied that Mrs C had full capacity with regard to her wishes to stay in her current accommodation and to use the value of her property to pay her bills by way of a DPA. The Council left information about the DPA with her, with some sections highlighted and made an appointment to visit her again on 23 March 2020 to sign the agreement.
45. An officer telephoned Mrs B on 20 March 2020 about her complaint. They confirmed that Mrs C had capacity to make the decision and was clear that she wished to remain in her current accommodation and use the value of her property

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- by a DPA to pay the fees. Mrs B said Mrs C had agreed to come home and live with her. She was upset because she would be made homeless when the fees had to be repaid. She also informed the officer that she was under the care of the community mental health team. The officer said the Council was satisfied that Mrs C had the capacity to make her own decision and was going to sign the paperwork with her. The officer asked if Mrs B would also like to attend the meeting but she declined. Mrs B disputes that she was invited to attend.
46. Mrs B says she visited her mother on 22 March 2020 and found the FAQs for DPAs in a pile of old newspapers. Some of the sections had been highlighted, including whether or not someone would have to sell their home if they had a DPA. Mrs B says this is the first time she had seen this information. The FAQs said the Council could charge an administrative fee for setting up the DPA, but it did not say how much and this section was not highlighted.
 47. Mrs B asked the Council not to visit Mrs C due to the risk of COVID-19.
 48. The meeting (arranged for 23 March 2020) did not go ahead due to the COVID-19 restrictions. The Council instead posted the forms to her, but Mrs C did not return them. The Council visited Mrs C on 12 June 2020 once the restrictions had lifted. Mrs C remembered what the documents were for and signed them. But the Council noted there was a lot of information Mrs C did not know about the house.
 49. On 18 June 2020 Mrs B's solicitor sent the Council a copy of an independent mental capacity assessment it had done, concluding that Mrs C did not have the capacity to agree to the DPA. The solicitor said they were in the process of registering the EPA but Mrs B had the legal right to act on Mrs C's behalf even before it was registered.
 50. The Council wrote to Mrs C on 10 July 2020 requesting additional information in respect of the DPA. It included an information leaflet about DPA, a leaflet about paying for care and confirmation that over £28,000 of care fees was outstanding. It sent copies of the letter and information to Mrs B.
 51. Mrs B made a further complaint to the Council alleging it had bullied Mrs C into signing the DPA when she did not have the capacity to do so. She also sent this letter to our office.
 52. The EPA was registered in August 2020 but it only covered decisions around finance and property so it did not cover Mrs C's care package. Mrs B had given notice on Mrs C's supported living flat.
 53. In August 2020 Mrs C went into hospital for several weeks. Her condition had deteriorated, but she expressed a wish to return to the supported living accommodation. By the end of August 2020, the Council considered she no longer had capacity to make decisions around her care. Mrs C moved into a care home on 1 September 2020 and on 9 November 2020 she became eligible for continuing healthcare funding from the NHS.

Ombudsman complaint

54. In November 2020 we decided to investigate the complaint.
55. In response to our enquiries, the Council repeated there was no change in its charging policy for community-based services, but a change in the way the Council treated property in financial assessments due to budgetary pressures. In April 2021, it gave these reasons for including Mrs C's property in the financial assessment.

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- The property was not used for Mrs C's sole or main home, as she lived in supported living.
 - Mrs C received no rental income from the property.
 - Mrs C's property was not occupied following her move to supported living for some time.
56. Mrs C owes over £33,000 in care charges and £380 towards the costs incurred in progressing the DPA.
57. In response to a draft of this report, the Council clarified that it was 'unfortunate' the officer referred to a change in the rules during her conversation with Mrs B in September 2019. But this was not accurate. The Council had advised all staff in April 2019 to be robust in how property is considered as part of the financial assessment and had sent a final note to staff in May 2019. This note said that:
"National research shows that most other local authorities simply charge at full cost and if the debt is not paid they routinely enforce debt recovery processes. The school of thought is that the second property is likely to be sold quite soon after the full cost decision is made".
58. It proposed billing clients at full cost and advising them that invoices will be raised accordingly. For existing clients, it proposed carrying out a new assessment for those identified as owning a second property and if the property had not been sold by the time the financial assessment was complete the Council should allow four weeks' notice before implementing the new charge. It went on to say:
"Explain to clients that we have allowed time for the asset to be sold and it is a capital asset so is now treated as having value in terms of the financial assessment. Our policy has always advised that we may take this into account."
59. It continued that for clients who had moved into an extra care facility, the Council could offer a DPA and the same procedure should be followed as for clients who move into residential accommodation.

Conclusions

Failure to provide advice and information about the impact of the change in its treatment of property in the financial assessment

60. Mrs C had been living in the supported living accommodation for six years, only paying her assessed contribution of £57.20 a week towards her care charges. This had been confirmed by the Council in the most recent financial assessment carried out in February 2017. The Council should have reviewed the financial assessment on an annual basis, but it missed 2018 and did not start another one until August 2019. By this time, the Council had made a significant change to the way it treated property in the financial assessment, which was likely to have a major impact on Mrs C. We consider the Council should have notified Mrs C of the change in approach before starting the assessment and provided written information about the reasons for the change and its likely effect. It sent general letters about other changes to charging to all service-users and we do not see any reason why it could not have included this change in emphasis in the letter. The failure to do so was fault.
61. Even once the financial assessment had started the Council did not give Mrs B or Mrs C any information in writing about the change, its impact on Mrs C, the reasons for it and the amount of care charges she would now have to pay. The

telephone call in September 2019 was insufficient to cover the issues involved and provide clarity about the change. This was fault.

62. To go from paying around £250 a month to facing a bill of £3,600 a month was a drastic change. The Council should have given Mrs B full information about the change in its approach and the likely impact on Mrs C before the start of the financial assessment. This would have given them at least three months to consider the available care options. Instead, Mrs B received a bill for £3,600 in mid-December 2019 with no explanation or support. This caused her significant distress and was entirely avoidable.

Lack of clarity over the application and content of the charging policy

63. Despite Mrs B requesting a copy of the Council's policy between September 2019 and February 2020 the Council did not provide one. It ignored her requests until February 2020 when it said the policy was unavailable as it was under review and a new version was waiting to be signed off. This was fault as it compounded Mrs B's confusion about what was happening and why.
64. The Council has also been unclear and evasive about when the policy changed. Initially the Council said to Mrs B the rules had changed in April 2019. It then said there had been no change in policy but a change in the way the existing rules were applied since May 2019. In January 2020 it said to Mrs B's MP that the policy was under review and the new version was awaiting approval.
65. In response to our enquiries, it denied there was any change of policy until July 2021, when it explained it had changed its approach to property and advised staff accordingly in April and May 2019. This indicates a lack of transparency over a significant change to the application of a policy with potentially significant impacts for vulnerable service-users. The failure of the Council to explain the change promptly and clearly to Mrs B and to us was fault.

Failure to give full and proper information about the DPA to Mrs B and Mrs C before the financial assessment or at its completion

66. The Council introduced the idea of a DPA by telephone. It sent most of its written information to Mrs B in September 2019 except for the FAQs. This was before the financial assessment was complete and the information sheet provided some detail about the scheme and how it worked. We accept the scheme was complicated, but the information sheet gave a good explanation of the scheme and provided some further links to find out more. We consider the Council gave Mrs B sufficient information for her to understand what was being proposed.
67. However, it did not provide Mrs B with the FAQs and gave them to Mrs C without Mrs B or an advocate being present. We accept Mrs C was clear she understood the concept of the DPA and that she wished to enter into one. But it is not clear whether Mrs C understood that additional administrative charges would be made. It was not highlighted on the FAQs and there is no other evidence that this was explained to her. This was fault.

Failure to give reasons for its decision to include the value of Mrs C's property in the financial assessment

68. The Council has not provided any evidence that it properly considered the application of the property disregard, both mandatory and discretionary as set out in the Care Act guidance. It has not provided any notes or evidence of how or why the decision was made, including how it considered Mrs B's situation or the reasons why she was living in the property. This was fault.

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69. The case records indicate the first manager made the decision after one conversation with the financial officer within half an hour of the conversation with Mrs B in September 2019. This was before Mrs B had provided any information about the reasons why she was living in Mrs C's property. The case records say the matter was considered again by a different manager but there are no notes to show what was considered or the reasons for the final decision.
70. The only attempt to provide reasons was given to us on 6 April 2021 in response to our further enquiries. The reasons the Council has given do not address Mrs B's situation, the fact she has no other home and has had a mental health condition.
71. This was a key decision with significant impacts for Mrs B and Mrs C. The Council should have clear evidence and reasoning as to why it decided not to apply the property disregard. The failure to do so was fault.

Delay in dealing with the complaint

72. The Council did not respond to Mrs B's complaint for two months and then sent out a response on Christmas Eve which Mrs B did not receive until 3 January 2020. This was insensitive timing compounding the delay. The Council said in response to a draft of this report that it was only six days outside its timescale to respond and the timing was simply when the response was checked and ready. Furthermore, the Council did not provide full details of the charges for another six weeks. This was fault which exacerbated the lack of information provided by the Council during this period and added to the frustration distress and uncertainty Mrs B experienced.

Signing the DPA

73. We understand Mrs B is very unhappy about the way in which the Council approached the signing of the DPA with Mrs C.
74. The Council assessed Mrs C's capacity on three occasions, October 2019, February 2020 and March 2020. It was satisfied that Mrs C had the capacity to understand and make the decision regarding her care and the impact on her finances. We acknowledge that Mrs B disagreed with this decision and obtained her own independent capacity assessment which concluded Mrs C did not have capacity. However, she did not show this to the Council until 18 June 2020, by which time the DPA application had been signed.
75. The Council also offered to visit Mrs B to go through the DPA scheme and invited her to the meeting with Mrs C in March 2020, but Mrs B declined. We understand Mrs B disputes this point, but we accept the case records are accurate and we are satisfied that the Council tried to include Mrs B.
76. However, we do think the fault in the initial events, including the lack of information about the charges and the DPA, adversely affected Mrs B's trust in the Council, which in turn affected her willingness to engage with the DPA process after March 2020. But we also recognise the potential impact on Mrs B after Mrs C dies, was also a factor in Mrs B's reluctance to engage with the DPA process.
77. The Council initially took advice from the advocacy service, and we consider it should have engaged an advocate for Mrs C at the point she signed the DPA, to ensure she fully understood the details of the complex scheme. We agree Mrs C was clear in her wish to stay in supported living even if it meant using the capital in her property. But given the independent mental capacity assessment, it is not

clear that she had the capacity to understand all the details and operation of the DPA scheme. The fact that she did not respond to documents sent by post or respond to any requests for information and was unable to complete the form properly on 12 June 2020, substantiates this concern.

78. From the evidence provided it appears that the DPA was never finalised, but Mrs C has still incurred £380 of costs as a result of signing the agreement. There is no evidence that this charge was specifically and properly explained to Mrs C.

Recommendations

79. 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*)
80. In addition to the requirements set out above the Council has agreed to take the following action to remedy the injustice identified in this report (within three months):
- a) provide Mrs B and us with a copy of the Council's current charging policy for non-residential care. *The Council has provided a copy of its charging policy and confirmed that no changes have been made to it;*
 - b) explain when its approach to the treatment of property within this policy changed, who authorised the change and whether any assessment of the impact on vulnerable service-users was done. *The Council has provided a chronology showing when and how this change in approach was decided, including the briefing notes circulated to staff. It could not assess the impact on service-users as it did not hold information on the numbers of service-users;*
 - c) carry out a review of the decision not to apply the property disregard to Mrs C's financial assessment, with reference to the Care Act statutory guidance and with properly evidenced reasons for its decision. *The Council has agreed to this recommendation;*
 - d) apply the new decision to Mrs C's case from 4 February 2020 (the date it provided an explanation of the charges and information about the DPA) and waive the charges before this date. *The Council has agreed to this recommendation and will only charge Mrs C her weekly assessed contribution for the period prior to 4 February 2020;*
 - e) confirm whether the DPA was finalised and if so, how it will operate. *The Council has confirmed the DPA was never finalised because Mrs C did not provide the requested information;*
 - f) waive the £380 costs incurred in this process. *The Council has agreed to this recommendation.*
 - g) pay Mrs B £500 for the distress caused and her time and trouble in pursuing the matter. *The Council has agreed to this recommendation;*
 - h) identify and review each time it has removed a property disregard from a service-user since April 2019. If the Council finds fault similar to that identified in this case it should follow the principles we have set out above to remedy any injustice caused. Once the review is complete the Council should produce a report on the findings and send us a copy. *The Council has agreed to this recommendation.*

Decision

We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mrs B and Mrs C. The Council has agreed to take the action identified in paragraph 80 to remedy that injustice.