

NHS Buckinghamshire, Oxfordshire and Berkshire West ICB - Buckinghamshire (24 003 060b)

Category : [Health](#) > [Mental health services](#)

Decision : **Not upheld**

Decision date : **19 Dec 2024**

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The Ombudsman's final decision:

Summary: Mrs X complained about top-up fees for accommodation without being offered of a suitable and affordable alternative. We did not find fault with the accommodation the Council offered. We found fault with some communication and recommended the Council and the NHS Trust apologise for any distress this caused to Mrs X.

The complaint

1. Mrs X complains on behalf of her mother, Mrs Y about, Buckinghamshire Council (the Council), NHS Buckinghamshire, Oxfordshire and Berkshire West ICB (the ICB) and Oxford Health NHS Foundation Trust (the Trust).
2. Mrs X complains that Mrs Y was charged a top-up fee for her care placement, without being provided with suitable alternative accommodation that could meet her needs and was within budget.
3. Mrs X wants Mrs Y to be reimbursed for the top-up fees that she has paid.

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The Ombudsmen's role and powers

4. The Local Government and Social Care Ombudsman and Health Service Ombudsman have the power to jointly consider complaints about health and social care. (Local Government Act 1974, section 33ZA, as amended, and Health Service Commissioners Act 1993, section 18ZA).
5. We investigate complaints about 'maladministration' and 'service failure'. We use the word 'fault' to refer to these. If there has been fault, we consider whether it has caused injustice or hardship (Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1), as amended).
6. If it has, they may suggest a remedy. Our recommendations might include asking the organisation to apologise or to pay a financial remedy, for example, for inconvenience or worry caused. We might also recommend the organisation takes action to stop the same mistakes happening again.
7. When investigating complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that during an investigation, we will weigh up the available evidence and base our findings on what we think was more likely to have happened.
8. If we are satisfied with the actions or proposed actions of the bodies that are the subject of the complaint, we can complete our investigation and issue a decision statement. (Health Service Commissioners Act 1993, section 18ZA and Local Government Act 1974, section 30(1B) and 34H(i), as amended)

How I considered this complaint

9. I have considered information provided by Mrs X, the Council, the Trust and the ICB. This includes relevant records, local policies and national guidance.
10. All parties will had an opportunity to comment on a draft of my decision statement and I considered these comments before reaching a final decision.

What I found

Relevant guidance and legislation

Section 117 Aftercare

11. Anyone who may have a need for community care services is entitled to a social care assessment when they are discharged from hospital to establish what services they might need. Section 117 of the Mental Health Act imposes a duty on health and social services to meet the health/social care needs arising from or related to the person's mental disorder for patients who have been detained under specific sections of the Mental Health Act (e.g. Section 3). Aftercare services provided in relation to the person's mental disorder under S117 cannot be charged for. This is known as section 117 aftercare.

Accommodation

12. The "Mental Health Act 1983: Code of Practice" (the Code) is statutory guidance. This means that councils and ICBs must follow it, unless there are good reasons not to. The Code says that section 117 aftercare can include accommodation and continues as long as the person needs these services.
13. People who receive section 117 aftercare broadly have the same rights to choice of accommodation as someone who receives care and support under

the Care Act 2014.

14. The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 (the Regulations) set out what people should expect from a council when it arranges a care home place for them.
15. The council must ensure:
 - the person has a genuine choice of accommodation;
 - at least one accommodation option is available and affordable within the person's personal budget; and,
 - there is more than one of those options.
16. However, a person must also be able to choose alternative options, including a more expensive setting, where a third party or, in certain circumstances, the resident is willing and able to pay the additional cost. This is called a 'top-up'. A top-up payment must always be optional and never the result of commissioning failures leading to a lack of choice.
17. If no suitable accommodation is available at the amount identified in the personal budget, the council must arrange care in a more expensive setting and adjust the budget to ensure it meets the person's needs. In such circumstances, the council must not ask anyone to pay a 'top-up' fee.

Organisational responsibilities

18. Under section 117 of the Mental Health Act 1983 the Council and ICB have a joint duty to provide or arrange free aftercare until they are satisfied the person no longer needs it. The ICB and the Council commission the Trust to assess aftercare needs and arrange or provide aftercare services. Although the ICB and Council have an agreement with the Trust for it to provide and coordinate aftercare services, they retain legal accountability for those services.
19. We have therefore investigated all three organisations in this complaint. I have referred to the Trust in this statement in relation to the delivery of section 117 aftercare, but all three organisations are responsible.

Care Quality Commission

20. The Care Quality Commission (CQC) is the independent regulator of health and adult social care in England. It inspects and rates residential care homes and nursing homes. It has four ratings: "Outstanding", "Good", "Requires Improvement" and "Inadequate". The CQC can provide advice or take action if a provider is not meeting the required standards.

Background

21. Mrs Y received care under section 3 of the Mental health Act 1983 in 2021. Following this she was eligible for section 117 aftercare. After leaving hospital, she received full-time live-in care in her own home. However, the carers found it increasingly difficult to care for Mrs Y.
22. In July 2023 Mrs X contacted a social worker at the Trust and explained the family felt Mrs Y could no longer live at home and would like her to move to a nursing home. Mrs X said she contacted a number of care homes and identified one care home, (Home A) that had assessed Mrs Y and agreed it could meet her needs.
23. The Trust sent a referral to the Council's commissioning team to identify a suitable nursing home for Mrs Y. The referral stated Mrs Y wanted a placement close to her family.
24. The Council identified a nursing home (Home B) close to Mrs Y's home address, but it could not meet her needs. The Council identified another potential nursing home that could meet Mrs Y's needs (Home C). However, this was further away from Mrs Y's home address (and her family). Mrs X declined Home C because it was too far away (around 18 miles from Mrs Y's home address).
25. The Council identified a further nursing home (Home D) that was a bit closer (around 13 miles from Mrs Y's home address), but Mrs X felt this was still too far to travel.
26. The Council sent a further referral to another nursing home (Home E) which was about one mile from Mrs Y's home address. The following week, Home E told the Council Mrs X had declined an assessment. This was partly because it had a CQC rating of "requires improvement" and concerns it could not meet Mrs Y's needs.
27. Mrs X contacted the Trust to ask the Council to consider Home A, which she would be happy with, or explain why it would not consider this suitable for Mrs Y.
28. The Trust said it would send Mrs X's request to the Council, but noted Home A would incur a top-up fee. The Council contacted Home A and it said it could offer Mrs Y a placement. Home A confirmed there would be a top-up fee of £420 a week. The Trust emailed Mrs X with this information and asked her to confirm if she wished to accept this offer.
29. Mrs X questioned whether the Trust could reduce the top-up fee. The Trust discussed this at a joint Practice Forum. The Forum did not agree to reduce the

top-up fees. The Trust emailed Mrs X the same day to explain this decision and set out three choices for Mrs Y:

- to move to Home A which will incur a weekly top-up fee of £420.
- to move to Home E following assessment. If it could meet her needs, section 117 funding would cover all the fees.
- for the Council's commissioning team to continue searching for an alternative suitable nursing home.

30. Mrs X confirmed she wanted Mrs Y to move to Home A with a top-up fee. Mrs Y moved to Home A the following day.

Analysis and findings

31. Mrs Y receives section 117 aftercare, which includes her accommodation costs. The Council had a duty to arrange this accommodation. The Regulations set out that at least one accommodation option must be available and affordable within the person's personal budget.
32. The Council identified four potential available placements. One provider (Home B) said it could not meet Mrs Y's needs. Mrs X declined two other placements (Home C and Home D) because they were too far from Mrs Y's family. The Council accepted this and identified Home E which was closer. However, Mrs X declined this option because the CQC rating was "requires improvement". She understandably had concerns that Home E could meet Mrs Y's complex needs or that it would be safe and clean.
33. The CQC inspected Home E in early 2023 and received an overall rating of "Requires Improvement". According to the CQC, this means the service was not performing as well as it should and the CQC would tell the service how it must improve. The report noted a previous "inadequate" rating from an inspection in 2022. It said while improvements in some areas had been made to the service, further actions were needed.
34. The CQC is one measure of standards. The Council's Integrated Commissioning Service also has its own procedures in place to monitor its commissioned care home providers.
35. In this case, the Council explained it worked with Home E since receiving the "Inadequate" rating to improve standards. Based on its own inspections and monitoring, and the improvements made, the Council's Commissioning Service considered Home E as suitable to commission placements from.
36. The Council has told us that later that year it suspended referrals to Home E because of concerns identified, but these inspections were after it had

considered suitability for Mrs Y. At the time it was seeking a vacancy for Mrs Y, based on the information available, Home E was considered to be a suitable placement that did not need a top-up payment. This is in line with the Regulations and is not fault by the Council.

37. The Trust set out the charges for Home A before Mrs Y's family agreed to this placement. This was in line with the Regulations. It also provided other choices of completing the assessment process for Home E (which was considered potentially suitable) or to refer back to the Council to seek different accommodation. Mrs X was therefore fully aware of the charges before agreeing to Mrs Y moving in.
38. Prior to agreeing to the placement, the records show Mrs X raised concerns about the safety of Home E. It may have been helpful at this point if the Trust or the Council had explained the inspection and commissioning process and specifically, addressed what had happened since the CQC inspections at Home E. The records show the Practice Forum recommended the Trust/Council should speak to Mrs X to explain the commissioning process and reassure the family about Home E. I have not seen evidence to show this was done. This is fault.
39. The fault may have led to Mrs X reconsidering a placement at Home E. However, I have noted Mrs X's strength of feeling about the suitability of Home A and the issues with Home E. Mrs X identified Home A as the placement she wanted for Mrs Y before the Council started the process of finding a suitable nursing home placement for Mrs Y. Her further communication with the Council asked it to specifically consider this placement and was focused on getting this agreed and having the top-up fee reduced. I therefore consider not having additional information about commissioning process was unlikely to have made a difference to Mrs X's decision to accept the placement at Home A.

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Agreed actions

40. The Council and the Trust have agreed to apologise to Mrs X for the loss of opportunity and distress caused by the fault with not communicating effectively with Mrs X about the suitability of Home E. This will be provided within one month from the date of the Ombudsmen's final decision statement.

41. The organisations should provide us with evidence they have complied with the above actions.

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Final decision

42. There was no fault by the Council in identifying and offering a suitable and affordable nursing home placement for Mrs Y. However there was fault by the Trust and the Council with communication about CQC and Council inspections.

43. The Council and the Trust have agreed actions to our recommendations. I have therefore completed my investigation.

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Investigator's decision on behalf of the Ombudsman

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