

# Report

on an investigation into  
complaint no 11 001 504 about  
Kent County Council

**23 July 2012**

# Investigation into complaint no 11 001 504 about Kent County Council

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S30(3) Local Government Act 1974 generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

## Key to names used

Mrs T	The complainant
Mrs F	The complainant's mother

## **Report summary**

### **Subject**

An elderly woman needed to go into a residential home for a short time when she was discharged from hospital. She needed to be in a home close to her daughter so she could visit. The daughter found a home from the Council's list but the Council refused to pay.

The reason for the Council refusing to pay was that senior officers in adult social services had issued instructions about short term residential care. The instructions were that staff could only use the Council's own homes, or places it had 'pre-purchased', or community hospitals.

The daughter paid for her mother to have a place for four weeks in a residential home not covered by the instructions. She complained to the Council about its decision not to pay for the place, but senior managers would not change it.

After four weeks, everyone involved agreed that the elderly woman should stay in the residential home permanently. The Council then agreed to pay the costs but still refused to pay for the first four weeks.

The Head of Policy & Service Standards in adult social services said he had not known about the instructions. The officers who issued the instructions said they were a response to a high level of vacancies in 'pre-purchased' places, a budget crisis, and pressure to free-up hospital beds.

### **Finding**

The Ombudsman found the instructions from senior managers were contrary to the 1992 Choice of Accommodation Directions. The Directions say a person can choose a permanent or temporary residential care home (if certain conditions are met as they were in this case). She found the Council acted with maladministration in:

- refusing to fund the first four weeks of the place in the residential home
- issuing instructions to staff that were contrary to Government Directions, and
- not realising that the instructions were wrong when the daughter complained and not correcting them.

## **Agreed remedy**

The Council agreed to the Ombudsman's recommendations to: apologise to the daughter; to refund the cost of the first four weeks residential care; to withdraw the instructions and to identify other people who may have been adversely affected by them.

## Introduction

1. Mrs T complains on behalf of her mother, Mrs F. She says that Kent County Council failed to offer a choice of residential care placement when Mrs F was discharged from hospital. This was because of a council policy that stipulated that temporary residential placements had to be made into the Council's own residential units or into pre-purchased beds where these were available.

## Legal and administrative background

2. A council must assess the social care needs of anyone over the age of 18 who appears to need community care services.<sup>1</sup> An assessment should identify needs and put them in one of four bands: critical, substantial, moderate or low. Statutory guidance<sup>2</sup> tells councils how to decide which band a need should be in. Each council can decide, as a matter of policy, which band of needs it will meet by providing services or direct payments. Assessed needs in the bands that will be funded are known as 'eligible' needs. Kent County Council's policy is to provide or fund services to meet needs that have been assessed as being in the critical, substantial or moderate bands.
3. Councils arrange for the provision of residential care for adults under responsibilities set out in Part III National Assistance Act 1948. The conditions that must be satisfied are that:
  - i. the person is aged 18 or over
  - ii. the person has a need for care and attention arising from age, disability, illness or any other circumstances, and
  - iii. the care and attention required must not be available otherwise than by the provision of accommodation with care.
4. National guidance<sup>3</sup> stipulates that if a council considers that the criteria in the previous paragraph are met and the person lives in their area, it has a duty to provide residential accommodation.
5. Once a council has decided to place a person in residential care under Part III of the 1948 Act, it must arrange a placement in a care home of the person's choice, provided four conditions are satisfied:
  - i. The preferred care home appears to be suitable (it is not necessarily *unsuitable* because it is not the council's preferred model of provision).

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1 S 47 NHS and Community Care Act 1990

2 Prioritising Need in the Context of Putting People First – a whole system approach to eligibility for adult social care

3 LAC (93) 10 Appendix 1

- ii. The cost does not exceed what the council would usually expect to pay.
  - iii. The preferred care home has a vacancy and is willing to offer it to the person.
  - iv. The preferred care home will provide the placement subject to the council's usual terms and conditions.<sup>4</sup>
6. In December 2010, senior officers issued internal financial guidance for care management staff in East Kent. The guidance stipulated that all non-permanent placements from hospital into residential care should be made into the Council's own residential units, intermediate care or assessment beds, other pre-purchased beds or community hospital beds where such suitably registered beds were available anywhere within the East Kent area. Those who declined these options would have to pay privately for their preferred alternative.

## Investigation

7. My Investigator has considered copies of Mrs F's social care records and records from the complaints file. She has interviewed council officers involved with assessing and reviewing Mrs F, managers and the officer responsible for policy and performance standards in the social care directorate. Both parties have commented on a draft of this report and where appropriate, their comments have been incorporated.
8. Mrs F has dementia. Until March 2011, she lived alone in a bungalow that she and Mrs T owned jointly. Family members called on Mrs F regularly to provide assistance. She had a private carer for domestic tasks. She received meals on wheels. From January 2011, Mrs F received support from mental health services and a Community Psychiatric Nurse visited her at home. Mrs F was reluctant to accept professional support.
9. The Community Psychiatric Nurse made an urgent referral to the Council's adult social care team on 31 January 2011. She was concerned about Mrs F's ability to continue to live independently. Mrs T was on holiday and the CPN was visiting Mrs F every day at her home. Mrs F appeared confused and there were unacceptably high risks associated with her wandering in the community. A Care Manager completed an assessment of need on 11 February. The Care Manager and CPN suggested respite care, but Mrs F would not agree to this.
10. Mrs F went into hospital on 15 March, following a fall at her home. The Care Manager updated the assessment of need that had been completed the previous month. The assessment concluded that Mrs F would require residential care. The Care Manager wrote on the assessment form that there was no real potential for any improvement of Mrs F's condition.

11. On 21 March 2011, Mrs T, Mrs F and the Care Manager met with hospital staff. Mrs T told my Investigator that everyone at the meeting agreed that Mrs F should have a short-term period of residential care. The Care Manager said she would carry out a review of Mrs F after four weeks. The Care Manager explained to Mrs T that she had identified three vacancies in care homes. These vacancies were in pre-purchased beds. Mrs T was not happy with the locations of any of the three care homes proposed. In particular, she did not want her mother to be placed out of her locality on a temporary basis and then possibly have to move again to a home closer to her family and friends. Mrs T considered that the three homes offered were too far away for regular visits from family. Mrs T is self-employed, works long hours and has caring responsibilities for other family members. It was important that any care home for her mother should be within easy travelling distance to enable her to visit as often as possible. Hence, Mrs T declined the Council's offers. She was also concerned that one of the homes identified by the Care Manager may be due to close. This would mean a move to another care home, which would be disruptive and distressing for her mother.
12. Mrs T consulted the Council's care directory and after visiting a number of the homes listed, selected Beech House as her preferred option. The home had vacancies. Mrs T asked the Care Manager if the Council would fund Beech House. The Care Manager said that this was not possible because of financial guidance from her seniors. Mrs T signed the initial contract for the place at Beech House and paid for the first four weeks. Mrs F moved to Beech House on 24 March 2011.
13. Mrs T complained to the Council on 31 March. She asked the Council to reconsider its decision not to fund Beech House for the first four weeks because she considered that the process of authorisation of temporary placements was flawed. Mrs T complained that many of the homes in the Council's care directory had places available at the Council's usual fee level. But the Care Manager told her that the Council would not pay for these because of financial guidance.
14. The Head of Service responded to Mrs T's complaint on 27 April. She concluded that Mrs F's case had been managed in accordance with internal guidance and did not uphold the complaint. She refused to reimburse the charges for the first four weeks.
15. The Care Manager reviewed Mrs F's placement on 28 April. Mrs F had settled in to Beech House and so the Care Manager recommended that the placement should be made permanent. Mrs F's psychiatrist carried out a formal assessment of her capacity to decide on her long-term care and accommodation arrangements. He concluded that she did not have capacity to make those decisions. Everyone involved with Mrs F's care agreed that it was in her best interests to live at Beech House permanently.
16. The Council's funding panel formally authorised and approved permanent funding for Mrs F's placement at Beech House on 5 May, with the decision backdated to 21 April.

17. The Care Manager told my Investigator in interview that:
  - a. She thought Mrs F's placement was likely to become permanent, although she could not be absolutely sure. There was at least a chance that a temporary period in residential care might assist her to improve so that she could return home with support from home carers.
  - b. It was not good practice to make decisions about permanent residential placements on discharge from hospital. This was because the environment could be quite stressful for many service users and they may not show their true range of abilities in hospital. In her experience, some people with dementia made good progress in residential care, and were able to return to a more independent environment.
  - c. She often arranged placements from hospital into pre-purchased beds and council-owned residential care homes to enable people to make informed decisions about future care needs. This was appropriate where it was felt that the service user had a reasonable chance of making a further recovery.
  - d. Before December 2010, when the financial guidance became operational, there was no requirement to place people in pre-purchased beds. Choice issues had arisen in other cases, but she had always managed to resolve any disputes by discussion and negotiation.
  - e. She was aware of the legal requirement to offer choice to service users who expressed a preference for a particular care home. But there was a strong direction from her seniors in December 2010 that staff should follow the internal guidance. Her manager advised that service users who were unhappy could make a formal complaint.
18. The Head of Policy and Service Standards told my Investigator that he was not aware of the internal financial guidance in operation in East Kent from December 2010, as he was in a different temporary role. He did not believe that anyone else in the policy team knew about it either. He said that official county-wide policy and guidance was approved by his team, and where necessary, legal advice was sought. This did not happen if the guidance in question came from local managers, as was the case here. He said that the internal financial guidance was withdrawn in July 2011 following my draft decision on Mrs F's complaint. The Directorate Management Team instructed area managers not to issue any further local guidance for staff without input from the policy team. Managers recently attended specialist training on key aspects of social care law and guidance. The purpose of this training was to improve knowledge and awareness of legal obligations among staff.
19. The Council commented in response to a draft of this report that the Area Management Team was responsible for issuing the internal financial guidance. It clarified the county-wide residential placement policy and general financial guidance for care managers. The Head of Service commented in interview that she had noted

that there were a high number of vacancies in pre-purchased beds and council care homes in late 2010. The Head of Service explained to my Investigator that the financial guidance came about in response to a high level of vacancies in pre-purchased residential homes, coupled with a budget crisis and pressure from the NHS to free up hospital beds. The ethos was to use short term assessment beds as a way of discharging people from hospital and for many people, a short period in residential care could lead to an improvement in their skills and a potential to return home. The Head of Service said that with the benefit of hindsight, the phrase '*clients who decline the offer should expect to pay privately*' should not have been included in the financial guidance.

## **Findings – maladministration**

20. In refusing to place Mrs F in Beech House upon her discharge from hospital, the Council breached the Choice of Accommodation Directions. This was maladministration. The Council's assessment was that Mrs F needed residential care. There was no dispute about suitability, availability, or cost with regard to the preferred home. The standard terms and conditions were acceptable to the Council, as the home was on its approved provider list. Statutory guidance accompanying the Choice Directions makes it clear that the choice principle applies equally to temporary and permanent residential placements. Temporary placements are specified as including intermediate care, short term breaks or any other type of interim care arrangement. The failure to fund Beech House from the outset was maladministration. Mrs T should not have been required to pay the first four weeks of her mother's care home fees.
21. Internal financial guidelines applicable to adult social care teams in East Kent were issued as an addendum to borough-wide financial guidance. Whilst the Council is entitled to take measures to control and monitor its finances and resources closely, it must ensure that any internal guidelines issued to staff do not place it in breach of the law. The requirement to offer service users a genuine choice of placement when they are assessed as needing residential care is enshrined in law. The internal guidance issued in December 2010 did not adhere to the principles set out in the Choice Directions. This was maladministration.
22. When Mrs T made a formal complaint, the Council's response failed to identify that its internal guidance was contrary to law. This was maladministration.

## **Findings – injustice**

23. I find that the Council has acted with maladministration as described above and that this caused Mrs T injustice. The Council has agreed to reimburse monies that are due to Mrs T on account of her paying for the first four weeks of her mother's placement at Beech House. This amounts to a total of £1,560. The Council has also agreed to apologise to Mrs T.

24. The Council has withdrawn the offending internal guidance, acknowledging that the implications were not considered fully at the time that it was issued. It has carried out a review of all placements made from hospital for the period that the guidelines were operational, in order to determine whether any others have been similarly affected. It has agreed to carry out a more detailed review of some cases where the records were not clear about whether people got their preferred placement.

**Anne Seex  
Local Government Ombudsman  
10th Floor Millbank Tower  
Millbank  
LONDON SW1P 4QP**

**23 July 2012**