

08 August 2017

**Complaint reference:**  
16 019 162

**Complaint against:**  
Bath and North East Somerset Council

## **The Ombudsman's final decision**

Summary: The Council failed to explain that Mr B would have to pay more than his usual respite charge for a residential placement. It should therefore write off the outstanding care fees. It also took too long to recover these care fees which caused additional confusion and distress.

---

## **The complaint**

1. The complainant, Mrs X, complains on behalf of her father, Mr B. She complains that the Council failed to communicate respite charges with Mr B before he went into respite care. She also complains that the respite care was extended by two weeks because of the Council's delay and it took 18 months to invoice him for the care.

## **The Ombudsman's role and powers**

2. We may investigate complaints from a person affected by the matter in the complaint, or from someone the person has authorised in writing to act for him or her. If the person has died or cannot authorise someone to act, we may investigate a complaint from a personal representative or from someone we consider suitable to represent the person affected. *(section 26A or 34C, Local Government Act 1974)*
3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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)*
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. *(Local Government Act 1974, section 30(1B) and 34H(i), as amended)*

## **How I considered this complaint**

5. I have:
  - Read the papers submitted by Mrs X and discussed the complaint with her.
  - Considered the Council's comments about the complaint and the supporting documents it provided.

- 
- Shared my draft decision with Mrs X and the Council and considered their comments.

## **What I found**

### **Law and Guidance**

6. The statutory guidance in place at the time was the Charging for Residential Accommodation Guide (CRAG) in support of the National Assistance (Assessment of Resources) Regulations 1992. Relevant sections of the guidance in this complaint:
  - *“Admissions to residential accommodation should be deemed temporary or permanent depending solely on the needs and circumstances of individual service users. As such councils’ or users’ resources should play no part in the decision. Knowing whether they are permanent or temporary will matter a great deal to residents and carers. Hence, decisions about the status of admission should be made, agreed and shared, openly with them – or others on their behalf if appropriate - and put in writing”.*
  - *“The LA must ensure that the resident is given a clear explanation, usually in writing, of how the assessment of his ability to pay has been carried out. This should explain the usual weekly assessed charge. They should also inform the resident of the reasons why the charge may fluctuate, particularly where a new resident’s charge may vary in the first few weeks of admission because, for instance, of the effect of benefit paydays on Income Support/Pension Credit or the withdrawal of Attendance Allowance or Disability Living Allowance (Care component). The resident should, however, be informed of why the charge may fluctuate. There is also no requirement to specify the assessed charge in the contract with the home”.*

### **Events leading to the complaint**

7. Mr B has a number of care and support needs. In 2014 he was living at home with his wife, Mrs B, and receiving support from carers in his home, he was also attending a day centre. As part of this package, Mr B was eligible six weeks of residential respite care a year. Mr B contributed £92.91 per week towards his care. At this point, he was also assessed as having the mental capacity to make decisions about his own care.

#### **Mr B went into respite care**

8. In 2015 carers became concerned about Mr B’s increasing support needs and asked his occupational therapist (OT) to complete an assessment. The OT decided that Mr B needed to have a specialist stair lift installed or move his bedroom downstairs. Mrs B said that she did not want to do this, but would think about her options while Mr B was in a period of his planned respite care.
9. Mr B contracted a chest infection and was admitted to hospital in February 2015. On 16 February 2015 Mr B went into his planned residential respite care which was due to end on 23 February.
10. On 24 February 2015 Mrs B told the Council that she could not have Mr B home because she felt that she could *“no longer cope and felt that this would be a long term decision”*. The Council’s notes state that the social worker discussed costs of alternative care homes and the social worker agreed to research options. But the notes are not clear whether Mr B’s contribution was discussed. Mrs B confirmed that she was not willing to move the bedroom downstairs or make the necessary

---

adaptations for Mr B to return home at that point. The Council negotiated a further week of respite care while it arranged a residential placement.

#### Mr B moved to a different care home

11. Mr B entered his new care home on 2 March 2015. The Council states it was a permanent care placement, Mrs X disagrees. She states that it was a temporary arrangement.
12. On 9 March 2015 Mrs X emailed the Council and said that Mr B was not happy with the placement. She said that Mrs B would like Mr B to move home and is prepared to make the necessary adaptations to their home to allow this to happen. The Council acknowledged this and arranged for two stair lift specialists to complete an assessment. Unfortunately they did not have any availability to complete the assessment until 18 March 2015.
13. On 12 March 2015 the social worker sent an update email to Mrs X about Mr B's move home. At the end of the email it also said, "*as regards the placement I have had finance contact me and have determined that your father is currently on a trial period at the home and therefore his DP has stopped and he will be assessed under CRAG*". Mrs X did not respond to this section of the email. She said she did not know what it meant. She said she thought that Mr B should continue to pay his £92.91 per week which he had previously done for his respite care. On 26 March 2015 the Council sent Mrs X a financial assessment form to complete. This form explained that Mr B would have to contribute towards the cost of his care and that the Council would calculate exactly how much.
14. On 31 March 2015 Mrs B decided that she would move the bedroom downstairs while waiting for the stair lift to be installed so that Mr B could move home sooner. The Council explained that the OT would still need to complete an assessment to ensure it was suitable and that the correct hoist was in place. It also explained that she was on annual leave for a couple of weeks.
15. The OT returned from annual leave, assessed Mr B's discharge plans and he moved home on 11 April 2015.

#### The Council completed the financial assessment

16. On 19 May 2015 the Council sent Mrs X a letter setting out the outcome of its financial assessment. It said that while Mr B was in residential care between 2 March and 11 April 2015 he should pay £228.34 per week towards his care. It said it would send an invoice for the charges he owes for that period in due course. It then sent Mrs B two invoices totalling £1337.42.
17. Mrs X was unhappy that the Council had invoiced Mr B for the time spent in residential care above his usual £92.91 per week. She said that this was not explained to the family before Mr B went into residential care and that it was only ever intended to be a temporary placement.
18. The Council responded and explained that Mrs B had requested for it to be a longer term placement and therefore it had treated it as such. It was also satisfied, because of the email of the 12 March 2015, that it had explained that there would be a charge for the care home. Therefore it did not uphold their complaint. Mrs X responded and explained she disagreed with the Council's decision and she did not receive a response. The Council also did not pursue the outstanding care fees until over 12 months later in November 2016.

- 
19. After receiving correspondence from the Council in November 2016 seeking the outstanding care fees Mrs X complained to the Council again. She thought that the matter had been resolved and the care fees had been written off.
  20. The Council responded in March 2017 and said it was entitled to chase the care fees because it had told Mrs X and Mrs B about them. It said, as part of the complaint, it completed a review of the file. It discovered that while Mr B was in residential care he continued to pay his £92.91 per week towards his personal budget. It therefore reduced the outstanding fees to £834.86 and advised Mrs X to approach the Ombudsman if she remained dissatisfied.

### **Analysis**

21. After reviewing the file the Council was correct when it told Mrs X that Mrs B asked the Council to keep Mr B in residential care permanently in February 2015. Therefore the Council was entitled to reach the view that it was a permanent move. But I have seen no evidence that it properly explained the financial result of this to Mrs X, Mr B or Mrs B before him moving into residential care. The Council states that it has introduced new procedures to ensure that service users are informed of care fees before they go into care as part of a pre-assessment process.
22. The first time the Council gave the family charging information was on 12 March 2015 via email. Two weeks after Mr B moved into residential care and four days after the family said they would like Mr B to move home. This information was also not sufficient; it only said Mr B "*will be assessed under CRAG*". This did not provide the family with enough information to satisfy the Council's duty in line with government guidance. The Council did not give satisfactory information on charging until it sent an email on 26 March 2015, nearly four weeks after Mr B moved into residential care. This is fault.
23. The Council should have provided the family with more information about charging prior to them making a decision about moving him into residential care. This would have allowed them to have made an informed decision. Given that Mrs B made the decision that she wanted Mr B to return home shortly after he moved into residential care. On balance, I think it is likely than not that she would have wanted her husband to move home from respite care instead of residential care if she had known about the increased charges. Therefore the Council should write off the remaining care fees because it did not adequately explain that Mr B would have to pay more than his usual £92.91 per week towards the cost of his care.
24. I appreciate that Mr B remained in residential care longer than his family wanted him to because he needed to wait for necessary adaptations to the home. But I have found no evidence of unreasonable delay by the Council. Once it received notice by the family that they wanted Mr B to move home, it arranged the necessary assessments. Unfortunately, there was a waiting list getting the necessary appointment and a period of annual leave with the occupational therapist but the Council are not at fault here.
25. The Council also took too long to resolve this complaint and did not adequately signpost the family to the Ombudsman when they initially complained. This has added to the distress that the family has experienced.

---

### **Agreed action**

26. In recognition for the faults identified above the Council, within six weeks of my final decision, has agreed to:
- Apologise to Mrs B, Mr B and Mrs X for failing to appropriately explain Mr B's residential care fees with them or handle their complaint correctly.
  - Write off the outstanding £834.86 invoice.
  - Issue a guidance note to social workers about the importance of explaining care fees to service users before decisions are made and keeping accurate case notes to evidence this.

### **Final decision**

27. The Council failed to explain that Mr B would have to pay more than his usual respite charge for a residential placement. It should therefore write off the outstanding care fees. It also took too long to recover these care fees which caused additional confusion and distress. The Council has agreed to my recommendations and therefore I have completed my investigation.

### **Investigator's decision on behalf of the Ombudsman**



**Complaint reference:**  
16 015 966

**Complaint against:**  
Bath and North East Somerset Council

## **The Ombudsman's final decision**

Summary: There was fault by the Council in the conduct of mediation carried out by trading standards officers. That led a suspicion of bias and a loss of confidence in the process. There was also fault in record keeping and the provision of information, but that did not lead to significant injustice requiring remedy.

---

## **The complaint**

1. The complainant, whom I shall call Mr B, complains the Council treated him unfairly in connection with his complaint against a trader it had approved under its 'Buy with Confidence' scheme.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

4. I considered all the information provided by Mr B about his complaint. I made written enquiries of the Council and took account of the information it provided in response.
5. I provided Mr B and the Council with a draft of this decision and considered all comments received in response. I then made limited further enquiries of the Council.

## **What I found**

### **The Buy with Confidence (BWC) scheme**

6. BWC is a national register of businesses vetted, approved and monitored by council trading standards officers to try to ensure that they operate in a legal, honest and fair way. The Council takes part in this scheme. Its website explains

---

that while it cannot guarantee the businesses which subscribe to the scheme will never let a customer down, if this happens trading standards will offer support.

### Background

7. Mr B engaged a builder to build a basement at his property. The builder he selected was registered with the BWC scheme. The work was finished around January 2013 but subsequently there was water ingress and the basement began to develop mould. Mr B tried unsuccessfully to work with the builder to get these problems resolved. The builder had offered a ten-year guarantee on his work, but by late 2014 the matter was not resolved and Mr B asked the builder for a refund.

### Trading standards become involved in Mr B's case

8. In December 2014 the builder who had carried out the work at Mr B's home contacted Trading Standards (TS) to say he had had complaint from Mr B. TS then called Mr B to talk to him about what had happened. As the builder was a member of the BWC the Council was able to offer mediation. Mr B and the builder agreed to a joint independent investigation of the work prior to the mediation meeting.

### Mediation

9. The mediation meeting was facilitated by two officers from TS. I will return to this point later in this statement.
10. A chartered surveyor had completed an independent report, with the agreement of both parties. The builder was unable to confirm he had taken the necessary steps to ensure the effectiveness of the tanking product he had used. The surveyor's report concluded the water ingress and failure of the basement was a direct result of the builder using inappropriate construction details for the water proofing tanking system he had chosen. The surveyor considered both parties had been slightly naïve in their approach to the works: no architect had been involved. To remedy the water ingress, the only option would be stripping out the basement including removing stairs and any fixtures, followed by installation of a suitable tanking system by an approved fitter.
11. The cheapest quotation for the necessary works to rectify the cellar was about £8,000. The notes from the mediation meeting record that while the builder agreed the basement needed to be stripped out, he reported he had suffered financial loss of £5,500 due to loss of profit from the original works, the costs of attempts made at repair, and the survey. The builder therefore offered to pay Mr B a settlement sum £4,000 to cover the cost of stripping the cellar and preparing it for damp-proofing.
12. Mr B said he wished to consider the offer and he then initially accepted it. However when the builder sent the cheque he also sent a letter which imposed conditions on the settlement. Mr B considered the conditions meant the payment was not solely for what had been specified at mediation but also covered costs of possible future defects in the side extension the builder had constructed, effectively cancelling the 10 year guarantee on the works. Mr B consulted his solicitor and advised the Council the terms were unacceptable.
13. Mr B asked TS to comment on the letter the builder had sent him. The Council said it had played no part in the drawing up of the conditions the builder was seeking to impose but it was prepared to suggest that the builder clarify the terms if Mr B wished it to do so. However it advised that if agreement between the parties could not be reached, the remaining option would be civil action.



---

### Civil proceedings

14. Mr B took the builder to the county court. The court made a judgment in Mr B's favour, requiring the builder to pay him a greater sum of money than he had offered at mediation.
15. The builder is no longer a member of the BWC. He failed to pay the county court judgment against him and so no longer satisfied the conditions for membership of the scheme.

### What happened next

16. Mr B complained to the Council about its role in what had happened. Responding, the Council advised Mr B that TS had only become involved because the builder was a member of its BWC scheme. Membership offers benefits to members such as advice and assistance and mediation and the builder in this case had asked for help and advice from the Council as he was entitled to do.
17. Regarding the conditions the builder had attached to the settlement proposal, the Council said the builder's letter referred to the basement project (thus excluding issues relating to the extension works) and indicated that he could not be held liable for any remedial works done by a third party. When responding to Mr B's complaint later, the Council told him the builder had sought its advice about whether the letter was acceptable in legal terms, and said he had been required to seek advice due to his membership of the BWC scheme. In fact what happened was that the builder had sent the Council a copy of the offer letter he proposed to send to Mr B and had asked for its views. The Council has no record of any advice provided to the builder in response. If it gave advice and did not record it, that was fault in record keeping. If it did not give any advice, it was fault to tell Mr B it had done so. It was also fault to tell Mr B the builder had been required to seek advice because of his membership of the scheme when there was no such requirement. However these faults did not lead to significant injustice for Mr B. It was always a matter for the builder to make his offer with whatever terms and conditions he wished to impose, and for Mr B to choose to accept or reject what was offered. It was not for the Council to say what either side should do, and there is no evidence that it did so.
18. The mediation offered by the Council under the BWC scheme is not a legally binding arbitration service. So ultimately in cases of dispute it will be for the court to decide where responsibility lies. The Council was not obliged to offer mediation but in seeking to provide this it was trying to assist the parties in reaching agreement. The Council's aim was not been to identify the cause of the issues, nor to apportion blame, but to seek to reach agreement in respect of a compensation payment. The Council made clear mediation was not binding on either party, and when agreement could not be reached, Mr B was able to take legal proceedings. Ultimately this did not provide the outcome he had hoped for but that was not the fault of the Council.
19. However, there was fault in the mediation process, which the Council has acknowledged. When Mr B arrived for the mediation meeting he saw the TS officer involved in the mediation talking to the builder. In its consideration of what had happened the Council acknowledged Mr B may have suffered a loss of confidence in the process, since they may have been thought to be talking about the case. The Council accepted that the mediation meeting had not been carried out by a trained mediator. It has since taken steps to employ a trained mediator, and they will be supported at such mediation meetings by a TS officer who has no prior knowledge of the case under review.

- 
20. The Council has confirmed this was the first case where a BWC member had requested that the TS team provide mediation to help resolve an issue, as they may do under the terms of the scheme. The evidence shows the Council was trying to assist with achieving resolution via mediation, but it was not properly equipped to do so. That was fault. While on balance I am satisfied that the fault did not lead to Mr B being given incorrect advice about his options, it did cause him a loss of faith in the process and concern that the Council was biased in favour of the builder.
  21. Regarding membership of the BWC scheme, before membership is agreed the Council carries out a number of checks. These include checks with Companies House, with credit agencies, and with the Disclosure and Barring Service (formerly the Criminal Records Bureau). Complaint history is reviewed and references are required from customers. The builder employed by Mr B had applied to the Council to join the scheme in 2009 and all relevant checks were made. The builder was accepted onto the scheme. In accordance with the terms and conditions of membership, the Council conducted re-audits periodically. In this case the Council's records include re-audit forms from 2012, 2014 and 2015. The records from 2014 and 2015 are incomplete and this failure in record-keeping was fault. But I cannot conclude that fault led to significant injustice to Mr B.
  22. Mr B considers the Council was indifferent to his complaint because it was the first the Council had received against this builder. The Council has confirmed that Mr B's complaint was the first it had received against the builder, but the Council's actions do not evidence indifference.
  23. Mr B takes the view that the builder lacked the appropriate skills, knowledge and expertise to fulfil the requirements of the contract and ought not to have accepted it. But it is not the Council's role to micro-manage the workload of traders, and failure by the builder is not evidence of a lack of due diligence by the Council. The builder continued to meet the conditions of membership of the BWC scheme until he failed to comply with the county court judgment.
  24. Mr B also has concerns about the terms and conditions of the builder's contract, in particular a clause which states that any dispute arising from the works is to be referred (by either party) to a person nominated by the President of Arbitrators, whose decision will be final and binding upon both parties. Mr B considers this clause meant he could not use mediation or court proceedings. It was of course matter for Mr B whether he chose to enter into the contract with the builder, accepting its terms and conditions, and whether he wanted to seek arbitration as set out in the contract. But in any event he was not precluded from participating in the mediation offered by the Council and he subsequently took legal proceedings.

### **Agreed action**

25. In recognition of the loss of faith caused to Mr B by the failings in the mediation process described above I recommended that within four weeks of the date of the decision on this complaint the Council issues him with a formal written apology. The Council has agreed with my recommendation.
26. I commend the action the Council has already taken to improve the mediation service it offers under the BWC scheme, set out at paragraph 19 above.
27. The Council has also confirmed that in 2016 it reviewed the administration of the BWC scheme and appointed a new officer with responsibility for delivery of the scheme, leading to procedural improvements. The Council has undertaken to

---

ensure all self-assessment review forms will be signed off by the officer. I therefore made no further recommendation in respect of the fault in record keeping identified by my investigation.

### **Final decision**

28. The action agreed above will provide a suitable remedy for this complaint.

### **Investigator's decision on behalf of the Ombudsman**



**Complaint reference:**  
16 001 307

**Complaint against:**  
Bath and North East Somerset Council

## **The Ombudsman's final decision**

Summary: On completing a mine stabilisation scheme the Council commissioned the Council failed to ensure the complainant received the same Completion Pack and associated documents including the warranty it issued to all other affected households and all the documents relating to later remedial works.

---

## **The complaint**

1. In brief the complaint is when it completed a project to stabilise former stone mines affecting the complainant's home the Council failed to:
  - provide the complainants with the same warranty and completion certificate it issued to other home owners in the area on completion of the stabilisation project;
  - begin a stage two investigation when the complainants complained in May 2015 and referring the investigation back to stage 1.
2. The complainants, whom I shall refer to as Mrs X and Mr Y, say because of the failings they could not insure their home. They say they face difficulty if they try to sell their home without these documents which other affected home owners have received. There is also confusion about whether they have all documents relating to later remedial works which future home buyers may wish to see.

## **The Ombudsman's role and powers**

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

5. In considering this complaint I have:
  - Reviewed the information presented with the complaint;
  - Put enquiries to the Council and reviewed its responses;

- 
- Read the notes of a colleague's interview with a Council officer;
  - Reflected on the comments received in response to the first and second draft decisions.

## **What I found**

### **The mining stabilisation project**

6. Mrs X and Mr Y own a house in an area historically affected by subsidence following the closure of stone mines. The Council applied to the Government for funding under its Land Stabilisation Scheme for a scheme to stabilise mines affecting the area. It received funding and the Council agreed a scheme (the Scheme) to complete the work. It commissioned contractors to carry out the work and appointed a project manager.
7. On its website the Council says the Scheme was a major project by the Council to stabilise abandoned stone mines and preserve the health and safety of the area. It says that when the Scheme completed stabilisation works under a property the owner received a Statement of Completion. This, it says, certified the Scheme had stabilised the mines beneath the property. It says a copy of the completion statement is available from its Land Charges Team or available to view at the Bath Record office.
8. The Council undertook publicity and work to identify owners of affected land and property. The Mineral Workings Act 1985 gives owners the right to claim for compensation caused by any works undertaken. Reflecting that right the Scheme included a blanket insurance scheme for all affected properties.
9. In 2010 the scheme completed works to stabilise the mines. On 3 December 2010 the Council wrote to property owners. The letter says the Council had been working with the Association of British Insurers to produce a circular for its members. The circular or guidance recommends that on completion of the Scheme normal underwriting conditions should be applied to properties in the area. The Council enclosed a copy of the circular and said it might be useful for owners when they took out, renewed or changed the insurance on their property. The letter referred to the Completion Pack sent to owners of properties affected by the Scheme.
10. Mrs X and Mr Y say they did not receive the Completion Pack and the Completion Certificate. They did not receive the warranty that states the completed work had a design life of 100 years. The Scheme issued the Completion Pack and these associated documents to other home owners in January 2010. The Council says under the Scheme it had responsibility for issuing the warranties. It has no record of issuing one for Mrs X and Mr Y's property.
11. Under the terms set by the Council the Scheme arranged for insurance to protect property owners against any failure of the stabilisation works. House owners may make claims for any work needed because of subsidence through the insurance company. The insurance company would assess the damage, agree any repairs covered by the insurance policy and carry those out. The insurance policy governs the procedures by which loss adjusters decide on remedial work.
12. Mrs X and Mr Y say without the warranty the Council issued to other house owners the British Association of Insurers told them they could not buy property insurance.

---

### **Subsequent Damage to Mrs X and Mr Y's property**

13. Several years after the Scheme's completion Mrs X and Mr Y's home experienced damage from subsidence. Cracks appeared in the walls and this led to significant structural repair work. Further cracks appeared. A report in December 2015 recommended filling the hairline cracks but said the property needed no further work.
14. Mrs X and Mr Y say they have not made any claim against any insurance policy. They did not know who contacted the insurance company. The Council contacted the insurers and arranged for the survey. In an email in January 2016 from the Council's Divisional Director the Council says "...I assume we will need a full structural engineer report to confirm the findings of the works and the insurance backed warranty for the works. Can you please ensure I am copied in to all correspondence?" The Council's involvement in arranging the repairs is clear from this email.
15. Mrs X and Mr Y says that in March 2017 the Council told them it or the contractors would provide the paperwork certifying the remedial works but they did not receive that paperwork. The Council says the insurers and their contractors have not sent that paperwork and officers continue to chase them for it. The Council says it is not responsible for the insurers and their contractors' failure to provide this paperwork. However Mrs X and Mr Y point out they did not commission the insurance or the remedial works so they have no legal standing to force them to issue the paperwork. There is confusion about what paperwork is missing.

### **The Council's actions**

16. The Council arranged for all the properties involved in the scheme to be issued with a blanket completion statement for the restoration project as part of the Completion Pack. All owners received a warranty stating the work done had a design life of 100 years.
17. The Council says the contractors it appointed to complete the Scheme should have given Mrs X and Mr Y the Completion Pack and associated documents. It has encouraged the contractors to contact Mrs X and Ms Y. It says it contacted the insurers covering the Scheme and arranged more recent work as a gesture of goodwill. It does not have to involve itself in claims under the blanket insurance.
18. Officers say the contractor or the loss adjuster should provide a completion certificate or warranty for the latest repairs.

### **The Council's complaint handling**

19. The Council uses a two-stage complaints process. Mrs X and Ms Y first raised their concerns with their local councillor after they had asked the Council to provide a completion certificate and received no response. This was in late May 2015. The councillor told them he would take the matter up with the Council's Chief Executive. Mrs X and Mr Y believed this counted as the first stage of the complaints procedure. The councillor told them he had sent four emails to the relevant officers and received only one reply. In April 2016 the Council said it had no record of a formal complaint from Mrs X and Mr Y.
20. In April 2016 Mrs X sent a complaint to the Ombudsman. The Ombudsman treated it as a premature complaint which meant it had not previously been put to the Council for a response. Mrs X wanted the Council to treat it as a stage two complaint but the Council disagreed and sent a stage one reply. I find no fault in

---

that. The reply included a copy of the contractor's report which said no work would be done apart from filling and painting over the cracks.

21. Mrs X asked the Council to raise the complaint to stage two. In response the Council said it would take it back to stage one as there had been new developments and the Property Services Team was best placed to try and resolve the matter.

#### **The insurance claim**

22. The Council commissioned the Scheme. The property insurance scheme arranged by the Council should cover any resulting claims for damage to property. House owners can claim compensation for any further damage or damage not accepted by the insurer under the Mineral Workings Act 1985.
23. The Council referred the concerns about the damage experienced since completion of the Scheme to the Scheme insurers. Following further cracks the insurers commissioned a structural report.
24. The insurers have dealt with the insurance claim and work has been carried out. It is however, far from clear how the Council explained the process to Mrs X and Mr Y, and what information it gave them to help them understand the procedure it would follow. It is also unclear whether all documents relating to the remedial works have been issued and officers say they have not. This has caused confusion for Mrs X and Mr Y.

#### **Documents**

25. On 6 March and 27 April 2017 the Council finally sent copies of the documents including the warranty Mrs X needed to take out property insurance. However, it did not send the completion certificate for the remedial works although the Council wrote telling Mrs X on 7 March 2017 it (or the contractors) would provide the certificate. In commenting on my draft decision the Council says the contractors are the insurer's contractors and not Council contractors. Therefore in its view they cannot instruct them. However, officers have been liaising with the contractors and insurers on behalf of Mrs X. The Council says it has been promised documents that have not been sent. It says it is willing to help the complainants but has no control over a third party.

#### **Analysis – has there been fault leading to an injustice?**

26. My role is to consider how the Council dealt with issuing the paperwork for the original scheme, and how it has ensured Mrs X and Mr Y received all relevant paperwork for the remedial works. Paperwork for those remains outstanding.
27. The Council sought funding for the Scheme. It commissioned the Scheme and appointed its project manager. It has final responsibility for the Scheme and for ensuring all affected households received the Completion Pack and associated documents. Mrs X and Mr Y did not receive that Completion Pack and associated documents and the Council cannot produce any evidence to show it was sent.
28. The Council says it has never had copies of the Completion Packs or associated documents. It should at least have had an example of one for its records and evidence all affected households had received one.
29. The Scheme provides continuing insurance for affected properties. However, without evidence of this being an affected property (as shown by the Completion Pack and associated documents) Mrs X and Mr Y could not prove they have this protection. Recent work appears to have been funded through this insurance scheme. Anyone interested in buying their home in future will want to see the



---

warranty stating the original Scheme's works have a life expectancy of 100 years. This should have been given in 2010; it has taken the Council until March 2017 to provide a copy.

30. So I find fault in the failure to provide a Completion Pack and associated documents within a reasonable time which caused concern for the future sale of the property and insuring it. Once the Council provided documents in March and April 2017 Mr and Mrs X have successfully insured the property.
31. In March 2017 the Council promised it or the insurers or their contractors would provide the paperwork for the remedial works. It still has not done so. The Council argues it cannot help because the contractors were commissioned by the insurers. That may make it difficult but the Council is responsible for ensuring the insurers it commissioned to provide the cover delivers the service through its contractors. If it fails to do so the Council should consider all options on how best to ensure Mrs X and Mr Y receive the paperwork. It should consider whether as the commissioner of the insurance it can make a complaint to the Financial Services Ombudsman or sue in the courts for a breach of contract. It may wish to offer Mrs X and Mr Y support in presenting their own complaint to the Financial Services Ombudsman (given it is they who are suffering the injustice caused by its absence). It cannot simply say it is nothing to do with the Council. It commissioned the insurance and so is responsible for the delivery of work under it.
32. I find fault in the Council's failure to recognise its responsibility for the issue of paperwork following remedial works it referred to the insurers. To remedy that I have added recommendations to those already agreed with the Council.

### **Recommended and agreed action**

33. To remedy the injustice arising from the fault found in this statement I recommend and the Council agrees to within six weeks of my final decision:
- Apologise to Mrs X and Mr Y;
  - Pay Mrs X and Mr Y £250 in recognition of the time and inconvenience to which they have been put in trying to obtain the documents;
- And I further recommend that within two months of my final decision the Council:
- Provides or through its insurers and their contractors provides a copy of the paperwork promised in March 2017; or
  - If its insurers fail to provide the paperwork to consider making a complaint to the Financial Services Ombudsman or help Mrs X and Mr Y present a complaint to the Financial Services Ombudsman sharing with that Ombudsman any information the Council may have to assist in the investigation of the complaint against the insurers.

### **Final decision**

34. The Council failed to ensure the complainants received without undue delay the Completion Pack and associated documents on completion of the Scheme and the paperwork relating to more recent remedial work which has led to injustice for which I have recommended a remedy.

### **Investigator's decision on behalf of the Ombudsman**



## **The Ombudsman's final decision**

Summary: The Council failed to offer an available suitable care home placement. This resulted in a more expensive placement and the family funding an unmanageable top-up. The Council will refund top-up payments already made and cover the full cost for the duration of the stay.

---

## **The complaint**

1. The complainant, who I will call Mr B, says the Council failed to identify an available suitable nursing home to meet his mother's assessed care needs to facilitate her discharge from hospital.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

4. I considered:
  - Information provided by Mr B and discussed the complaint with him.
  - The Council's response to my enquiries.
  - The Care and Support statutory guidance issued by the Department of Health.
  - Responses to a draft of this decision.

## **What I found**

5. Mr B's mother, Mrs C, was in hospital. Mrs C previously lived in a retirement apartment with 24 hour care available. Mrs C could not return there as she needed nursing care.

- 
6. Mr B asked the Council for a list of nursing homes in its area so he could start to look at possible options. Mr B visited three suitable homes but they did not have vacancies.
  7. The Care and Support guidance says a council “must ensure that at least one accommodation option is available and affordable within the person’s personal budget and it should ensure that there is more than one of those options.” Although there were accommodation options available, the Council accepts there was not an available option that was suitable to meet Mrs C’s assessed needs. One particular home that the Council identified was too far for Mr B to travel and meet Mrs C’s need to maintain their relationship.
  8. Mr B found an available nursing home outside of the Council’s borough, which was suitable to meet all of Mrs C’s assessed needs. The Council records this as being Mr B’s preference. The home was above the Council’s usual cost rate. The Council discussed a top-up with Mr B and gave him an information leaflet. Mr B reluctantly agreed to pay the extra £200 per week and signed the top-up agreement; but he made clear he would pay it “for now” and would be appealing the decision.

### **Was there fault and injustice**

9. Although the Council records refer to the chosen nursing home being Mr B’s preference, on balance I do not consider it was a true preference. Mr B showed he was willing for Mrs C to live in a care home in the Council’s borough, and at its usual cost rate, but none were available. This was fault as the Council must ensure at least one suitable option is available.
10. The Council says it is likely that a suitable placement would have come available within its cost rate within a few days. There is no evidence the Council suggested this to Mr B. Although nobody was placing pressure on Mr B he understandably felt pressure to move his mother away from a hospital setting that was no longer needed, and to get her settled in a more permanent homely environment. That is not to say he would not have waited a few more days if given a realistic option.
11. The Council gave Mr B clear information about the payment of third party top-ups. Mr B did agree and sign up to this. However, Mr B told the Council it was a lot of money to commit but that he would pay it for now to get Mrs C moved. The Council should ensure the person paying the top-up is willing and able to do so for the duration of the stay, there is no evidence the Council satisfied itself of this given Mr B’s comments. This was fault. The Council should be acting in Mrs C’s best interests and it is unlikely to be in her best interests to move twice. The Council was on notice the placement was unlikely to be a suitable long term option because of the large top-up.
12. A top-up must never be because of a lack of choice; but that is what happened here. This was fault of the Council.
13. Because of the Council’s commissioning failures Mr B agreed to an unmanageable top-up payment. This has caused conflict between Mr B and his siblings. It has placed Mr B under a lot of stress, and has been a financial hardship.

### **Agreed action**

14. To acknowledge the impact of its fault, the Council will:
  - a) Apologise to Mr B;

- 
- b) Take responsibility for the full cost of Mrs C's stay for the full duration at the current placement, minus any client contribution;
- c) Arrange a re-assessment of Mrs C's needs, including a risk assessment about the possibility of moving her to a suitable available placement.
- If the assessment decides Mrs C cannot be moved then the Council will have to fund the current placement in full minus any client contribution from Mrs C, for the full duration of the stay.
  - If Mrs C can be moved, the Council must fund the current placement until the move takes place, minus any client contribution.
  - If Mrs C can be moved but Mr B prefers she stay where she is then the family will have to agree to fund the top-up. The Council must be satisfied the family are willing and able to do so for the full duration of the stay.
- d) Refund Mr B all top-ups he has paid for the current placement;
- e) If it does not already have one, produce an information leaflet for residents and their families. This should cover the process of choosing care placements, usual cost rates, and out of borough care placements. This should be produced within four months of the Ombudsman's final decision.
15. Actions a - d should be completed within one month of the Ombudsman's final decision.

### **Final decision**

16. I found fault causing an injustice to Mr B. I consider the agreed actions are sufficient to acknowledge this.

### **Investigator's decision on behalf of the Ombudsman**

