

# Reviewing the needs of people in care

A trust's continuing duty towards service users



## Introduction

Care homes must be registered and are monitored regularly by the Regulation and Quality Improvement Authority. This does not, however, mean that in placing a service user in a care home a trust can then divest itself of its responsibility to ensure that the placement continues to meet the person's needs.

Trusts have a continuing duty towards the individuals they place in care homes. By failing to appropriately monitor or reassess a resident's needs, a trust could be acting unlawfully.

This briefing will examine the continuing duty of trusts towards a service user placed in care.

## Set cycles for review

A trust is entitled to operate a policy or guidelines as an indication of a norm which is intended to be followed. What it is not entitled to do is to approach decisions with a pre-determined policy as to how all cases falling within a particular class will be treated. For example, a policy setting a cycle of six months for review of the needs of someone placed in care should not be followed rigidly. The defined period for review will not be appropriate in every case. Some individuals may need more contact with trust workers rather than less in consequence of going into care. Trusts must, therefore, be flexible in their approach to when, and how often, the needs of individuals placed in care homes require to be reviewed.

Flexibility will prevent the policy being challenged as an unlawful 'blanket' policy.

## Caselaw

Local Government Ombudsman offices in England have found maladministration on the part of some local authorities on the question of reassessment and monitoring of residents' needs. Two are outlined below.

## Complaint No. A5/A/00880 (Essex County Council)

### The facts

The case involved care provided to a 25 year old man who suffered from athetoid cerebral palsy (Mr B). Mr B had complex physical and learning disabilities. His needs included one to one care and a range of stimulating recreational and educational activities.

In 2001 Mr B was living in a residential unit. He then moved to a supported living complex where he had one to one care. Initially the placement was successful but he became unhappy in 2002. It was disclosed for the first time that he had been sexually abused at his previous placement. No action could be taken against the abusers as they had left the job and could not be traced. Around the same time, his original carer, with whom he had a very good relationship, moved to another job. He did not get on so well with replacement carers.

Throughout 2002 Mr B's parents raised their concerns with his social worker. In particular, they expressed concern about the lack of social activities for their son, the high turnover of staff and the perceived failure of the home to respond to his deteriorating psychological state. They requested counselling for him because of the emotional fall-out from the abuse allegations. The council's position regarding counselling was that this was for Mr B's GP to arrange.

The council did not respond to Mr B's parents concerns. Under their standard review cycle a review of his placement was not due to take place until August 2003.

By August 2003 Mr B's placement had broken down completely and he was in a very highly agitated state and on tranquilising medication. Following the review, he was moved to a care home chosen by the Council.

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Mr B and his parent's accepted the offer of the home. It was, however, not suitable to meet his needs.

The family believed that, because no serious attempts were made to find a suitable alternative to their son's placement until crisis point had been reached, a care home that was not suitable to meet his needs was effectively forced upon him. The council argued that Mr B had agreed to the move and that they could not be criticised for the choice of placement.

### The Ombudsman's findings

- The council had failed to adequately review the quality of care. By sticking rigidly to its standard review cycle, it was guilty of maladministration. The Ombudsman found that in certain cases it is necessary to be flexible when reviewing care needs.
- The council had failed to consider whether the replacement care home was suitable to meet Mr B's assessed needs and it was therefore a flawed placement. Mr B could not have been said to have exercised an informed choice because his parents believed he would have agreed to anything given the situation by the time the council agreed to review.
- The council had failed to take a holistic approach when assessing Mr B's needs. The council had not identified that his earlier alleged sexual abuse had left him with particular psychological needs. Although by the time of the Ombudsman's formal report the council had agreed to arrange counselling for him, the Ombudsman found that the delay in doing so was maladministration.

The Ombudsman awarded £7,500 in compensation due to the failure, by the county council, to monitor whether the care home continued to meet Mr B's assessed eligible needs.

### Complaint No.02/B/10226 (Cambridgeshire County Council)

#### The facts

In 1991 Mr S was placed in a care home registered to accommodate persons with 'mental handicap'. In 1998 he was diagnosed with 'high functioning autism' The providers of the care home failed to in-

form the placing authority, Cambridgeshire County Council, although his mother made a number of complaints to the council about both the home and county council's discharge of their responsibilities towards him.

Included amongst these complaints was that the council had failed to reassess Mr S's needs following the autism diagnosis. As a result of the mother's complaint, the council took the view that a psychological report was needed before a formal re-assessment of Mr S's needs was carried out. Because of this, it was two and a half years before a re-assessment of his needs took place.

### The Ombudsman's findings

- The Ombudsman found that the initial diagnosis of autism should have prompted a re-assessment of Mr S's needs and found maladministration on the part of Cambridgeshire County Council. Compensation of £7,500 was awarded.

### Conclusion

Three key points were made in both the above cases. Firstly, local authorities need to depart from predetermined policies on time limits for reviewing care needs. Secondly, responsibility remains with the local authority to ensure that a placement in care continues to meet the service user's need. Thirdly, the concerns of families should be listened to, taken seriously and responded to appropriately.

Trusts will avoid acting unlawfully if they follow these principles and ensure that a placement in care is suitable and continues to meet the service user's needs throughout his/her stay.

**The Law Centre's community care advisers are happy to advise on this or other legal issues relating to community care.**

*For any queries arising from this briefing, please contact the community care unit of Law Centre (NI) on the advice line (028 9024 4401) or, in individual cases, please feel free to refer a client directly.*