

**Further Report  
on an investigation into  
complaint ref no 12 007 311 against  
Shropshire Council**

**January 2014**

**Investigation into complaint 12 007 311  
against Shropshire Council**

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**

Mr and Mrs Ryan - The complainants

## **Introduction**

1. In April 2013 I issued a report on a complaint by Mr and Mrs Ryan. Mrs Ryan has complex mental health problems and lives at home, supported by Mr Ryan. They complained the Council failed to provide Mrs Ryan with 24 hour care between February 2008 and April 2010. They said as a result Mr Ryan had to provide all Mrs Ryan's care. He left work to do so. While Mrs Ryan received a 'direct payment' to pay Mr Ryan for some of the care he provided, this was not enough to cover the 24 hour care.
2. I found the Council acted with maladministration as it failed to:
  - assess Mrs Ryan's needs properly from February 2008 onwards;
  - assess Mr Ryan's needs as a carer properly from February 2008 onwards; and
  - operate its complaint procedure adequately.
3. I found this maladministration caused Mr and Mrs Ryan injustice. In Mr Ryan's case I accepted he left his job to provide 24 hour care for Mrs Ryan, with only limited respite provided by another family member. I found it likely this would have been the case, even without the maladministration identified and with a family member providing respite, as it was not clear other carers could meet Mrs Ryan's complex needs. I also found the Council had not made 'direct payments' to Mrs Ryan to cover all the care provided by Mr Ryan, as the Council limited these payments to the cost of care for just 50 hours a week. I considered the Council should have paid Mrs Ryan enough to cover the cost of 24 hour care she needed from February 2008 onwards. I found if it had done so Mrs Ryan would have paid this money to Mr Ryan and so his injustice was that he had not received payment for all the care he provided to Mrs Ryan.
4. I found the maladministration also caused Mrs Ryan injustice through the stress, time and trouble she incurred pursuing her complaint.
5. To remedy the injustice sustained by Mr and Mrs Ryan, I recommended the Council;
  - pay Mr Ryan £61,270 in recognition of the care he provided to Mrs Ryan which the Council had not funded at the time;
  - apologise to Mr and Mrs Ryan;
  - review its complaint handling procedures given the faults highlighted in the report; and
  - pay Mrs Ryan £1000 in recognition of her time and trouble pursuing the complaint.

## **The Council's response**

6. My report was considered at a meeting of all elected Councillors on 18 July 2013. Councillors received a covering report prepared by officers which challenged the first of my recommendations above, while accepting the other three. Councillors voted in support of their officer's report. This recommended the first part of my proposed remedy be amended. The Council decided Mr Ryan should instead "be entitled to his

loss of earnings less any payments he has received in respect of the care he has given to Mrs Ryan”.

7. The Council said my recommendation of a payment to Mr Ryan was “wholly disproportionate to the needs of the case”. It said my report “failed to take account” of “the unusual circumstances including:
  - not carrying out an assessment as Mrs Ryan was resistant to the idea;
  - agreeing care to be provided by Mr Ryan 24/7;
  - continuing to make payments even though no proper account has been given by Mrs Ryan of the monies she received;
  - the current challenges in engaging Mrs Ryan in a reassessment”.
8. The Council based its alternative proposal on the premise that if it had assessed Mrs Ryan’s needs around February 2008, as my report found, then this would not have resulted in Mr Ryan providing Mrs Ryan with 24 hour care. Instead the Council considers the reassessment is more likely to have decided that 50 hours a week care was enough to meet Mrs Ryan’s needs. Also it would not have been appropriate for one person to provide all Mrs Ryan’s care needs.

## **My consideration**

9. I welcome the fact that the Council accepted three of the four recommendations made in my report of April 2013. I have considered the points put forward by the Council about why it will not accept the final recommendation regarding a payment to Mr Ryan. In my report I drew attention to the Council’s proposal to remedy the complaint on the same terms as set out at paragraph 6 above. I rejected the proposal giving my reasons as follows:


“I have however decided that it would be difficult to discover what Mr Ryan’s losses were in relation to his employment. This is because due to his increased caring role Mr Ryan had to leave his job as a full time employee as a manager and was then paid on a sessional basis when he could undertake departmental tasks. His ability to take on this work decreased as Mrs Ryan’s care needs increased. It also appears that he had to leave his job in order to care for Mrs Ryan. It is therefore difficult to get an accurate picture of how much work he could have done. In addition I would be unable to put a figure on Mr Ryan’s lost pension contributions and the possibility that had he remained in employment he may have been promoted.”
10. In relation to those arguments summarised in paragraph 7, my report recognised the Council’s view that its relations with Mrs Ryan were ‘strained’. I accept that carrying out an assessment may have been challenging but I note that Mrs Ryan co-operated with other professional assessments undertaken under the ‘Care Programme Assessment’ (CPA) approach (the framework used to support mental health care for people with severe mental health problems). In any event Mrs Ryan’s degree of co-operation did not absolve the Council of its duty to carry out such an assessment.
11. It was also recognised in the report that from April 2010 the Council accepted Mr Ryan could provide ‘24/7’ care to Mrs Ryan. My report identified that before then:
  - in January 2008 an Analytical Psychologist found Mrs Ryan needed 24 hour care;

- in June 2008 a 'Care Programme Assessment' (CPA) review found Mr Ryan provided Mrs Ryan with 24 hour care;
  - in October 2008 a CPA review indicated Mrs Ryan needed 24 hour care;
  - in April 2009 a CPA meeting requested Mrs Ryan be funded for 24 hour care;
  - in April 2010 funding for 24 hour care for Mrs Ryan was agreed.
12. The weight of evidence is therefore overwhelming that Mrs Ryan needed 24 hour care from February 2008 onwards. As the Council accepted the need for 24 hour care from April 2010, it must consider what fair remedy to provide Mr Ryan. Whether, following a community care assessment, Mr Ryan would have continued to meet all Mrs Ryan's care needs is irrelevant. What is relevant is that Mrs Ryan needed 24 hour care and between February 2008 and April 2010 Mr Ryan delivered that care. Therefore I cannot agree with the Council's view that I should recommend a remedy to Mr Ryan's complaint on the premise that Mrs Ryan only needed 50 hours a week care when this was not the case. Or that I should recommend a remedy that considers Mr Ryan should only have provided 50 hours a week care to Mrs Ryan with her receiving additional support from other carers. Neither argument reflects the facts of the case and would not remedy the injustice caused to Mr Ryan.
13. The Council's comment that Mrs Ryan has not accounted for money received for her care is disputed strongly by her and her representatives who had no opportunity to comment on its officers' report before it went to Council. I do not need to investigate the matter as it is irrelevant to my findings. The Council has an audit procedure for ensuring direct payments for care are accounted for. The Council should address any concerns it has with Mrs Ryan's spending with her through that procedure.
14. The Council's comments on 'engaging' with Mrs Ryan in a reassessment taking place after the events covered by the complaint is also irrelevant to my findings. I also note Mrs Ryan and her representatives again strongly contest these statements, having had no opportunity to comment before the officers' report went to Councillors.

## **Conclusion**

15. My report highlighted the Council poorly handled Mrs Ryan's complaint when it began in 2010, a conclusion it accepts. It compounds that poor handling now by seeking to re-open points it has made before, making untested allegations against Mrs Ryan and introducing arguments irrelevant to my investigation. I trust the Council will now recognise that I have given careful consideration to all that it has said.

16. For the reasons outlined above, I am not satisfied with the action the Council has proposed to take in response to my recommendations. As such, the Local Government Act 1974 requires me to issue a further report. I have therefore issued this further report in relation to Mr and Mrs Ryan's complaint and call on the Council to reconsider its position as to the financial remedy I have recommended.

Handwritten signature of Jane Martin, consisting of the letters 'J Martin' in a cursive style, with a horizontal line underneath.

**Dr Jane Martin  
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**January 2014**