The Ombudsman's final decision

Summary: The Council has incorrectly interpreted the Department of Health's Guidance on Fairer Charging for Home Care in a financial assessment it completed of Miss X. There is no legal basis for the Council's decision in this case.

The complaint

1. The complainant who I will call Miss X complains the Council has unfairly taken account of a carer's allowance she receives for caring for her son in a financial assessment of her for care services she receives in her own right. Miss X is being supported to make this complaint by a solicitor.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and if it has, she may suggest a remedy. *(Local Government Act 1974, sections 26(1) and 26A(1))*

How I considered this complaint

3. As part of this investigation I considered:
   - the written complaint;
   - the correspondence between Miss X's representative and the council, including the Council's response to the complaint;
   - Department of Health Fairer Charging policy for Home Care and other non-residential Social Services 2013;
   - Darlington Borough Council Fairer Contributions Policy for Non Residential Services.

Relevant legislation

4. Under Section 17 of the Health and Social Services and Social Security Adjudications Act 1983, local authorities are given discretionary powers to charge for non-residential social services. The local authorities decide on how to set charges for non-residential services, these charges should be fair and no one should be asked to pay more than they can reasonably afford.
What I found

5. Miss X has significant disabilities and health problems. She receives home care services from the Council.

6. Miss X is a carer for her adult son who is disabled. For this she is in receipt of carers allowance.

7. Recently the Council carried out a financial reassessment of Miss X to determine what, if any financial contribution she may be required to make towards her care. Up until this point Miss X had been assessed as a not being required to contribute towards her care.

8. In its most recent financial assessment of Miss X the Council made a decision to include the carer’s allowance she receives as income.

9. Following the financial assessment the Council wrote to Miss X in March 2013. It explained that it had included the carer’s allowance as income in the assessment and informed her that as a result she was required to pay £49.80 per week towards the cost her care.

10. Miss X’s solicitor complained to the Council saying the decision to include the carers allowance as income was unfair and asked it to review its decision.

11. The Council responded to the solicitor. It quoted paragraph 89 of the Fairer Charging Guidance 2013. The Council said this showed that Council’s could exercise discretion and may take carers allowance into account for the purposes of financial assessments for services.

12. Paragraph 89 of the Fairer Charging Guidance 2013 says "Councils may decide to include Invalid Care Allowance (ICA) within a carer’s income as part of a charge assessment, where a carer is receiving this, but are not obliged to do so. The requirements that a charge should not reduce net income below basic levels of income support or the Guaranteed Credit element of Pension Credit, plus 25%, and to disregard earnings mean that most recipients of ICA will not in any event be liable to pay a charge.

13. Miss X’s solicitor responded to the Council saying the Council had incorrectly interpreted paragraph 89 as quoted above. The solicitor said the charge referred to services a carer was receiving as a carer not for services received in their own right.

14. The solicitor and the Council exchanged further correspondence on this matter each re-iterating its own interpretation of paragraph 89 as quoted above.

15. No resolution was found and the Council informed the solicitor that its complaints procedure had been exhausted and the complaint should be brought to the Ombudsman for consideration.

Consideration

16. The crux of this complaint is whether the Council has correctly interpreted paragraph 89 of the Department of Health Fairer Charging Guidance 2013, and whether there is any legal basis for the Council’s decision.

17. It is clear from plain reading of the paragraph that this does not apply this case.

18. The charges referred to in paragraph 89 refer to financial assessments for services a carer is receiving as a carer and not services a carer has been assessed as eligible to receive in their own right.
19. It is agreed that paragraph 89 allows Council's to exercise discretion, this discretion is not in a case of a service user, it is only in respect of a carer.

20. The Council's interpretation of paragraph 89 is wrong as matter of fact. It is also inconsistent with the Council's own policy.

21. Paragraph 8 of the Council's policy states that "DBC will use its legal powers to charge for non residential social services in a manner consistent with the legislation, official guidance and best practice".

**Final decision**

22. There is no legal basis for the Council's decision in this case.

23. The Council is at fault for incorrectly interpreting section 89 of the Fairer Charging Guidance 2013.

24. The Council cannot use this as a basis to include Miss X's carers allowance in a financial assessment which relates to services she receives in her own right.

25. The investigation is now complete and will be closed on the above basis.

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