

Open Report on behalf of Richard Wills, Monitoring Officer

Report to:	County Council
Date:	15 September 2017
Subject:	Report of Local Government Ombudsman

Summary:

To report to the Council the Report and outcome of an investigation by the Local Government Ombudsman into allegations of maladministration and for the Council to consider the recommendations of the Ombudsman and the actions taken and proposed to be taken by the Council

Recommendation(s):

That full Council

1. Receives the Report of the Ombudsman attached at Appendix A
2. Accepts the recommendations of the Ombudsman at paragraphs 58, 62 and 63 of the Report
3. Endorses the actions taken or to be taken by the Council as set out in paragraph 1.15 to 1.17 of this report
4. Considers what if any further action the Council should take.

1. Background

- 1.1 The Local Government Ombudsman has power under the Local Government Act 1974 to investigate and issue Reports concerning allegations of maladministration or service failure.
- 1.2 The Ombudsman has issued the Report attached at Appendix A following an allegation of maladministration by the Council in the exercise of its adult social care functions. The Ombudsman has concluded that the Council was guilty of maladministration and that this caused injustice to the complainant and his wife. The Ombudsman has identified a concern that others may have suffered similar injustice by reason of similar maladministration and as a result has issued a public report and included wider recommendations than would be necessary to remedy the injustice in the particular case.

- 1.3 The Report is issued under section 31 of the 1974 Act. As a result the Report must be made public by the Council and reported to the full Council so that they can consider the report and notify the Ombudsman of any action taken or proposed to be taken by the Council in response.

Context of the Report

- 1.4 The complaint and Report concern the use of short term residential care placements in circumstances where the adult care assessment has identified that a person would benefit from home care.
- 1.5 The use of such short term residential placements is an important tool for local authorities in meeting service user needs. As the Report recognises, the Council has always used such placements for a variety of reasons. Sometimes such a placement will be necessary because a person's home is not available for example adaptations may be required before they can move back home or because the person requires a period of rehabilitation before returning home. In some cases, the use of a short term residential placement is made necessary by the Council's own inability to source a provider to deliver the necessary package of care. The case of Mrs A is one of those cases.
- 1.6 The Council would aim for a maximum period in short term residential care of 6 to 8 weeks regardless of the reason for the placement. However, there is always the potential for this period to be exceeded.
- 1.7 The other relevant context is that at the time Mrs A came to be assessed for home care, the Council was undergoing transition from one model of commissioning home care in which the Council contracted with a large number and wide range of localised home care providers to a prime provider model in which the Council contracted with a single prime provider in each of twelve areas with each of those prime providers supported by local sub-contract arrangements.
- 1.8 The difficulties of the previous model are set out in the Ombudsman's Report at paragraph 18. The new model was designed to overcome those difficulties by creating a critical mass of volume for a smaller number of twelve prime providers, thereby enabling the successful prime providers to plan with more confidence and address issues of capacity and training from a more secure commercial base.
- 1.9 This transition required the transfer of a significant number of packages from existing providers to the new prime provider. This placed an equally significant pressure on the new prime providers to accommodate the transferring packages at the same time as meeting new demand all at a time when the new model had not matured sufficiently to realise the expected benefits in terms of capacity in the market. This was recognised and the Council took steps to robustly manage the situation as set out in the Ombudsman's Report at paragraph 23.

1.10 The Ombudsman found no fault with the adoption by the Council of the new commissioning model. That model is bearing fruit with the number of short term residential placements at the time of the Ombudsman's Report being quoted in paragraph 21 as 10.

The Ombudsman's Findings

1.11 The Ombudsman's findings are set out in the section of the Report headed "Decision" – paragraph 57. There are three elements.

1.12 Firstly, the Council was at fault for allowing Mrs A's placement in residential care to continue for 10 months. This finding is accepted. Although significant efforts were made to find capacity within the prime provider contract model and although the Ombudsman did not find it to be a fault on the part of the Council not to spot contract outside the prime provider model, a 10 month period in residential care for someone assessed as suitable for home care is not acceptable. It is important that the Council critically assess its own performance and as noted by the Ombudsman at paragraph 52 of the Report it is accepted that in care planning terms spot contracting should have been considered at an earlier stage

1.13 Secondly, the Council was at fault for placing Mrs A on a dementia unit. This finding is accepted. Although Mr A was involved in the decision, ultimately the Council is responsible for meeting Mrs A's needs in a suitable way and should not have agreed to this particular placement.

1.14 Thirdly, the Council was at fault for not reviewing Mrs A's care plan when her situation changed. The Ombudsman accepts that it is for the Council to determine how to meet need and that service user wishes must be considered but not necessarily followed (paragraph 54). In the same paragraph the Ombudsman accepts that on a review it would have been permissible for the Council to conclude that residential provision was suitable for Mrs A in the circumstances at that time. Nonetheless it is the case that no such review took place and the Council accepts that it should.

Actions the Council has taken or will take

1.15 The Council has accepted the recommendations made by the Ombudsman at paragraph 58 of the Report concerning how Mr and Mrs A should be compensated. The process of making those payments has already been commenced.

1.16 Steps have also been taken operationally to address the circumstances that happened in this case. In particular:-

- An escalation process has been put in place such that 8 weeks is the maximum permissible length of a short term placement. Anything over this 8 week period has to be agreed by an Area Manager, anything above 16 weeks has to be agreed by a County Manager, above 20 weeks by an Assistant Director and above 24 weeks by the

Executive Director . The current longest wait in a short term residential care bed is below the 4 week mark.

- The brokerage team alert the County Manager Adult Frailty and Long Term Conditions of any cases over 8 weeks in short term residential care.
- Appropriate use on a last resort basis of providers outside the home care prime provider contracts to be signed off and agreed by County Managers
- Access to all new short term care residential placements has to be agreed by the County Manager or Area Manager where this responsibility has been delegated.
- These procedures have been issued to all staff and will continue to be issued as reminders at appropriate intervals.

1.17 In addition to the above the Council has commenced reviews of the other cases referred to in the Ombudsman's Report. This had not been completed at the date of publication of this Report but such reviews will be actioned in accordance with the Ombudsman's recommendations at paragraphs 62 and 63 of the Report and reported back to the Ombudsman in accordance with paragraph 64 of the Report.

2. Legal Issues:

2.1 Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

The Recommendations relate to actions to be taken to address failings identified by an Ombudsman's reports and should lead to improvements for people with a protected characteristic.

2.2 Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

The improvements identified should help to contribute to the aims of the JHWS in relation to older and disabled people

2.3 Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

There are not considered to be any direct implications for crime and disorder issues

3. Conclusion

3.1 The role of full Council is set out in section 31 of the Local Government Act 1974 which requires the Ombudsman's Report to be laid before the Council and it is the duty of the Council to consider the report and, within the period of three months beginning with the date on which they received the report,

to notify the Ombudsman of the action which the Council has taken or proposes to take.

- 3.2 This report therefore invites the Council to consider the Ombudsman's Report at Appendix A and the actions already taken or identified to be taken and identify if there are any other actions it considers the Council should take.

4. Legal Comments:

The role of the Council in receiving the Ombudsman's Report is set out in the Report.

The Council cannot reject the Ombudsman's findings except by way of judicial review. There are no grounds on which the findings of the Ombudsman on the facts of this case could successfully be judicially reviewed.

The Council cannot reject or amend the Ombudsman's recommendations except on rational grounds. Given that the findings cannot be challenged it is not considered that there are legal grounds on which the recommendations could be rejected.

Consideration of an Ombudsman's Report issued under section 31 of the Local Government Act 1974 is a matter reserved to full Council.

5. Resource Comments:

The resource implications in relation to this case are set out in the Ombudsman's Report. In accepting the recommendations of the report the Council is currently in the process of paying compensation to reflect the distress ensued by the complainants and reimburse costs incurred for travel based on the Council's rate for mileage.

The escalation process also described in this document should also ensure that the resource implications for similar incidences are kept to a minimum.

6. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

Not Applicable

d) Have Risks and Impact Analysis been carried out??

Yes

e) Risks and Impact Analysis

See the body of the Report

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Report of the Local Government Ombudsman

8. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by David Coleman, Chief Legal Officer who can be contacted on 01522 552134 or david.coleman@lincolnshire.gov.uk.

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