

**Open Report on behalf of Glen Garrod, Executive Director for Adult Care and Community Wellbeing and David Coleman, Monitoring Officer**

Report to:	<b>Executive</b>
Date:	<b>5 October 2021</b>
Subject:	<b>Report by the Local Government and Social Care Ombudsman</b>
Decision Reference:	<b>I022771</b>
Key decision?	<b>No</b>

**Summary:**

This report to the Executive sets out the Report by the Local Government and Social Care Ombudsman ("the Ombudsman") into allegations of maladministration. The Executive is requested to receive the Ombudsman's report on behalf of the Council and consider the recommendations of the Ombudsman and the actions taken and proposed to be taken by the Council under the Local Government Act 1974.

In addition, this report fulfils the statutory responsibility of the Monitoring Officer under section 5A of the Local Government and Housing Act 1989 to report to the Executive instances of maladministration in the exercise of executive functions identified as a result of the Ombudsman's investigation.

**Recommendation(s):**

That the Executive:-

1. Receives and considers the report published by the Ombudsman on 6 July 2021 and contained within Appendix A.
2. Notes and affirms the actions already taken to address the concerns set out in the Ombudsman's report as set out in this report.
3. Accepts the first two recommendations of the Ombudsman as set out in paragraph 70 of the Ombudsman's report at Appendix A.
4. Accepts the requirement for the Council to act with all possible urgency to move from a net to a gross payment arrangement consistent with properly managing the risks of the change for the Council, providers and service users.

5. Notes, confirms and approves the actions taken both in respect of practice changes already implemented and the significant actions and change in systems being implemented to bring about the changes required to its payment mechanism. It also notes the work outstanding and the assurance that this will be actioned with all possible urgency.

**Alternatives Considered:**

No alternatives considered.

**Reasons for Recommendation:**

The Council accepts the findings set out in the Ombudsman's report 6 July 2021.

The service to the individual and her family fell short of the standard that the Council would wish to see delivered to the residents of Lincolnshire. The Council had already offered its apologies to the complainant but in accordance with the Ombudsman's recommendation it has provided a further formal apology in writing.

It is right in these circumstances that the Council accepts the Ombudsman's recommendation to pay compensation in the sum of £600 in recognition of the time, trouble and distress that has been caused to the complainant and it has already done so.

The change from a "net" to a "gross" mechanism for payment to the Council's commissioned residential providers has already been the subject of Executive decision on 6 October 2020 and changes to complete its implementation are underway.

It is right therefore that the recommendation to complete the changes is accepted. The Ombudsman recommends that the changes to the payment arrangements are completed "as a matter of urgency". It is not clear that the Ombudsman means by this phrase but there are a number of risks to the Council, service users and providers of moving to a gross payment arrangement in an uncontrolled way. The Council therefore needs to ensure that these changes are made with all possible urgency consistent with not compromising the Council or the customers it serves. The work already carried out and still to be carried out in support of the recommendations is detailed below.

**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. The Ombudsman has issued this public report and included recommendations that he considers would be necessary to remedy the injustice in this case.
- 1.3 This report is issued under section 31 of the 1974 Act. As a result the Report must be made public by the Council and placed before the Council so that it can consider the report and notify the Ombudsman of any action taken or proposed to be taken by the Council in response.
- 1.4 In addition the Monitoring Officer is under a separate statutory responsibility under section 5A of the Local Government and Housing Act 1989 to report to the Executive instances of maladministration in the exercise of executive functions identified as a result of an Ombudsman's investigation. On receipt of the Monitoring Officer's Report the Executive must consider the report and determine (a) what action (if any) the Executive has taken or proposes to take in response to the report, b) when it will take any proposed action and (c) the reasons for taking the action or, as the case may be, for taking no action.
- 1.5 The report therefore enables the Executive to comply with the Council's obligation under s.31 of the 1974 Act and its obligations under section 5A of the 1989 Act.

### **The Complaint**

- 1.6 The complaint to the Ombudsman focused on the service the Council provided in arranging care in a residential home for the complainant's mother. In particular she complained that the Council failed to explain or follow its duties under the Care Act in relation to the payment of care fees in the following way:-
- Failed to fully explain the options available and the implications for each of the different options before the care started;
  - Failed to offer Mrs B the option of paying the top up fee and Mrs C's service user contribution to the Council;
  - Did not provide a written confirmation of the fee paying arrangement until April 2020 and then sent three different versions with no explanation;
  - Failed to explain or provide information about the deferred payment agreement before the end of the 12 week disregard period;
  - Failed to support Mrs B when the care home took duplicate payments for Mrs C's service user contribution directly from Mrs C's bank account and refused to refund the money for several months; and

- Had not explained to Mrs B when and how the accumulated debt will be repaid when Mrs C's flat is sold.

### **The Background and Context of the Complaint**

- 1.7 In order to fully understand the complaint made by Mrs B, it is important to understand the background and context to this complaint. Mrs B had previously made a complaint about the arrangements that were made when her father was placed in a care home on an emergency basis in March 2016. The Council were at fault as they did not offer a care home without a top up fee, did not meet the full cost of the home including the top up when no home within the personal budget was found, did not offer the option of paying any top up fee to the Council, did not fully explain the Council's duties under the Act and the person's rights and did not intervene when Mr C was threatened with eviction.
- 1.8 In January 2018, the Local Government & Social Care Ombudsman (LGO) issued a first public report which made a finding that the Council's third party top-up payment arrangements departed from the Care and Support Statutory Guidance and that the Council had not given adequate or cogent reasons for that departure.
- 1.9 Historically the Council has always in the first instance paid the residential care provider the cost of the service user's care less any service user contribution and third party "top up". The care homes have then been required contractually to attempt to collect on behalf of the Council the service user contributions and any third party "top ups". It was only after the care home had been unsuccessful that the Council paid the amount of the service user contribution and/or third party top-up to the provider. This is referred to as a "net" payment arrangement.
- 1.10 Under a "gross" payment arrangement the Council will pay the full amount inclusive of both service user contribution and third party top-up to the provider straight away and from the start recover any outstanding service user contribution or top-up from the service user or third party without any arrangement for the provider to undertake initial collection.
- 1.11 The LGO concluded that the Council's payment arrangements amounted to maladministration. In the report, the LGO recommended that the Council review its procedures to ensure that people were given the option to pay the third party "top up" to the Council; to review its third party contract to ensure the same and to review its existing top up arrangements to bring them in line with the Care Act.
- 1.12 That first public LGO report was considered by the Adults and Community Wellbeing Scrutiny Committee and by the Executive. At its meeting on 6 March 2018 the Executive approved the carrying out of a review and delegated to the Executive Councillor for Adult Care, Health and Children's Services the decision about whether to accept the LGO's recommendations.

- 1.13 On 10 July 2018 the Executive Councillor for Adult Care, Health and Children's Services received a report which provided an options analysis and set out the anticipated financial and operational impacts were the Council to accept the recommendations of the LGO.
- 1.14 On the basis of that report and with the support of the Scrutiny Committee, the Executive Councillor for Adult Care, Health and Children's Services did not accept the LGO's recommendations and instead agreed to implement a modified form of the existing payment arrangements for third party top-ups and service user contributions. The modifications made clearer the legal relationships between the Council, the provider and the third party and in particular made it clear that the provider was only undertaking a collection service on behalf of the Council and the payments were at all times due to the Council and not the provider.
- 1.15 In brief the Executive Councillor for Adult Care, Health and Children's Services' original decision in 2018 was based upon the Council's systems and processes being unable to operate an alternative, gross, payments system without significant investment. On the basis of leading counsel's advice this was considered to be a reasonable and therefore lawful basis on which to choose not to follow the LGO's recommendations. However, the Executive Councillor for Adult Care, Health and Children's Services also agreed that the revised arrangements should be reviewed again in 2021/22. This would bring it in line with the review of the residential rates contracts as well as looking for a sustainable social care solution which was expected from the anticipated Green Paper.
- 1.16 On or around 12 February 2020 the LGO published a second public report expressing dissatisfaction with the Council's response to his first report and in particular taking issue with the reasons given in the July 2018 report for not accepting the original recommendations. The LGO in the second report has recommended that the Council make the necessary arrangements to ensure full compliance with the recommendations set out in his investigation report of January 2018 and provide evidence of this within three months of the date of this report. As a result the Council brought forward its review of its payment arrangements.
- 1.17 An updated paper to the Executive setting out the Council's review of its payment arrangement agreed on 6 October 2020 that the time was now right for the Council to work towards moving its payment arrangements from net to gross payments. That position was approved by the Executive. An update as to where the Council is with that process will be dealt with below.
- 1.18 The current complaint was made against this history and deals with some of the issues around moving from net payments to gross payments. In October 2020 the Ombudsman was advised of the Executive decision that was made about its payment arrangements on 6 October 2020. On 6 July 2021 the Ombudsman issued a further public report following the new complaint referred to it by Mrs B.

## The Investigation and Report

1.19 On making its own enquiries the Council concluded that the service it had provided to this family was poor and fell short of the standards which residents of Lincolnshire are entitled to expect. As a consequence of this the Council acknowledged the points set out in paragraphs 48 and 49 of the Report.

1.20 The Ombudsman's full conclusions that can be found at paragraphs 55-67 of the report. The Ombudsman in summary concluded that:

- The information provided to the family before the start of care was confusing.
- Some conversations did take place about the operation of the Deferred Payment Agreement, but the Council failed to follow it up with written information.
- There was evidence that the Council suggested that Mrs B look at other homes and evidence that one specific alternative was provided which the family explored although the confusion around the fees meant that Mrs B did not fully understand the consequences of accepting a place at the Home.
- Had the Council taken responsibility for payment of the full charges, the Council would have agreed the fees, Mrs B would not have been in negotiations with the home about top ups fees or self-funding rates. The home would also not have been party to financial information about the resident. The weekly rate would have been clear and the Council should have intervened sooner once it was clear overpayments had been made.
- Clear and consistent timely information was not provided about the application of the top up during the 12 week period of disregard.
- There was further confusion and delay as it was not explained that Mrs B could sign the third party top up as an eligible resident even though it was a first party top up. Differing amounts added to the confusion and resulted in further delay to the resolution of the payments.
- The Ombudsman did not find fault with the Council as a result of the increase in care home fees on a self-funding basis as this was not within the control of the Council.

1.21 Whilst the Ombudsman has taken the view that all of the faults would not have occurred if the Council had already been operating a "gross payment mechanism", the Council does not share this view. The provision of timely information and advice, discussions about options and the level of fees would have been the same irrespective of the nature of the payment mechanism.

## Practice Improvements

- 1.22 In October 2020, the Council set up a working group to review the systems and processes and the customer's experience of the process for charging individuals for their care in accordance with the Care Act 2014 and its associated regulations. Its purpose was to revisit existing processes, review its information and advice given to potential residents and to review the documentation involved within the process. This process also cast a critical eye over the issues raised within the current complaint.
- 1.23 As part of this review process the Council completed the following action plan

WHAT HAPPENED	DEVELOPMENT ACTIONS/OBJECTIVES ARE SMART
<p><b>Mrs B complained about the way we arranged care for her mother, Mrs C in a care home.</b></p>	
<p><b>Fault was found in the following areas:</b></p>	
<p><u>Our Advice and Information</u></p> <p>The investigation found we failed to fully explain the options available and the implications of different options before the care started. Mrs C moved into residential care and fee paying information was not supplied for a further three months.</p>	<p>To provide clear and consistent and timely information:</p> <p>Practitioner Finance Charging Process Briefings were held in December 2020 across Adult Care. Later in that month further information was cascaded to all teams in readiness for the changes to the Financial Assessments; which assigned the responsibilities to Practitioners for starting this process. Key messages included that 'all keyworkers should expect to clarify financial circumstances and record the outcome of conversations in case notes following up any significant or complex discussions with a letter'. Appointed 'Finance Champions' are in place in all areas of Adult Frailty &amp; Long Term Conditions. These staff have been trained to lead on supporting staff and specialise in supporting more complex financial situations and as such provide oversight. They are responsible for updating their teams on development updates.</p> <p>All Finance factsheets were reviewed and updated in December 2020 and are in operation currently.</p>

<b>WHAT HAPPENED</b>	<b>DEVELOPMENT ACTIONS/OBJECTIVES ARE SMART</b>
It was found that we failed to explain or provide information about the deferred payment agreement before the end of the twelve week disregard period.	A specific Deferred Payment Factsheet was produced. As above, all practitioners were informed that information must be supplied at the earliest point.
It was also found that we gave conflicting advice about TPTU payments during the 12 week disregard period. It resulted in a seven month delay until payment was confirmed.	This has been clarified in the factsheet. Also a presentation was produced and delivered to Heads of Service, Area Managers, Locality Leads & Lead Practitioners across Adult Care. This was presented by the Principal Lawyer for Adult Care at the Adult Care Leadership forum on 15 June 2021. Faults found in this investigation were presented as key messages and as such included clarity of top up payments.
Confusing information was given in that Third Party Top Up Agreements were sent with no explanation. Mrs B found this confusing as there was no separate first party for her to sign	<p>Mrs B could have signed the third party top up agreement as an eligible resident under the Council's framework contract but this was not explained to her.</p> <p>The residential framework is under review currently, ready for implementation next year. The Principal Lawyer for Adult Care met with Commercial team managers and the review will include matters from this investigation and the form currently in use in line with payments changes as per further below.</p>
An explanation was not given in a timely way when and how the accumulated debt will be repaid once Mrs C's home sold.	A flowchart was produced to provide an easy guide to the process that can be given at the outset to negate risk of information/awareness delay. This provides an overview of how the agreement works and the processes, costs & timescales involved.
The Ombudsman found a lack of clarity over the level of the Home's fees and this was a fault which impacted upon Mrs B's ability to make an informed choice which was best for Mrs C.	The 15.06 2021 presentation informed managers of the vigilance required in ensuring all providers know that they can only charge the LCC contracted rate under the Traditional Deferred Payment Agreement. This has been further clarified in the deferred payment flow charts; two charts differentiate the 'loan' from the 'traditional' agreement.

<b>WHAT HAPPENED</b>	<b>DEVELOPMENT ACTIONS/OBJECTIVES ARE SMART</b>
<p>The Council accepted that our information and advice was lacking and at times confusing.</p>	<p>A Task &amp; Finish group was established in October 2020 to review the customer experience with regard to financial dealings so that accurate and timely information can be passed on at the earliest opportunity. This was chaired by the Head of Service, Adult Frailty and Long Term Conditions and the group membership includes reps from Serco, Finance, Adult Frailty teams and legal services. The group has provided governance for the actions highlighted in this plan.</p>
<p><u>Payments:</u></p> <p>We failed to offer Mrs B the option of paying the top-up fee and Mrs C's service-user contribution directly to the Council.</p>	<p>The decision to change payment arrangements was taken by the Council's Executive Committee in October 2020. The Executive agreed to changing paying providers net amounts to instead paying the gross amount of a residential care package. As a result a programme to change systems was approved; this has started and was delayed due to the pandemic. This delay, along with other factors deemed relevant to this complaint were relayed to the Ombudsman. The Ombudsman decided to publish a further public report and recommended that the Executive consider this latest report and recommendations, which includes progressing the payment changes as a matter of urgency. The report is scheduled to be placed before the Executive in October 2021.</p>
<p><u>Support to Mrs B and Mrs C findings:</u></p> <p>The Council were found to have failed to support Mrs B when the care home took duplicate payments for Mrs C's service-user contribution directly from Mrs C's bank account and refused to refund the money for several months.</p>	<p>Our responsibilities to support and protect families from these matters are clear. We must interject at the soonest opportunity and take the responsibility for resolution as we have in other similar cases. This was included in the Presentation delivered on 15 June 2021 and is an expectation.</p>

WHAT HAPPENED	DEVELOPMENT ACTIONS/OBJECTIVES ARE SMART
General issues arising from this particular complaint	A review was commissioned in order to undertake an objective account of the complaint events that originated from the operational team. This was completed with recommendations which have been accepted to protect reoccurrence, in order to provide good support to our residents and to ensure developmental oversight of practitioners.

### **Moving from Net to a Gross Payment Mechanism**

- 1.24 The Executive made a decision on 6 October 2020 to make changes to its payment mechanism to move from a net payment mechanism to a gross payment mechanism. In order to make this change there have been a number of changes with the Council's processes and software which require implementation before the Council can confidently move over to paying its commissioned residential providers in this way. The move to a gross payment basis is a large scale project given its many interdependencies and scale of financial income and expenditure involved.
- 1.25 Each individual entering adult social care is offered a financial assessment to ascertain how much they can afford to pay towards their care needs, this is their financial contribution. The Council operates a system called Abacus which uses the financial information provided by the individual to calculate their contribution.
- 1.26 Paying on a net payment basis, the Council subtracts the individual's contribution from their cost of care and pays the difference to the care home. The payment to the home of the net amount is made from Mosaic, the Council's client record system. The home then collects the contribution directly from the individual service user on behalf of the Council.
- 1.27 To enable the Council to move to a gross payments basis, the Council needs to;
- have a charging system and all the associated governance structures and processes in place to enable the council to collect the individual's contribution to their care directly from the individual, forecast to be upwards of £26m income per year.
  - change its payment systems structure to pay providers for the full cost of care, approx. £81m per year, rather than the full cost less the service user contribution.

- have agreement from the 3,000+ individuals, or their representative, that they will cancel the current payment arrangements they have in place eg direct debit to the care home and that they will set up a new payment arrangement into the Council.
- operate an efficient and effective Credit Control function to ensure that the income from any individual who is only able to pay via invoice is collected promptly.
- ensure our systems can talk to each other. When a front line worker is in front of an individual they need to be able to see their client record and their financial information. Enabling the systems to interact also provides an ability to escalate any non-payment by an individual or to a provider at the earliest opportunity and enable resolution.

1.28 The report received by the Executive in October 2020 highlighted what had been done up to that point and the further improvements needed to move to a gross payment basis. Since October 2020 we have;

- streamlined our existing systems from four systems to three to avoid duplication in process. The system risks identified earlier in the project planning stages have also been minimised further by recent technological developments now available from our software provider.
- made progress with the Debt Review Programme which is now well underway. The aim of this programme is to provide visibility of the current level of debt held and the reasons why it is unpaid. This is key to ensuring we operate an efficient and effective Credit Control process as we move to gross given the increased level of income expected into the Council. The Financial Assessment Improvement Programme, chaired by the Director of Adult Social Care, has oversight of Adult Care debt and the process changes in train to prepare for the move to gross.
- developed a master client dataset which identifies who is residing in which home, their weekly cost of care and the contribution towards that care.

1.29 There are four fundamental work streams underway with oversight from the Financial Assessment Improvement Programme, these are:

- i) Utilising the master client dataset, the Council will commence individual discussions with the 3,000 individuals (and/or their representative) currently in residential care to move their payments from their residential provider into the Council.

- ii) The creation and maintenance of a Provider Register which will reconcile, for each of the 282 care homes, who is residing in their home, how they currently pay for their care, the frequency to which they pay, the amount they pay and any outstanding debt between the individual and the home.
- iii) Continue with the Debt Review Programme which will have reviewed all debts >£25,000 by 31 March 2022 and implemented where appropriate any further needed process changes.
- iv) The Council is currently running with Abacus version 1.71. December 2021 will see this upgraded to version 21.1. This upgrade ensures the system responsible for calculating and collecting service user contributions is fit for purpose and will be able to interface with the client record and provider payment detail held in Mosaic. The interface between Abacus and Mosaic can then be developed.

1.30 The Council has explored whether the implementation of a gross payment basis could be put in place as a matter of urgency however the following risks are considered to be too great:

- We need to work with 3,000 vulnerable individuals or their representative to gain their agreement to change their financial payments. Each individual currently has their own, often longstanding, financial arrangements in place with the homes they are living in. The individuals need to cancel their existing arrangements with the home and set up a new arrangement between themselves and the Council.
- We need to ensure the cash flow into the 282 providers is maintained during the transition and avoid any confusion around who should be paying what. For example we need to work with each provider so that they know that from a point in time they will no longer receive their income from their residents instead they will receive payment from the Council. For them to receive payment from the Council, the existing documentation between the Council and the provider (known as a purchase service request form) needs to be prompt to trigger the payment. Any delay in this paperwork will result in no payment to the provider.

1.31 The structure of the programme to transition to a gross payment mechanism is such that any individual who may be at risk of pressure from a provider due to unpaid bills will be identified through the work streams above and the appropriate action taken as soon as this risk is highlighted. This structure minimises the risk to individuals of any undue pressure prior to the move to gross.

1.32 We will continue to work with individuals, their families and the organisations involved. The priority for the council is to transition at a pace which ensures the financial security for all involved. The move to gross is planned for the first quarter of 2022-23.

- 1.33 For the Council simply to proceed to make these changes as a matter of urgency as recommended by the LGO without having managed these impacts will be a recipe for confusion with the potential for vulnerable adults to be making duplicate payments or providers continuing to seek to collect monies from individuals when they should not be. These are matters which the LGO could be expected to take exception to if they were allowed to happen. At the same time it is accepted that the Council should act with that degree of urgency which is consistent with controlled management of the change in the interests of the Council, providers and service users.

## **Legal Issues**

### Care Act 2014

- 1.34 The Care Act 2014, the Statutory Guidance and the Care and Support (Charging and Assessment of Resources) Regulations govern the Council's duties to assess an individual's needs and to make provision to meet those needs. Where the Council wishes to charge for services it must carry out a financial assessment in accordance with s.17 of the Care Act and the Charging and Assessment Regulations referred to above. The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 together with Guidance set out in Annexe A "Choice of accommodation and additional payments govern how individuals have the right to choose their accommodation in certain circumstances. This annexe also sets out the responsibility for costs and to whom the payments are made. The Ombudsman did not accept that the Council had cogent reasons for departing from this guidance. This is no longer relevant (save for historical clarity) in that the Council has now determined to change the way it makes its payments to its commissioned residential providers.

### The Ombudsman's Report

- 1.35 The Report at Appendix A is issued under section 31 of the 1974 Act. As a result the Report must be made public by the Council and placed before the Council so that it can consider the report and notify the Ombudsman of any action taken or proposed to be taken by the Council in response.
- 1.36 Because the Report deals with matters which fall within the remit of the Executive it must be placed before the Executive.
- 1.37 The Council in responding to an Ombudsman's Report must accept the findings of the Ombudsman unless it judicially reviews the Ombudsman to challenge those findings. Having accepted the findings the Council is not required to follow the Ombudsman's recommendations if it has cogent reasons not to.

- 1.38 In this case the Council has not challenged the conclusions of the report. The wording of the Ombudsman's final recommendation is unclear. There are cogent reasons set out in the Report for not proceeding "as a matter of urgency" if this means without regard to the need to make the change to a gross payment arrangement in a controlled manner. The Council will implement the changes to the payment mechanism with all possible urgency having regard to the need to manage the potential impacts not just on the Council but also on providers and service users.

#### The Role of the Monitoring Officer

- 1.39 The Monitoring Officer is under a statutory responsibility under section 5A of the Local Government and Housing Act 1989 to report to the Executive instances of maladministration in the exercise of executive functions identified as a result of an Ombudsman's investigation. On receipt of the Monitoring Officer's Report the Executive must consider the Report and determine (a) what action (if any) the executive has taken or proposes to take in response to the report, (b) when it will take any proposed action and (c) the reasons for taking the action or, as the case may be, for taking no action.
- 1.40 The Report identifies the actions to be taken and the proposed timetable and the reasons for taking the action.

#### Equality Act 2010

- 1.41 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.
- 1.42 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- 1.43 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.
- 1.44 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.
- 1.45 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.
- 1.46 Compliance with the duties in section 149 may involve treating some persons more favourably than others.
- 1.47 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 decision set out in the Report rectifies a finding of maladministration made by the Ombudsman. The work undertaken and described above will rectify the impact of that maladministration which will have impacted disproportionately on older people and people with a disability.

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

- 1.48 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

There are no direct implications of this report for the JSNA or the JHWS.

Crime and Disorder

- 1.49 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

No implications relevant to section 17 of the Crime and Disorder Act 1998 have been identified in respect of this report.

### **Conclusion and Next Steps**

- 1.50 The Council accepts the findings set out in the Ombudsman report dated 6 July 2021 and have undertaken further assurance work to try to reduce a reoccurrence of these issues.
- 1.51 In addition, the Council is in the process of carrying out the work necessary to implement the change to its payment arrangements. This is anticipated to take place in the first quarter of 2022/23
- 1.52 Following the Executive's decision a response will be provided to the Ombudsman confirming the actions taken by the Council in response to his report.

#### **Legal Comments:**

The Council is required to accept the findings set out in the Ombudsman's Report.

The Council is not required to accept the recommendations of the Ombudsman if it has cogent reason not to. The apology and the compensation have already been actioned. The Report sets out the issues relating to the third of the Ombudsman's recommendations. The Executive is required to consider the Report and decide how to proceed as set out in the Report.

#### **Resource Comments:**

Any costs associated with the move to a gross payment mechanism can be met from within existing budgets. To minimise financial risk to the Council, the individuals in receipt of residential care and the providers of residential care, it is vital that the systems and processes which fundamentally underpin the move to gross are in place. This includes

- Identifying and reaching agreement with the 3,000+ people in receipt of care that they have made arrangements to cancel their existing payments to providers and set up new arrangements to pay the Council prior to moving to gross thus reducing the risk to the Council of increased debt.
- Ensuring mechanisms are in place to maintain the cash flow into the 282 privately owned residential providers and that there is no duplication/omission of payments.

- The financial systems are in place with ease of reconciliation to ensure any potential financial risks are highlighted and resolved as early as possible.

## Consultation

**Has The Local Member Been Consulted?** - N/A

**Has The Executive Councillor Been Consulted?** - Yes.

## Scrutiny Comments

The Adults and Community Wellbeing Scrutiny Committee supports the five recommendations to the Executive.

The Committee has agreed that the following comments would be put forward:

- The complexity of the system for assessing the financial eligibility of people for social care funded by the local authority was acknowledged.
- It was a benefit of the new arrangements that the pressures on care providers would be alleviated.
- The Committee was reassured that all IT new systems would be tested in advance of the April 2022 target implementation date and resources were in place for this. This target date was supported, provided that this allowed sufficient time for the testing of the IT systems.
- Consideration could be given to the resources required to contact over 3,000 individuals (or representatives), to move their payments from their residential provider to the council. Consideration could also be given to how these people are prioritised.
- There was a suggestion that where arrears in payments for 'top up' payments were accruing, support and advice could be provided to families at an earlier stage.
- There was a suggestion that training for all relevant staff should be reviewed. Practitioners, who are experts in the assessment of care needs, are not necessarily experts in finance, although it is acknowledged that finance champions have been identified in each service team.

**Has a Risks and Impact Analysis been carried out?** Yes

**Risks and Impact Analysis** - See the body of the Report

## Appendices

These are listed below and attached at the back of the report

Appendix A	Report by the Local Government and Social Care Ombudsman 6 July 2021.
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## Background Papers

The following Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report.

Background Paper	Where it can be found
Executive report of 6th March 2018	<a href="#">Agenda for Executive on Tuesday, 6th March, 2018, 10.30 am (moderngov.co.uk)</a>
Report to the Executive Councillor 10th July 2018	<a href="#">Decision - Payment Arrangements for Residential Care and Residential Care with Nursing (moderngov.co.uk)</a>
Executive report of 6th October 2020.	<a href="#">Agenda for Executive on Tuesday, 6th October, 2020, 10.30 am (moderngov.co.uk)</a>

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