

**Report of Local Government Ombudsman - Judgement On Adult Social Care**

<b>COUNCIL MEETING DATE</b>  25 October, 2017	<b>Classification:</b>  Open  If exempt, the reason will be listed in the main body of this report.
<b>Ward(s) affected</b>  All	
<b>Cabinet Member</b>  Cllr Jonathon McShane - Health, Social Care and Devolution	
<b>Key Decision</b> N/A  <b>Reason – For information</b>	
<b>Group Director</b>  Anne Canning, Group Director of Children, Adults and Community Health	

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1 The Local Government Ombudsman (LGO) has issued a report (Appendix 1) following an investigation of a complaint against the Council. The complaint related to a nine month delay of an assessment and subsequent acceptance of funding responsibility for an individual, Mrs Y, who was placed by her daughter, Mrs X into a residential care home. The Ombudsman found that there had been fault on the part of the Council, and this had in their view caused injustice to the complainant.
- 1.2 The LGO report sets out two recommendations, of which one has already been implemented by the Council. The Council has taken the action which the Ombudsman regards as providing a satisfactory remedy for the complaint, and provided an update to the LGO. This report to full Council sets out those recommendations and the action undertaken by the Council.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1 The LGO investigation referred to above relates to the complaint by Mrs Y's daughter about the Council's refusal to fund her late mother, Mrs Y's residential care home, from 28<sup>th</sup> September, 2014. Mrs X claims that the Council should have reassessed her mother's needs and that she had been seeking an assessment prior to her mother being transferred into a residential care home.
- 2.2. The Council made clear to the LGO that Mrs Y was placed by her immediate family via a private arrangement into a residential home.
- 2.3 Mrs Y's placement was made without prior assessment by the Council. The Council highlighted to the LGO that they had no knowledge of the placement. The LGO report stated that the evidence supports the Council's position on this. In the first instance the Council was informed by Mrs Y's family that she was taken out of her ordinary accommodation to go on a family vacation.
- 2.4 The Council explained to the LGO that the under the Care Act 2014 the provision of residential care is subject to clear eligibility criteria and an assessment process. It was the Council's view that Mrs Y could have been supported in her own accommodation in the community even if her needs further changed which would also be a financially cost effective solution in comparison to the cost of residential care.
- 2.5 The Council was first advised of Mrs Y's family decision for Mrs Y to remain permanently in residential care in November 2014.
- 2.6 The Council emphasized to the LGO that it was their view that Mrs Y could have been supported in the community and therefore not in need of residential care, the Council was not liable for residential care home fees. It was also the Council's view that as the arrangement to place

Mrs Y by her family was intentional and outside of the borough, there were sufficient grounds for the Council to discuss the residency status with the host local authority. This was in order to consider the Ordinary Residence of Mrs Y, as well as which local authority would hold the future responsibility for Mrs Y's care and support provision.

- 2.7 The Council during its liaisons with Mrs Y's family's solicitor sought ongoing advice from the Council's legal services who responded to all enquiries and correspondence from the complainant solicitor.
- 2.8 The LGO's decision was based on case record information, documents on adult social care system and through interviews.

### **3. LGO RECOMMENDATIONS**

#### **3.1 The LGO report makes a series of recommendations as set out below.**

- **The Council to settle the invoice with the residential care home based on its assessed weekly contribution between the 26<sup>th</sup> November 2014 and the 20<sup>th</sup> October, 2015. The Council has worked this out to be £19,898.**
- **The complainant has reportedly already made some payments to the residential care home which are more than Mrs Y's assessed weekly contribution therefore the care home agrees to reimburse those payments to Mrs Y's estate on receipt of the Council's payment.**
- **The Council was requested to reimburse legal fees as part of the Ombudsman decision. The LGO decided it was reasonable for the complainant to engage legal help in what the LGO considered to be a complex matter where the complainant was dealing with a public body that failed to act for a lengthy period.**

### **4. REASONS FOR LGO DECISION**

- 4.1 This report forms part of the Council's obligations under the Local Government Act 1974 to publicise receipt of a Local Government Ombudsman report.
- 4.2 The LGO has determined the Council had delayed for nine months in carrying out the assessment. The LGO has interpreted that this has caused financial loss to Mrs Y.

### **5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 5.1 None.

## **6. BACKGROUND INFORMATION**

- 6.1 The Council has a statutory responsibility to carry out an assessment of need where it appears an adult may be in need of community care services. The assessment must be of the adult's needs and how they impact on their wellbeing and the outcomes they want to achieve. It must involve the individual and where appropriate their carer or a person they want to involve. Statutory guidance also requires the Council to undertake a proportionate review of an adult who is in receipt of services and/or where there has been a change in a service user's circumstances.
- 6.2 Mrs Y was a woman of Turkish-Cypriot origin. She was a widow with 4 children. She had a diagnosis of Dementia with cognitive and communication impairments. Her daughter Mrs X advocated on her behalf.
- 6.3 Mrs Y had resided in a local authority sheltered accommodation flat with support from her family.
- 6.4 Mrs Y was experiencing a decline in her physical abilities and was unable to undertake practical tasks with regards to her daily living needs.
- 6.5 Mrs Y was admitted to hospital in December 2013 and remained there for a number of months until the time of her discharge in April, 2014. Although there were discussions around the best options of her discharge destination and future care and support needs, Mrs Y was determined to return back to her independent accommodation. This information was related to the Council by two of her daughters who reported Mrs Y wished to die in her own home rather than in a care home setting. Mrs Y's family were in full support of this request.
- 6.6 From a practice point of view, the Council's position is that a permanent care home placement is a last resort decision and preferably should not be made at a point where the individual has not had a sufficient opportunity to recuperate following a period of illness and return to their baseline level of functioning.

## **7. INVESTIGATION AND FINDINGS OF THE LGO**

- 7.1 In April 2014 following a lengthy period of hospitalisation, Mrs Y's condition had deteriorated to the extent that the multidisciplinary team's recommendation was a nursing home placement. At this point in time her family stated that they wanted to care for her at home. Subsequently, a package of care was arranged to enable Mrs Y to return home.

- 7.2 In September, 2014 the Council were advised via Mrs Y's care agency that Mrs X had cancelled home care as the family were going on holiday abroad for 2 to 3 weeks. Mrs X had advised the homecare provider that she would contact them once they had returned in order to re-start the package of care.
- 7.3 It was established that Mrs X did not take her mother on holiday but instead arranged for her to go into a care home outside of Hackney. The arrangement Mrs X had with the home was a private one at a cost of £550 per week and described as temporary respite.
- 7.4 Mrs X asserted that she had spoken to Council officers by telephone requesting assistance to arrange respite care and made several attempts to do so as she was reported to be struggling to care for her mother. There is no recorded evidence on Mrs Y's case file to evidence any contact during this period or to evidence that to suggest any contact had been repeatedly made by Mrs X requesting for respite care.
- 7.5 In October, 2014 Mrs X had contacted the Council as she had been finding it difficult to manage and reported being no longer able to care for her mother throughout the day in the periods when organised care was not visiting. There is however no record of Mrs X advising the Council that Mrs Y was no longer living in Hackney or had been already placed into respite care in Council C.
- 7.6 The homecare agency which provided care and support to Mrs Y reported that since her discharge from hospital in early 2014 her condition was improving therefore, it was surprising the family had not been coping and were of the opinion Mrs Y required residential care.
- 7.7 Mrs X advised the LGO her intention was to have her mother return home but was concerned the Council would not provide more hours of care to an already extensive care package. Mrs X further advised the LGO that by November 2014 a decision was made by the family that her mother would not be returning home as Mrs Y had settled well in the care home she was in.
- 7.8 Investigations by the Council determined that Mrs Y was no longer registered with her GP and had been confirmed as having moved out of the borough permanently prior to the family's decision that it is reported they could not manage Mrs Y any longer at home.
- 7.9 In November, 2014 Mrs X visited the Council offices and advised that she had placed her mother into a care home and as she could not continue to care for her mother at home. It was at this point the Council made it clear as this was a private arrangement Mrs Y was advised

return home in order for a re-assessment or review to be conducted in order to determine if Mrs Y required a long term placement.

- 7.10 In December the Council made the decision that as the family had voluntarily transferred Mrs Y into another borough and fees were being funded privately with no intention of returning to Hackney she should now approach the borough the care home was located within for assistance.
- 7.11 During December 2014 and January 2015 Council officers exchanged correspondence with Council C over whose responsibility it was to fund Mrs Y's care and where she was now deemed to be ordinary resident. Both Councils sought legal advice and neither Council accepted funding responsibility.
- 7.12 In May 2015, the Council C wrote to Hackney Council requesting to arrange a social care assessment. Council C believed Mrs Y remained ordinary resident in Hackney and the responsibility for funding her care home placement should have remained with the Council. Therefore, Council C said it would refer the case to the Secretary of State if the Council did not accept responsibility. There was no evidence that either Council referred the matter to the Secretary of State.
- 7.13 In June 2015, an officer from Council C contacted the Council to advise Mrs Y wanted to return back to Hackney and still had a tenancy in Hackney.
- 7.14 A Social Worker carried out an assessment in August 2015 and determined that Mrs Y required residential care. The assessment further indicated that Mrs Y's family wanted her to return to a care home in Hackney.
- 7.15 In October 2015 Hackney agreed to fund Mrs Y's placement less her client contribution.
- 7.16 In November 2015 Mrs X instructed a solicitor to arrange the Council to pay the outstanding debt to the care home.

## **8. COMMENTS FROM THE COUNCIL**

- 8.1 Mrs X did not fully communicate to the Council the arrangement she had made for her mother as a result of her inability to continue in her caring role.
- 8.2 Mrs X failed to consult with the Council over the reported planning of Mrs Y's respite and made her own private arrangement through an acquaintance of the family who was the proprietor of the care home.

- 8.3 The agreement between Mrs X and the care home was a private arrangement solely funded by the family and without the Council's involvement or approval.
- 8.4 In October 2014 Mrs X provided inconsistent information by advising the Council that she was unable to care for Mrs Y while the fact of the matter was that Mrs Y was already in residential care home which she failed to disclose.
- 8.5 There is clear evidence to suggest that the family planned to move Mrs Y permanently to Council C by deregistering Mrs Y with her local GP; this was confirmed by the GP Practice.
- 8.6 The Council disputed ordinary residence issue with Council C as the legal advice suggests that when a person moves to another local authority area permanently under private arrangement they would usually acquire an ordinary residence in the new area.

## **9. THE COUNCIL'S COMMUNICATION WITH COMPLAINANT**

- 9.1 The Council believe that Mrs X provided inconsistent information to the Council regarding Mrs Y's condition, situation and her future intentions on how the family considered Mrs Y's care needs should be met.
- 9.2 The Council believes Mrs X had not been transparent with her family's intentions on transferring Mrs Y into a residential care home.
- 9.3 The Council had attempted to resolve the matter on several occasions taking into consideration the circumstances which Mrs Y had been placed into respite care however, the complainant was not amenable to a compromise on outstanding care home charges.

## **10. SENIOR MANAGEMENT OVERSIGHT**

- 10.1 Senior management in the Council were aware of Mrs Y's case and in liaison with legal services.
- 10.2 In December 2016, the Council attempted to settle the matter with Mrs X in a bid to resolve the ongoing dispute of outstanding care home charges. An amount (based on possible care needs) had been proposed to take over funding responsibility from March 2015 as a pragmatic gesture to finally resolve the matter. However, this offer was not accepted by Mrs X.

## **11. CONCLUSIONS**

- 11.1 Following LGO investigation report in summary, the Council has carried out the following actions
- 11.2 The Council has settled the invoice with the care home based on its assessed weekly contribution between 26<sup>th</sup> November 2014 and 20<sup>th</sup> October 2015.
- 11.3 The Council has accepted the LGO decision to reimburse Mrs X with reasonable and auditable legal fees which have been incurred during the process. Therefore, the Council is awaiting a payment request.

## **12. CONSULTATIONS**

- 12.1 Section 30 of the 1974 Local Government Act requires the Council to make a public notice in more than one newspaper within two weeks of receiving the LGO report, and to make the report available at one or more of the Council's offices for three weeks. These actions have been undertaken.

## **13. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

- 13.1 The LGO recommendations outlined in Section 3 of the report will cost approximately £24k, and will be met from existing Adult Social Care resources. The Council will settle the £19,898 invoice with the residential care home based on its assessed weekly contribution for the agreed period, and then reimburse legal fees of approximately £4k as part of the Ombudsman decision.

## **14. COMMENTS OF THE INTERIM DIRECTOR OF LEGAL**

- 14.1 The report to Cabinet sets out the outcome of the investigation by the Local Government Ombudsman ("LGO") into the complaint by the family of Mrs Y (deceased). The complaint concerns the Council's refusal to fund Mrs Y's residential care from 28 September 2014. The complaint was made by Mrs Y's daughter Mrs X who states that the Council should have reassessed Mrs Y's needs as she had been requesting an assessment before Mrs Y went into the care home.
- 14.2 There is a duty on the Council to undertake an assessment of need:
  - 14.2.1 Prior to 01.04.2015, section 47 of the NHSCCA 1990 requires local authorities to carry out an assessment of needs for community care services with a view to providing or arranging to provide



community care services to such an individual. Such community care services may be provided under sections 21 and 29 of the National Assistance Act 1948;

14.2.2 From 01.04.2015, section 9 of the Care Act 2014 imposes a duty on local authorities to undertake a needs assessment to determine whether the adult has care and support needs.

14.3 The threshold to undertake a needs assessment is very low and the duty is triggered once it appears to the local authority that an adult may have needs for care and support.

14.4 Once the assessment has been carried out, a support plan will be prepared setting out the services to be provided, subject to a financial assessment and the individual's personal contribution to the cost of care.

14.5 The duty to assess and provide services falls to the local authority where the individual is ordinarily resident. Ordinary residence in itself refers to an individual's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration."

14.6 Where an individual is placed outside a local authority's area, the deeming provisions will apply meaning that the placing authority will remain responsible for meeting the individual's care costs. The deeming provisions will however not apply where the placement was made without the knowledge or involvement of the local authority (*unless where the local authority failed to carry out their statutory duty, in which case the deeming provisions will apply*).

14.7 Where there is an alleged breach of the duty to assess and provide care and support services, the individual concerned or the individual's family will have recourse to the complaint process, including a referral to the LGO.

14.7.1 Part III of the Local Government Act 1974 (sections 26 (1) and 26A (1)) empowers the LGO to investigate complaints about 'maladministration' and 'service failure, consider the adverse impact on the person making the complaint and where this has caused an injustice, suggest a remedy.

14.7.2 Whilst the LGO has no legal power to force councils to follow their recommendations, it is always advisable for the authority to give due consideration to the LGO's recommendations and in the majority of cases, local authorities tend to accept the LGO's recommendations to remedy complaints. The LGO's recommendations may be that the local authority –

- Issue an apology to the individual or the family
- Pay a financial remedy and/or
- Improve its procedures so similar problems do not happen again.

14.8 Lessons to be learnt from the recommendations of the LGO will include

- (i) A reminder that local authorities must comply with the provisions of the Care Act 2014 in relation to assessment of needs;
- (ii) A firming up of the process for dealing promptly or within a reasonable time with requests for assessment/review of needs and provision of services;
- (iii) A general review of the practice of dealing with matters on a *Duty* basis once the support plan is signed off as this practice may give rise to slippages.

## APPENDICES

Appendix 1 – LGO Report, July, 2017

Appendix 2 – Letter to LBH, July 2017

### Background Paper

None

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