

<b>DECISION-MAKER:</b>	COUNCIL
<b>SUBJECT:</b>	LOCAL GOVERNMENT OMBUDSMAN REPORT
<b>DATE OF DECISION:</b>	14 NOVEMBER 2012
<b>REPORT OF:</b>	SENIOR MANAGER: LEGAL, HR AND DEMOCRATIC SERVICES
<b>STATEMENT OF CONFIDENTIALITY</b>	
N/A	

### **BRIEF SUMMARY**

This report has been prepared under Section 31(2) of the Local Government Act 1974. The report sets out the findings of the Local Government Ombudsman in relation to an adult social services matter. The Ombudsman has found that the Council's actions resulted in a suitable care home not being made available to the complainant at its 'usual rates' upon her discharge from hospital resulting in her family incurring the expense of additional 'top up' fees for a more expensive care home placement which the Council should have funded. The Ombudsman also criticised the Council's actions in failing to properly identify alternative care home provision for the complainant within a wider area. The Council was also asked to consider whether there was a need to review its 'usual rates' to reflect local market conditions. As a result the Ombudsman has made a finding of maladministration causing injustice in this case and has concluded that, notwithstanding the Council's willingness to remedy the matters complained of, there is a wider public interest justification in publishing a formal report in relation to this matter. The Council is now required to consider the findings of the report and the actions taken or proposed to be taken in response to it and then to report back to the Ombudsman accordingly.

### **RECOMMENDATIONS:**

- (i) To receive the report of the Local Government Ombudsman attached at Appendix 1 and consider her findings, and
- (ii) To note the Ombudsman's settlement proposals that have been agreed by the Proper Officer under powers delegated to him to settle Local Government Ombudsman complaints in accordance with the Council's Constitution: The settlement that has been agreed is to:
  - (a) Meet the full cost of the Mrs Elliot's care in Care Home B from 31<sup>st</sup> July 2011 (less the assessed contribution Mrs Elliot needed to pay.)
  - (b) Refund the top up fees Mrs Elliot's family had paid from 31<sup>st</sup> July 2011 and pay them interest on those payments at the Council's standards interest rate.
  - (c) Pay Mrs Elliot's family £500 to recognise the time, trouble and distress caused to them.
  - (d) Review the Council's guidance for staff regarding the availability of services at the Council's 'usual rate'.

(e) In the short term, to negotiate access to placements at the Council's 'usual rate' with key care home providers. In the medium terms, to hold discussions with care home providers to develop an agreement on fee levels.

## **REASONS FOR REPORT RECOMMENDATIONS**

1. The Council has fully co-operated with the investigation by the Local Government Ombudsman. The findings of the Ombudsman have already been considered and acted on by officers, including the Director and Senior Manager responsible for adult social care matters and accepted as a settlement proposal by the Head of Legal, HR and Democratic Services as the Proper Officer for such matters. The proposals set out at recommendation (ii) above offer a suitable and reasonable remedy for the complainant in this matter having regard to the level of service the complainant should reasonably have expected to have received from the Council and the impact this will have had on both the individual complainant and their family.

## **DETAIL (Including consultation carried out)**

2. Attached at Appendix 1 is a report from the Local Government Ombudsman in which he has found maladministration by the Council. Council is requested to consider the report and findings prior to issuing a response to the Ombudsman on the actions it has taken to address the maladministration identified within the report.
3. This complaint relates to the arrangements the Council made to provide nursing home care for an individual being discharged from hospital. The names used in the report are 'pseudonyms'. The Ombudsman publishes all such reports having altered the names of the individuals concerned in order to protect the privacy of individual complainants and their families.
4. In July 2011, the complainants were advised that they needed to source a nursing care home placement for their mother upon her discharge from hospital as her previous residential placement could not continue to meet her revised medical needs. Family members visited a number of care homes, all of which were more expensive than the Council's usual rate of payment (above which the family would be liable to pay any top up fees if there was a care home available at the Council's usual rate). The family requested details of care homes available at the Council's usual rate. Only one care home's details were provided on the basis that they were prepared to carry out an assessment of the individual's needs. The Council understood the willingness to carry out an assessment as acknowledgement that a place would be made available for the individual. The family visited that care home and were advised by the home that they did not have any places available at that time. As a result the family cancelled the assessment and, feeling pressured to discharge their mother from hospital, elected to place her in a home that had immediate availability but charged more than the Council's usual rate.
5. In relation to the particular matter complained of, the Ombudsman concluded that a suitable care home placement was not available at the Council's usual rate when the individual who is the subject of the complaint was discharged from hospital. Government guidance states that where a home is not available at the Council's usual rates, it should make suitable alternative

arrangements and seek no contribution from the individual other than their assessed statutory contribution. The Council's belief that a placement would have been available at the time of discharge and that the family had cancelled the assessment and opted to place the individual in more expensive accommodation resulted in a refusal to pay the additional costs of an alternative care home selected by the family. As a result the individual's family had to pay additional top up fees of £187.56 per week. The Ombudsman determined that – in her view - no accommodation was actually available at the Council's usual rates and, as a result, the Council should have paid to accommodate the lady in suitable alternative care rather than her family.

6. The Ombudsman also commented on the apparent lack of accommodation at the Council's 'usual rate' and asked that the Council consider whether there was a need to review its fee rates to reflect market conditions.
7. As a result of the findings set out in paragraph 5 and 6 above, the Ombudsman has found that the Council's failings in relation to this matter amounted to maladministration causing injustice to the complainant.
8. In response to the Ombudsman's investigation into this matter, and following consultation with the Director and Senior Manager of the relevant adult social care service area, the Head of Legal , HR and Democratic Services as the Proper Officer for the investigation and resolution of Local Government Ombudsman complaints, agreed the following settlement terms with the Ombudsman by way of remedy for the maladministration identified:
  - (a) Meet the full cost of the Mrs Elliot's care in Care Home B from 31<sup>st</sup> July 2011 (less the assessed contribution Mrs Elliot needed to pay.)
  - (b) Refund the top up fees Mrs Elliot's family had paid from 31<sup>st</sup> July 2011 and pay them interest on those payments at the Council's standards interest rate.
  - (c) Pay Mrs Elliot's family £500 to recognise the time, trouble and distress caused to them.
  - (d) Review the Council's guidance for staff regarding the availability of services at the Council's 'usual rate'.
  - (e) In the short term, to negotiate access to placements at the Council's 'usual rate' with key care home providers. In the medium terms, to hold discussions with care home providers to develop an agreement on fee levels.
9. While accepting the findings of the Ombudsman in relation to this matter it should also be noted that the timing of the events surrounding the complaint in the context of local market conditions in July 2011 is significant. The Council's "usual rates" have historically been lower than neighbouring authorities' rates and are currently on average approximately £40 per week less than neighbouring authorities' rates. This can at times cause difficulties in finding and managing placement availability. The Council has been proactive in responding to safeguarding concerns and has a robust system of collating and acting on concerns about provision. This includes, in the most serious cases, suspending the use of specific services until there is assurance about

the safety of residents or even considering moving current residents. At the time of the referral the nursing home market locally was under additional pressure as referrals were suspended from a significant service in the city due to safeguarding concerns. Those concerns have subsequently been addressed and the service has been in a position to accept new referrals since February 2012. Intensive work was undertaken with this provider over a period of a year to ensure the immediate safety of residents and to support the provider to get to a position of providing safe care without external oversight and support from Adult Social care and Health staff.

10. Since July 2011, a programme of work has commenced to promote quality and to increase availability of placements at the Council's usual rates.
  - The 2012/2013 usual rates for some care home provision has been raised by 2%.
  - A budget has been provided for equipment to support homes to cope with the increasingly frail resident population.
  - The Council has for some time funded and jointly arranged a training programme for private and voluntary sector providers. This year the funding for this programme has been increased and is focused on areas highlighted in safeguarding and quality assurance work.
  - A Quality Assurance team has been developed to work with providers. This team are working with homes to identify issues which could lead to safeguarding or registration authority concerns to develop and implement improvement programmes.
  - Work has commenced with providers and representative organisations on future relationships and rates, including a review of the current Terms of Inclusion – the basic contract used for homes (shared with Hampshire County Council and Portsmouth City Council).
  - Negotiations are underway with key providers to agree priority access to a number of placements at the Council's usual rates.
  
11. In relation to addressing the specific recommendations of the Ombudsman arising from recommendations (ii) (d) and (e), the Council has:
  - Issued appropriate reminders and management instructions to staff to remind them of the requirements of the national guidance and of the need to clearly record the discussions with families when they are considering placements which would require top ups,
  - Undertaken work to scope the number of additional placement required and negotiations are expected to be completed by late November on the provision of additional nursing home placements both for frail older people and older people with mental health problems, and
  - Reached agreement with the Hampshire Care Association to commence work on reviewing the terms of an inclusion contract that will set out the expected standards of care and fee rates. This work is expected to be completed by June 2013.

12. It should also be noted that the circumstances surrounding the availability of providers in the area at the time of the complainants discharge, the circumstances of the individual family involved, the misunderstanding between the Council and the family as to choice / availability of placement that led to the family seeking a more expensive placement were unique. There is therefore no evidence of systemic 'over-charging' of care home residents. The decision of the Ombudsman in relation to this matter is limited solely to this complaint and does not set a precedent for any other complaints or claims that come forward. Any such complaint or claim would need to be investigated on its own merits and a finding reached accordingly.

### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

13. Not to accept the findings / recommendations of the Local Government Ombudsman. This would result in further action by the Ombudsman with additional reports being issued against the Council under the Local Government Act 1974 and additional publicity requirements being imposed.

### **RESOURCE IMPLICATIONS**

#### **Capital/Revenue**

14. The cost of meeting the settlement proposals agreed with the Local Government Ombudsman would be required to be met from existing adult social care budgets. The overall cost of refunding top up fees plus interest at the Council's standard rate of 2.5% in accordance with recommendation ii (b) will be £12,505.65. The ongoing cost of complying with recommendation ii(a) will be approximately £187.56 per week (subject to any increases or decreases in charges and assessed contributions) for the duration of the complainants time at her current care home. The total amount due to the individual and their family is therefore £13,005.65.
15. It should be noted that the majority of these costs would have been incurred if the Council had accepted its liability for the full care home fees at the start of the placement. Any implications from the recommendation to review fees levels payable within the care home sector (recommendation ii(e)) which could have further budget implications for the Council would be the subject of a separate report.

#### **Property/Other**

16. None

### **LEGAL IMPLICATIONS**

#### **Statutory Power to undertake the proposals in the report:**

17. Section 30 of the Local Government Act 1974 requires that, in cases where the Local Government Ombudsman has found that injustice has been caused as a result of maladministration, the Council must give Notice of that fact to the public within 2 weeks of receiving the Ombudsman's report and make copies of that report available for public inspection.

18. Section 31(2) provides that the Council must consider the Ombudsman's report and notify the Ombudsman of the action that has been taken or is proposed to be taken within 3 months of receipt of that report.
19. Section 31(3) empowers the Council to make payment to or provide a benefit to any persona who has suffered injustice as a result of maladministration by the Council and to incur such expenditure as it considers appropriate in that regard.
20. The Monitoring Officer is also required to produce a report under S.5A of the Local Government & Housing Act 1989 when he is satisfied that maladministration has occurred. This report serves the dual purpose of a report under both the 1975 and 1989 Acts.

**Other Legal Implications:**

21. None

**POLICY FRAMEWORK IMPLICATIONS**

22. The proposals in this report are consistent with the Council's Policy Framework.

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**SUPPORTING DOCUMENTATION**

**Non-confidential appendices are in the Members' Rooms and can be accessed on-line**

**Appendices**

1.	LGO Report on investigation into complaint number 11 021 923 against Southampton City Council dated 1 <sup>st</sup> October 2012.
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**Documents In Members' Rooms**

1.	None
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**Integrated Impact Assessment**

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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**Other Background Documents**

Title of Background Paper(s)      Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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**Integrated Impact Assessment and Other Background documents available for inspection at: N/A**

<b>WARDS/COMMUNITIES AFFECTED:</b>	All
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