

11 September 2017

Agenda Item: 8

REPORT OF THE SERVICE DIRECTOR, MID NOTTINGHAMSHIRE

RECOMMENDATIONS AND ACTIONS TAKEN IN RESPONSE TO A PUBLIC REPORT FROM THE LOCAL GOVERNMENT OMBUDSMAN OFFICE

Purpose of the Report

1. For Committee to endorse the actions taken, or being taken, by the Council in response to the Ombudsman's investigation and Public Report, which has upheld the complaint against the Council. Section 31(2) of the Local Government Act 1974 requires that the report is considered by the appropriate Local Authority Committee and following this reports back on the actions taken to the Local Ombudsman.

Information and Advice

2. The Local Government Ombudsman (LGO) independently investigate complaints about local authorities after citizens have exhausted a Council's corporate complaints process and are not satisfied with the outcome. The Ombudsman can make proportionate, appropriate and reasonable recommendations to redress any faults leading to an injustice that they may find. They request that Councils follow their recommendations and local authorities abide by these, although the LGO have no legal powers to enforce them. The LGO share a draft copy of the report and recommendations with Councils and provide the opportunity for further evidence and comments to be submitted prior to issuing a final report and recommendations.
3. On 27th July 2017, the Ombudsman issued the Council with their final report following their investigation of a complaint made by a Mr K (complainant) that he was stopped from seeing his partner's mother (Mrs J) by both the Council and the Care Home in which she lives. The full final report is attached at **Appendix A**. The Ombudsman's investigation has been concluded and the final report has found Nottinghamshire County Council is at fault and has caused injustice to Mr K. The report makes three recommendations to the Council and the Care Home which are being implemented.

Ombudsman's report conclusions

4. The Council was found to be at fault because it could not produce evidence that it had properly involved Mrs J in the decision to ban Mr K from visiting her, did not complete a documented risk assessment, did not review the initial ban and failed to tell the Care Home when it lifted this ban.

5. The report also finds that the Council is accountable for the faults of the Care Home with whom it has contracted to provide care to Mrs J, for:
 - a) not ensuring that the Care Home kept proper records
 - b) the provision of inaccurate information
 - c) for threatening Mrs J with eviction if she wanted Mr K to visit her on the premises without offering all the options and
 - d) for not ensuring that the Care Home's risk assessment was robust enough, in that it did not substantiate the Care Home's allegations of the man being verbally abusive to staff, or current risks to Mrs J.
6. The Ombudsman's report recognises that to some extent the injustice to Mr K is dependent on whether Mrs J wants to see Mr K, however, overall feels that the bodies involved have not dealt fairly with Mr K and therefore should apologise to him.

Ombudsman's report recommendations

7. The report recommends that the Council will:
 - a) within the next three months commission an Independent Advocate to get Mrs J's views on seeing Mr K away from the Care Home. If Mrs J wants to see Mr K, arrange for her to do this away from the Care Home and pay Mr K £300 for the failure to do this sooner;
 - b) write to Mr K apologising for its failings and those of the Care Home and Care Provider; and
 - c) consider what action it needs to take to ensure it and its care providers deal with such matters properly in future.
8. Implementation of all of the recommendations is underway/completed as follows:
 - a) A meeting has taken place with Mrs J and an independent advocate, as well as separately with an experienced Social Work Best Interests Assessor. Mrs J retains capacity to make decisions about who she sees and where she lives and has indicated that she would like to now meet Mr K. Arrangements remain available to take Mrs J to visit Mr K outside of the home. In addition the risk assessment regarding the ban is being revised and a meeting arranged with Mr K to see if a mutually acceptable way forward can be achieved that places Mrs J's views and wishes at the centre of all future decisions on this.
 - b) A letter of apology confirming that the £300 payment will be made has been sent to Mr K.
 - c) The Council's Quality and Market Management Team have issued a letter to all its directly delivered and independent sector care homes regarding actions that they may need to consider with regards to residents and their visitors. This refers providers to the Care Quality Commission (CQC) guidance 'Visiting Rights in Care Homes' available at:

<http://www.cqc.org.uk/help-advice/what-expect-good-care-services/visiting-someone-care-home>

- d) The Council's Quality and Market Management Team has included reference to the CQC guidance regarding 'Visitors to Care Homes' in their Quality Audit Methodology staff guidance and the Care Home Audit Tool. This will provide a specific focus for monitoring provider approaches to care home visitors as part of the annual Quality Audit. The current Care Home Contract already places specific obligations on providers to 'provide and perform the service in line with the Care Quality Commission's guidance'.
 - e) The Care Home has revised its corporate policy regarding 'Visitors to Care Homes' with input from Nottinghamshire County Council's Quality and Market Management Team.
 - f) An email has been issued to all relevant Team Managers of Social Care staff to share and discuss with their teams on actions that they may need to consider regarding visitors to services. This refers them to the CQC Guidance 'Visiting Rights in Care Homes'.
 - g) An article will also be placed in the Department's newsletter 'Team Talk' to raise awareness of the CQC guidance 'Visiting Rights in Care Homes'.
9. The Ombudsman has decided that this will be a public interest report and therefore promoted in the media because there are wider issues others can learn from. The issue of people being banned from care homes or having their access restricted is one which is frequently reported to them. They want to use the report to promote good practice, such as the CQC guidance which is now available.
10. The report was published on the LGO web site and as required for a public report, under section 30 of the Local Government Act 1974, the Council has placed two public notice announcements in two local newspapers/newspaper websites, made copies of the Ombudsman's report available for inspection at County Hall and Lawn View House and brought this report to Committee to consider and approve the actions.

Other Options Considered

11. None, the recommendations of the Ombudsman's report are binding.

Reason/s for Recommendation/s

12. Section 31(2) of the Local Government Act 1974 requires that a Public Report of the Local Government Ombudsman is considered by the appropriate Local Authority Committee and following this reports back on the actions taken to the Local Ombudsman.

Statutory and Policy Implications

13. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (public health

services), the public sector equality duty, safeguarding of children and adults at risk, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

14. The Council will pay £300 to Mr K alongside its letter of apology.

Human Resources Implications

15. Actions taken to improve staff awareness and knowledge of the issues and CQC guidance are set out at paragraph 8 (c-g)

Safeguarding of Children and Adults at Risk Implications

16. Ensuring that staff and providers are aware of and follow the CQC Guidance on 'Visiting Rights in Care Homes' will ensure a person centred, balanced and proportionate process is followed when assessing risk and taking difficult decisions of this nature.

Implications for Service Users

17. Ensuring that staff and providers are aware of and follow the CQC Guidance on 'Visiting Rights in Care Homes' will ensure a person centred, balanced and proportionate process is followed when assessing risk and taking difficult decisions of this nature.

RECOMMENDATION/S

That Committee:

- 1) endorses the actions taken, or being taken, by the Council in response to the Ombudsman's investigation, which are referred to in paragraph 8 of the report.
- 2) notes that the actions will be reported back to the Ombudsman.

Sue Batty
Service Director, Mid-Nottinghamshire

For any enquiries about this report please contact:

Sue Batty
Service Director, Mid-Nottinghamshire
T: 0115 9774876
E: sue.batty@nottscc.gov.uk

Constitutional Comments (SMG 24/08/17)

18. The proposals set out in this report fall within the remit of this Committee.

Financial Comments (AGW 23/08/17)

19. The financial implications are contained in paragraph 14.

Background Papers and Published Documents

None.

Electoral Division(s) and Member(s) Affected

All.

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