

31 March 2021**Agenda Item: 4****REPORT OF THE SERVICE DIRECTOR FOR CUSTOMERS, GOVERNANCE
AND EMPLOYEES****LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN DECISIONS
JANUARY TO FEBRUARY 2021****Purpose of the Report**

1. To inform the Committee about Local Government & Social Care Ombudsman's (LGSCO) decisions relating to the Council since the last report to Committee and up to the end of December 2020.

Information

2. Members have asked to see the outcome of Ombudsman investigations regularly and promptly after the decision notice has been received. This report therefore gives details of all the decisions received since the last report to this Committee on 1st February 2021.
3. The LGSCO provides a free, independent and impartial service to members of the public. It looks at complaints about Councils and other organisations. It only looks at complaints when they have first been considered by the Council and the complainant remains dissatisfied. The LGSCO cannot question a Council's decision or action solely on the basis that someone does not agree with it. However, if the Ombudsman finds that something has gone wrong, such as poor service, a service failure, delay or bad advice and that a person has suffered as a result, the LGSCO aims to get the Council to put it right by recommending a suitable remedy.
4. The LGSCO publishes its decisions on its website (www.lgo.org.uk/). The decisions are anonymous, but the website can be searched by Council name or subject area.
5. A total of nine decisions relating to the actions of this Council have been made by the Ombudsman in this period. Appendix A to this report summarises the decisions made in each case for ease of reference and Appendix B contains each decision statement in full.
6. Following initial enquires into five cases, the LGSCO decided not to continue with any further investigation for the reasons given in Appendix A.
7. Full investigations were undertaken in four complaints. Appendix A provides a summary of the outcome of each investigation. Where fault was found, the table shows the reasons for the failures and the recommendations made. If a financial remedy was made the total amount

paid or reimbursed is listed separately. (Reference and page numbers refer to the information in Appendix B).

8. No fault was found in one case relating to the determination of a contractor's tax status, and some fault was found in the Council's response when an Academy decided to close a footpath used by parents accessing an infant school.
9. Two cases related to Adult Social care, one concerned a complex case and a reduction in a care package. Some fault was found and a payment of £500 for distress and anxiety has been made.
10. The other case has been the subject of a Public Report. There are many reasons why the LGSCO might issue a public report. The main reason is because the Ombudsman believes it is in the public interest to highlight particular issues or problems. He might also issue a public report because what went wrong is significant or because the impact on the person complaining is significant.
11. In summary the report (page 21 in Annex B) found that the Council failed to act promptly in assessing the complainant's stepfather's care needs and mental capacity to decide where to live. This meant he may have stayed at a care home longer than necessary and he also accrued a debt of over £15,000, for care fees. It was found that the Council failed to act in his best interests regarding decisions about his care and finances. The Council's actions did not assess his wife's needs as a carer at a time she had said that she was having difficulties being able to cope. The Care Provider continued to pursue her for the fees directly, including threatening bailiff action, which has been a distressing experience.
12. The report made several recommendations which have all been accepted by the Council.
 - Apologise to members of the family
 - The Council has told the Care Provider it will take over responsibility for the outstanding care fees. The Council will pay the outstanding care fees.
 - Make payments to different members of the family
 - Review the reasons for the delays in this case and implement any identified improvements to service.
 - Give relevant staff training on applying the Human Rights Act 1998 to adult social care cases. So that staff are aware when the Articles of the Act might be engaged, and what is required of them to ensure individuals' rights are not unlawfully interfered with. And that the Council documents any consideration it has to the Human Rights Act 1998 in individual cases.

The LGSCO also noted "*The Council has wholeheartedly accepted our recommendations, is committed to improve, and has already started acting on the recommendations. The Council has started improvement work by reviewing its Mental Capacity Act documentation, making necessary changes to it, and issuing guidance to staff. We welcome the Council's commitment to learning from past mistakes*".

13. The Council has fully accepted the findings and recommendations of the Ombudsman final report. Adult Social care have developed an action plan which is attached at Appendix C and includes;

Actions completed:

- Apologies and payments have all been made
- Group Manager and Principal Social Worker have done briefings with the team concerned and are now working with the team on some interactive case studies to assure that all staff both understand and are able to apply relevant legislation.
- The case and reasons for the delays have been investigated internally by a senior manager and the findings from this have informed the action plan.
- Mental Capacity documentation and practice guidance has been reviewed so that it better supports good practice
- Departmental Care Act and Mental Capacity training programme has been reviewed
- A digital platform for a Mental Capacity Community of Practice is in now in place for staff to share skills and raise queries through a live chat forum

Actions planned:

- Article on lessons learnt from this report for the March departmental Practice newsletter
- Ongoing departmental audit process to be in place to assure quality of mental capacity and best interests assessments from March 2021.

14.

Statutory and Policy Implications

15. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance 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, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Data Protection and Information Governance

16. The decisions attached are anonymised and will be publicly available on the Ombudsman's website.

Financial Implications

17. The total financial remedies from the Adult Social care budget is £26,948.01.

Implications for Service Users

18. All of the complaints were made to the Ombudsman by service users, who have the right to approach the LGSCO once they have been through the Council's own complaint process.

RECOMMENDATION/S

That members consider whether there are any actions they require in relation to the issues contained within the report.

Marjorie Toward

Monitoring Officer and Service Director – Customers, Governance and Employees

For any enquiries about this report please contact:

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Constitutional Comments (HD (Standing))

Governance & Ethics Committee is the appropriate body to consider the content of this report. If the Committee resolves that any actions are required, it must be satisfied that such actions are within the Committee's terms of reference.

Financial Comments [RWK 10/03/2021]

The decisions detailed in the report and the appendix have resulted in financial remedies totalling £26,948.01 comprising £25,698.01 in waived care fees and £1,250 in compensation payments. These costs will be met from within the budget for adult social care.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All