

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN COMPLAINT – A BRIEFING FOR SCRUTINY

Report of the Head of Adult Care Operations and Health

Recommendation:

To consider if the actions taken following the Ombudsman complaint are proportionate to the case and ensure an appropriate level of learning in the service.

1. Background

Mrs X made a complaint to Devon County Council in July 2019 in relation to moving her mother, Mrs Z, between care homes due to costs, regarding the stress caused by the lack of communication, failure to comply with statutory guidance on top-ups and the refusal to reimburse £5000.

Where an individual wants a placement or care package that is above the Local Authority rate, and there is market sufficiency within the local authority rates, families are able to make a third party top up to enable someone to receive their preferred care package.

The original complaint response stated that it was not possible to match the weekly fee requested by the care home under the fair and affordable care policy. Mrs X had entered into a private contractual arrangement with the home for the care of her mother and therefore the home was stating that Mrs X should have given them formal notice to end that contract earlier.

As a result, it was felt at the time of the original complaint response that DCC were not liable for the additional payments made by Mrs X to the home, and she was given two options:

1. Pay the home at the private weekly rate, in full for the period 1st January – 28th April 2019. Consequently, DCC would recoup its payment (to the home) for the period 20th November 2018 – 28th April 2019 and reimburse Mrs X. Reimbursement would have been made at the weekly rate paid to the provider by DCC and not at the fee level that Mrs X had previously agreed with the provider, under the private contractual arrangement.
2. Decline to make any further payment to the provider, for the period January – April 2019.

Mrs X approached the LGSCO after receiving DCC's complaint response. The LGSCO summarised the complaint as follows:

Mrs X complains the Council failed to comply with the Care Act 2014 guidance regarding third party top ups. She also complains the Council failed to assess the risk to her mother aged 107 of moving her to an alternative care home.

The LGSCO investigated and upheld the complaint with maladministration and injustice. In this case, the LGSCO has published a public interest report for the following reasons:

1. significant fault, injustice or remedy and
2. a significant topical issue.

The Ombudsman's office has done this to make people aware of what it has found through its investigation by requiring DCC to:

- Place two public announcements in local newspapers and/or newspaper websites;
- Make the report available free of charge at one or more of its offices (or alternative suitable arrangement);

- Formally report back to the Ombudsman our intended course of action; and
- Discuss the Ombudsman's findings and recommendations at a high decision-making level, such as full council or cabinet.

As a result of the final recommendation above, this briefing has been prepared for the Health and Adult Care Scrutiny Committee, to ask them to consider if the actions taken in response to the Ombudsman's recommendations are proportionate to the case and that the actions ensure an appropriate level of learning in the service.

It should be noted that the Ombudsman has not issued a public report for Devon Adult Social Care services for over a decade. The Ombudsman has issued 7 public reports regarding charging in Adult Social Care services for English Local Authorities and care providers in 2021 to date (including the report relating to this complaint), however there were no reports on this subject matter issued in 2020, two issued in 2019, and six in 2018. This supports the Ombudsman's statement that one of the reasons for issuing a public report in this case was a significant topical issue of charging. We may expect to see a focus report from the Ombudsman on the same matter in the coming months.

2. LGSCO complaint and outcomes

Following investigation, the LGSCO made several recommendations. These were accepted by the Council and are outlined below, along with the actions taken:

Complete a new financial assessment for Mrs Z from November 2018.

This financial assessment should take into account that she had paid in advance for the care home and so this money should be included when calculating the level of capital held in November 2018. If the Council finds that Mrs Z's savings fell below the savings threshold in 2018 and that she was eligible for financial assistance, it should refund any money owed to her estate.

A new financial assessment was undertaken, and it was identified that the original calculations only took into account the payments at DCC's agreed rate and not at the rate Mrs Z actually paid the residential home. By not taking into account the actual payments made in advance DCC had implied that the difference should be met by the family as a third party arrangement (Top Up). DCC's policy and standard contract confirms a residential home can't request a Top Up for any elements of care provision direct from the family and that all Top Up arrangements should be between the client/representative and DCC. Furthermore, DCC can only enter into a Top Up arrangement with the client/representative once sustainability has been confirmed and an appropriate agreement signed.

By not including the Top Up element within the calculations the family effectively paid a Top Up direct to the residential home which is against DCC policy and practice.

A sum of £4,091.19 was calculated as requiring to be refunded to Mrs Z's estate, which has now been completed.

Pay Mrs X £250 to recognise the avoidable distress and time and trouble she experienced as a result of having to find and move Mrs Z to a new care home;

And

Provide a written apology to Mrs X for the faults identified;

The above two actions have been completed. A Community Services Manager has spoken to the complainant and explained the actions and learning being taken from the case, which the complainant was happy with.

Review its procedures around the transition from self-funded to Council funded care to ensure similar problems do not occur again. This should include clear guidance on how to negotiate with care providers when there is a dispute over funding levels;

And

Ensure all staff are aware of the requirement to identify affordable placements and the need for a third party top-up when there is no agreement regarding fees;

And

Ensure all staff are aware of the requirement to carry out a risk assessment where there are funding issues and a service user may need to move to a new placement.

The work required by these three recommendations is being undertaken with oversight by Tina Ramage, Principal Social Worker for Adult Care Operations & Health.

A summary of learning document has been produced and is in the process of dissemination across all Devon social care teams.

Staff guidance on assessing risk has been produced and published on DCC's Adult Social Care resource pages, including specific reference to risk assessments when service users move home. Staff have also been informed via the practice newsletter and internal communications. The guidance will also include webinars and practice videos.

The complaint is also going to be used as an anonymous case study as part of a wider learning package. Work on this will begin at the end of September and will be shared with a number of leadership forums across Adult Social Care.

In May and June 2021 two Practice Quality Reviews were completed by Adult Social Care managers with specific reference to the learning described in the action plan.

3. Additional Learning

Additional learning has been taken from this complaint and is summarised below. This has been shared with all adult social care operational teams via leadership team meetings in order to ensure appropriate cascade to all staff.

The importance of documentation

Everything must be fully recorded, particularly in relation to risk management; appropriate recording of information, including documentation of risk, was missing in this case.

The importance of proportionate independence when investigating complaints

DCC failed to remedy the issues within the local complaints process and did not acknowledge any fault. The complainant alleged fault from a manager who then investigated themselves, which was not appropriate. The initial complaint should have been passed to a different manager to ensure no conflict of interest in the investigation process. This may have avoided the need for an Ombudsman investigation and public report.

The importance of communication

Negotiations with the care home stalled for three months and no contact was made to family about finance or progress of placement. There was no evidence of any discussion with Mrs X about third party top ups. When contact was made after 3 months DCC did not acknowledge any fault or offer reimbursement of fees.

Communications should be clear, timely and documented, and consideration of an advocate is required.

The importance of clarity around finance and process

DCC was unsuccessful in its negotiation with the care home but the contract was put in place anyway. DCC's guidance on third party top ups was not followed.

We should not put in place contracts when the provider is not in agreement, and the agreed processes should be used, including escalation if a stale mate is reached.

A learning package on finance has been created and will be rolled out to all Adult Social Care teams in the coming months.

4. Conclusions

We have taken on learning and recommendations and embedded the learning into our practice. The issues raised have been taken seriously and they have changed practice, particularly in North Devon, and learning is being shared Devon-wide.

This case has led to practitioners having different conversations with both colleagues and families. We have also taken the principles of the learning and applied them to other scenarios, particularly around risk assessments.

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Helen Wyatt
Strategic Customer Relations Manager

Electoral Divisions: All

Cabinet Member for Adult Social Care and Health Services: Councillor James McInnes

Chief Officer for Adult Care and Health: Jennie Stephens

LOCAL GOVERNMENT ACT 1972: LIST OF BACKGROUND PAPERS

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<u>BACKGROUND PAPER</u>	<u>DATE</u>	<u>FILE REFERENCE</u>
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Nil