

Wiltshire Council

Cabinet

3 July 2018

**Subject: Local Government and Social Care Ombudsman
Complaint**

**Cabinet Members: Councillor Jerry Wickham - Adult Social Care, Public
Health and Public Protection**

Key Decision: No

Executive Summary

The Local Government and Social Care Ombudsman considers complaints from members of the public that they have suffered injustice as a result of maladministration and/or service failure by local authorities and other bodies within its jurisdiction. The Ombudsman has extensive investigation powers and can make findings based upon a balance of probabilities test, similar to the civil courts.

The Ombudsman published a report on 27 April 2018 finding maladministration against the Council that caused injustice to the complainant, Mrs. N, regarding the provision of respite care and travel support for her son Mr. P.

Where the Ombudsman reports that injustice has been caused to a person in consequence of maladministration, the relevant body, in this case the Cabinet, must, within three months of the publication of the report, consider the report and notify the Ombudsman of the action which the Council has taken or proposes to take.

The Council must also make arrangements for the publication and inspection of the report as set out in the relevant legislation.

Following consideration by Cabinet, the report will also be referred to the Overview & Scrutiny Management Committee and the Standards Committee.

Proposals

Cabinet is recommended to:

- a) **Note the findings and recommendations in the Ombudsman's report published on 27 April 2018;**
- b) **Confirms the Council's acceptance of the Ombudsman's findings and recommendations and the actions to remedy the injustice as set out in the report.**
- c) **Authorise the Director of Adult Care Services in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection to take the necessary steps to address the issues raised in the Ombudsman's report.**
- d) **Require that a progress report is made to the Standards Committee and to the Health Select Committee within 6 months.**

Reason for Proposals

To enable the Council to consider the Ombudsman's report and formally confirm its response to the Ombudsman as required by law.

Ian Gibbons, Director of Legal & Democratic Service and Monitoring Officer

Tracy Daszkiewicz, Director of Adult Services

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Purpose of Report

1. The purpose of the report is to inform Cabinet of the findings and recommendations in the report of the Local Government and Social Care Ombudsman (“the Ombudsman”) published on 27 April 2018 and to confirm the Council’s response to the report.

Relevance to the Council’s Business Plan

2. The issues raised within the Ombudsman’s report are integral to the Wiltshire Council Business Plan 2017 – 2027. They highlight the need to ensure protection of the most vulnerable in our community. This is achieved through a balanced and collaborative approach to empowering and safeguarding families and individuals, whilst ensuring there is a joined-up approach to health and care integration.

Background

3. Mr. and Mrs. N have an adult son, Mr. P, who has complex needs that are eligible for support. He has always lived at home with his parents. Mr. N is disabled and Mrs. N is the carer for both Mr. N and Mr. P. At her request, the Council pays her via direct payments to be Mr. N’s carer.
4. Mr. P has attended a day care facility on weekdays and the same respite centre for many years. The Council has provided transport for him to day care and residential respite care. The family lived in a house about 10 miles from the day care centre. In late 2015, Mr. and Mrs. N relocated within the County being keen that the existing care package should remain.
5. In June 2016, Mr. P’s transport funding was reduced, with a request that Mrs. N undertake two journeys per week between the home and the day centre or alternatively, fund the trips at a cost of £30.00 per trip. A decision was also taken to reduce respite care from 104 nights per year to 68 nights per year.
6. Mrs. N complained, initially under the Council’s Complaints Procedure, both in relation to the transport, as she was also required to care for her husband and to undertake the journeys would result in her husband being left

unaccompanied for up to 6 hours. Mrs. N also complained in relation to the reduction of respite care provision. Mrs. N subsequently complained to the Ombudsman.

Ombudsman's conclusions

7. A copy of the Ombudsman's report is attached at Appendix 1. The Ombudsman's conclusions are set out at paragraphs 66-99 of the report.
8. The Ombudsman concluded that the Council was at fault in the way in which it reduced the level of respite and transport provision. The request that transport be provided or funded by the family, was not based upon an assessment of need and therefore, in breach of the requirements of the Care Act.
9. The Ombudsman further concluded that the Council was at fault in the use and application of the Matrix Assessment Tool and for introducing the reduction in respite care, as quickly as it did. The Matrix Assessment Tool involved a four-stage assessment process, that assisted in the assessing of needs and allocation of available resources.
10. The Ombudsman also concluded the Council was at fault for having processed the complaint, by way of a two-stage complaint process, as opposed to a one stage complaints process, in accordance with the statutory scheme for adult care complaints under the 2009 Regulations.

Ombudsman recommendations

11. The Ombudsman's recommendations are set out in paragraphs 101-103 of the report. These include a requirement for the Council to consider the report and confirm, within three months, the action it has taken or proposes to take. The recommendations are as follows:
 - Apologise to Mrs N.
 - Restore the previous level of respite care pending a reassessment compliant with the Care Act 2014.
 - Confirm it will offer her 24 days' respite care, to be taken at a time of her choosing, in recognition of the respite care wrongly withdrawn.
 - Pay Mrs N £747.50 in recognition of the money she paid the Council for transport.
 - Pay Mrs N £500 in recognition of distress and time and trouble.
 - Review its policy and procedure on respite care, to reflect the requirements of the Care Act 2014.
 - Review other files for evidence of use of the Matrix Assessment Tool. It should write promptly to anyone similarly affected and review their cases.
 - Review the files of anyone whose transport was cut, to ensure these cuts were compliant with the Care Act.
 - Inform the Ombudsman of the numbers of people involved and undertake to review all cases, within a further three months.
 - Ensure all staff receive training in the requirements of the Care Act and the relevant guidance.
 - Review all relevant documents to ensure they reflect the current law.

Main Considerations for the Council

12. The Council has considered and accepted the conclusions and recommendations of the Local Government and Social Care Ombudsman.
13. To address the recommendations, an action plan has been developed (Appendix 2) which is supported by a tracking tool to ensure all actions are completed, within the suggested time frame, by the end of July 2018.
14. Additional resources have been provided from colleagues, in other Adult Social Care teams, to ensure actions are prioritized and delivered. A total of 142 customers have been identified as needing a review and all have been allocated a worker. Approximately 30% of these reviews have now been completed and all are scheduled to be carried out before the end of July. Of those completed, there have been no significant financial implications for the Council, as a result of this activity.
15. As part of the adult care transformation programme, all policies and procedures relating to assessment and support planning have been reviewed and are in line with Care Act guidance. In addition, Care Act training for all social care staff, from induction through to regular updates, has been provided, with additional training sessions being implemented with the Learning Disability Teams. This specifically includes training, with regard to support planning and the use of respite care to meet eligible need.

Overview and Scrutiny Engagement

16. It is proposed that progress in implementing the agreed actions on this matter is reviewed by the Council's Overview and Scrutiny Management Committee after 6 months.

Safeguarding Implications

17. The actions that are to be taken in response to the Ombudsman's Report will strengthen the approach of Wiltshire Council to safeguarding the interests of services users.

Public Health Implications

18. The public health implications of this report, relate to services users, their carers and wider families. The adoption of the conclusions and recommendations of the Local Government and Social Care Ombudsman will further ensure a positive impact upon individual health and wellbeing.

Procurement Implications

19. The report does not contain or result in procurement implications.

Equalities Impact of the Proposal

20. The equalities impact of the adoption of conclusion and recommendations of the Local Government and Social Care Ombudsman further enhance the provision of services delivered by Adult Social Care.

Environmental and Climate Change Considerations

21. There are no environment and climate change implications associated with this report.

Risks that may arise if the proposed decision and related work is not taken

22. The Council has accepted the conclusions and recommendations of the Ombudsman's report. Failure to implement the recommendations would result in customers and families potentially not receiving the appropriate amount of care to meet their needs. There would also be legal and reputational risks to the Council.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

23. None identified.

Financial Implications

24. It is not anticipated that this process will incur significant increased costs to the Council,

Legal Implications

25. The Local Government and Social Care Ombudsman considers complaints from members of the public that they have suffered injustice, as a result of maladministration and/or service failure by local authorities and other bodies within its jurisdiction. The Ombudsman has extensive investigation powers and can make findings, based upon a balance of probabilities test, similar to the civil courts.

Where the Ombudsman reports that injustice has been caused to a person, in consequence of maladministration, the relevant body, in this case the Cabinet, must, within three months of the publication of the report, consider the report and notify the Ombudsman of the action which the Council has taken or proposes to take.

The Council must also make arrangements for the publication and inspection of the report as set out in the relevant legislation.

**Directors : Ian Gibbons, Solicitor to the Council and Monitoring Officer,
Tracy Daszkiewicz, Director of Adult Services**

Date of report 6th June 2018

Appendices

1. Local Government and Social Care Ombudsman Report 12th April 2018:
16015946
2. Recommendation Action tracker

Cabinet Minutes Extract 3 July 2018 – Minute 258 - Local Government and Social Care Ombudsman

Councillor Jerry Wickham presented the report which informed Cabinet of the findings and recommendations in the report of the Local Government and Social Care Ombudsman (“the Ombudsman”) published on 27 April 2018 and to confirm the Council’s response to the report. In presenting the report, Councillor Wickham highlighted the actions proposed in response to the eleven points and reemphasised the apology that had already been made.

There being no further questions, the meeting;

Resolved

- a) To note the findings and recommendations in the Ombudsman’s report published on 27 April 2018;**
- b) To confirm the Council’s acceptance of the Ombudsman’s findings and recommendations and the actions to remedy the injustice as set out in the report.**
- c) To authorise the Director of Adult Care Services in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection to take the necessary steps to address the issues raised in the Ombudsman's report.**
- d) To require that a progress report is made to the Standards Committee and to the Health Select Committee within 6 months.**

Reason for Decision:

To enable the Council to consider the Ombudsman’s report and formally confirm its response to the Ombudsman as required by law.