

Standards Committee – 8 October 2012

Local Government Ombudsman – Report on an investigation into complaint 10/018/968 against Walsall Council

Service Areas: Adult Social Care, Business Change

Summary of report:

The purpose of this report is to:

- a) set out for the Committee's consideration a report issued by the Ombudsman following his investigation of a complaint relating to this council, and attached as Appendix A to this report
- b) also to set out details of action taken by the council in response to the Ombudsman's findings

Recommendations:

The Committee is recommended to note the contents of this report.

Resource and legal considerations:

The Ombudsman service was established by the Local Government Act 1974, to investigate complaints about council services by service users.

As noted in a separate report to this meeting, relating to complaints received and determined in the year 2011/12, the Ombudsman will generally conclude investigations after finding no maladministration on the council's part, or when a satisfactory local settlement of the matter has been achieved. However in a small number of cases, the Ombudsman will issue a formal investigation report, such as the document submitted for Committee's consideration at this meeting. The council last received a report of this nature in 2008, considered by the Standards Committee in October 2008. Please note that the names of people and places within all such reports are anonymised so as to maintain the confidentiality of complainants.

When a report is issued, the council concerned must place a notice in the local press advising residents that the report has been published and is available for inspection, and must arrange for the report to be submitted to the relevant council committee for its consideration. The Committee is advised that notices have been placed in the Walsall Advertiser and Walsall Chronicle indicating that the report is available to view and read at the First Stop Shop on the ground floor of the Civic Centre, and at Walsall Reference Library. The report is also available on the Ombudsman's web site www.lgo.org.uk. The Ombudsman has been advised that the report would be submitted to the next meeting of the Standards Committee which, locally, is responsible for Ombudsman matters.

Citizen impact:

The Ombudsman service provides one way in which residents and other service users may make complaints about council services. The outcome of complaints provides valuable information about our services, and opportunities to learn, and to make improvements for the future.

Environmental impact:

None specific to this report.

Performance and risk management issues:

The Local Government Ombudsman issues an annual letter to each council relating to complaints made to the service about that council during the year, and about cases concluded during the same year. The Ombudsman's annual letter for 2011/12 which is also included on the agenda for this meeting does not include reference to this decision. As the decision was made in July 2012, this case will be included in the 2012/13 annual review.

Equality implications:

None specific to this report.

Consultation:

The Ombudsman liaised closely with officers of the council, and with the complainant, throughout the investigation of this complaint.

The council was consulted on the draft report, and given the opportunity to correct any factual errors.

Background papers: None

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Signed:

A handwritten signature in blue ink, appearing to read 'P. Davies', written diagonally.

Paul Davies, Executive Director
Date: 26 September 2012

Signed:

A handwritten signature in blue ink, appearing to read 'P. Gordon', written horizontally.

Paul Gordon, Head of Business Change
Date: 26 September 2012

1. THE OMBUDSMAN'S INVESTIGATION

- 1.1 The council received a complaint from the Ombudsman on 14 April 2011. The complainant had complained to the Ombudsman that the council had unlawfully or unreasonably charged her top-up fees for her mother's residential care when her mother had moved from one residential home to another in March 2008, although no alternative homes had been identified in the authority's area.
- 1.2 The council provided a full response to the Ombudsman's initial enquiries on 26 May 2011.
- 1.3 The Ombudsman's investigator wrote to the council again on 11 August 2011, seeking additional information. The council provided those details on 14 September 2011. Also, on 11 October, officers contacted the Ombudsman to indicate that it was looking further at one of the questions in the Ombudsman's August letter, providing those details on 20 October. The investigator sought further clarification on two specific points, with a response provided on 1 December 2011.
- 1.4 The Ombudsman did not, in this case, visit the authority to view relevant files or to interview relevant staff.
- 1.5 A draft report, setting out the facts of the case, and the Ombudsman's provisional conclusions, was provided on 14 May 2012, seeking the council's comments. Alongside the draft, the Ombudsman provided the council with an indication, based upon the facts of the case and her provisional conclusions, of what it considered to be an appropriate remedy.
- 1.6 The council replied to the Ombudsman on 25 May, confirming that it was willing to accept the Ombudsman's findings and the remedy which had been set out by the Ombudsman
- 1.7 Subsequently the Ombudsman issued the present report on 10 July 2012.
- 1.8 The Ombudsman after setting out the facts of the case, has concluded that "the Council did not establish whether there were any suitable residential homes in its area or in Mrs Plane's area where a top-up fee would not be required when it moved her mother in emergency circumstances [in March 2008]. The Council kept poor records of the information it provided to Mrs Plane. Mrs Plane paid a top-up fee as requested by the Council until December 2009 when she could no longer afford it. The Council should not have asked her to make the payments. The Council did not review the fee arrangements with the residential home or take responsibility for the contractual arrangements. Mrs Plane was expected to pay increased top-up fees. She was worried over a long period that the Council or the home might take steps to move her mother from where she was settled and happy, because she could not pay". The Ombudsman therefore found that there had been maladministration on the council's part, causing injustice to the complainant.
- 1.9 As noted above, in responding to the Ombudsman's draft report the council indicated that it accepted the findings of the investigation and agreed to the remedy which the Ombudsman had set out, that it should:

- “apologise to Mrs Plane;
 - reimburse her the amount of top-up she has paid of £5,049.17, with interest at the County Court rate amounting to £982.50, totalling £6,031.67;
 - come to an agreement with Home X to resolve the fee and any backdated or overdue payments;
 - pay Mrs Plane the sum of £250 for her time, trouble and anxiety;
 - review its systems to ensure that in circumstances such as these the availability of suitable accommodation based on assessed need is established by the Council before relying on a relative's willingness to pay top-up fees;
 - check that it has processes in place to demonstrate the lists it provides to relatives and what these are;
 - review its arrangements where third party payments are involved to ensure the responsibility for contractual arrangements and reviews rests with the Council as the law provides; and
 - provide the Ombudsman with written confirmation that the above remedies have been implemented, within three months”.
- 1.10 The council has taken steps to implement the agreed settlement. An apology has been made, and payments of £250 and £6031.67 have been made to the complainant.
- 1.11 The Ombudsman also recommended that the council should come to an agreement with the residential home in question to resolve the fee and any backdated or overdue payments. The Committee should note that the council has requested information from the home in order to reach an agreement to resolve any back dated or overdue payments. The appropriate payment will be made once the figure and evidence to support this figure has been received.
- 1.12 The Ombudsman also recommended that the council should review its systems to ensure that in circumstances such as described in this case the availability of suitable accommodation based on assessed need is established by the council before relying on a relative's willingness to pay top-up fees. The Committee should note these systems and related documentation have been reviewed and amended in the light of the Ombudsman's findings.
- 1.13 The Ombudsman also recommended that the council should check that it has processes in place to demonstrate the lists of residential homes it provides to relatives. The Committee should note that lists of residential homes in the Walsall area that clearly state registration categories are provided on the directorate's intranet pages. This information is supplied to people who request it and enables service users, carers and families to identify a care home that appropriately meets assessed needs. Interested parties are also advised to review Care Quality Commission inspection information which is in the public domain. Walsall contracted rates are explained, and the document “Paying to Live in a Care Home” is provided. Confirmation that the information has been supplied and the financial implications explained is contained in the revised placement documentation.

- 1.14 Finally the Ombudsman recommended that the council should review its arrangements where third party payments are involved to ensure the responsibility for contractual arrangements and reviews rests with the council as the law provides. The Committee should note that action has been taken and is demonstrated in revised placement documentation. In addition individual contractual agreements require residential providers to inform the council of proposed changes to their agreed charges.
- 1.15 Following consideration of the Ombudsman's report and findings, and the present report by this Committee, officers will write again to the Ombudsman to confirm that the council has implemented the agreed remedy as set out above.