

ANNUAL ASSEMBLY

15 May 2019

Title: Report of the Local Government Ombudsman on a matter relating to the Council's charging process for Residential Adult Care	
Report of the Cabinet Member for Social Care & Health Integration	
Open Report	For Decision
Wards Affected: All	Key Decision: No
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Accountable Strategic Leadership Director: Elaine Allegretti, Director of People & Resilience	
Summary <p>A complainant approached the Local Government Ombudsman (LGO) to ask them to investigate the handling of payments with a provider of residential care, Moreland House Care Home. During their investigation, the Ombudsman used their discretion to also focus the investigation on the way in which the Council makes payments for residential care.</p> <p>The matter principally concerns the practice of the Council making payment to the residential care home for only the Council's contribution and expecting the care home to pursue the service user contribution directly with them. The LGO holds, and has set out clearly, that this is contrary to the Care Act guidance. There were also related issues about the approach taken when third parties contribute to the cost of an individual's care, and some deficiencies in the care planning process in this instance.</p> <p>The resulting report finds fault on the part of the Council, and that this had caused injustice to the complainant. There are a number of councils operating similar processes, and the Ombudsman has therefore chosen to issue a report in the public interest detailing the outcome of this complaint.</p> <p>As a result, the Council has repaid the complainant the third-party top-ups that have been made, and half of the contributions of the service user. In the longer term, this has substantial implications for the way the Council currently undertakes its social care finance processes, and the necessary changes are being made to the systems and processes around how payments are made for residential care. It has also prompted a thorough look across all social care finance processes.</p> <p>This report summarises the findings and the action for Members' consideration.</p>	

Recommendation(s)

Assembly are recommended to note:

- a) the report as issued by the Local Government Ombudsman, its publication, and the notice that has been published in local news sources;
- b) the remedies that have been offered to the complainant in this case; and
- c) the system improvements that are being worked on to prevent further recurrence of these issues.

Assembly is further recommended to:

- d) Refer the matter to Overview & Scrutiny Committee, to review progress in six months' time so that the Council can be assured that the system changes are being applied and will remove the risk of further such incidents occurring.

Reason(s)

It is a requirement of the Local Government Ombudsman that the report is laid before the appropriate body of the Council within three months of being issued. The report contains a number of remedies for the issue that the LGO has raised, and it is appropriate that Members have the opportunity to review the prompt response of the Council in this respect. This is one of a number of emerging issues that has prompted a full review of the business processes that support adult social care services, including the charging and financial assessment process.

1. Overview of the report

- 1.1 The LGO's final report is attached at Appendix 1.
- 1.2 In summary, the LGO's findings in this case were injustice caused by the Council's policy of paying care home fees net of the service user contribution and any third -party top-up.
- 1.3 A third-party top-up is where, for example, a relative or friend makes additional payments for the cost of care provision in order to make possible a more expensive placement than the Council would normally fund. It is permissible, under Care Act 2014 Statutory Guidance, to pay the home net of third party top-up, if that is the choice of the service user and third party. The view of the Ombudsman is that there is no such permission explicitly granted by the Care Act to pay the home net of the service user contribution.
- 1.4 The injustice in this case was exacerbated by:
 - Poor provision of information and advice around finances and social care;
 - Delays in invoicing by Moreland House;
 - Lack of clarity over setting a personal budget based on needs, and although the new social care recording system requires this step, we had previously not termed it the personal budget in the context of residential care planning;

- Lack of recording of the offer of a suitable placement within the personal budget, so that the Council could not absolutely guarantee in retrospect, that placements were available that would not have required the third party to make additional payments; and
- A format of top-up agreement that was not Care Act compliant (the statutory guidance lays out specific items that should be included).

1.5 It is important to record that this is not a report into the quality or safety of care services. It solely concerns the further anxiety caused to the family member by the Council and care home failing to properly administer the payment and charging regime for social care.

Remedy proposed by the Ombudsman

1.6 Importantly, in arriving at their conclusions, the Ombudsman recognises the constructive response of the Council to their findings, and further recognises that this will be a significant change of systems, which will require some time to implement.

1.7 In respect of the complainant, the Ombudsman has recommended the reimbursement of half of the service user contribution and the third party top-up. This will amount to around £5k, and payment has been arranged.

1.8 Moreland House have also been recommended to pay the complainant £250 for their part in the difficult situation arising.

2. Assessment of the extent to which the situation is more widely replicated

2.1 The service has assessed the various aspects raised by the Ombudsman in their investigation of this case, and in particular, has looked at how widespread they are in other casework.

2.2 It should be noted that the complainant had a particular set of circumstances which compounded the problems identified. As the report details, the service user moved into a care home as a self-funder, choosing a home that would not accept contracts at the Council 'usual rate' of payment. When she subsequently moved to local authority support, a family member agreed to make a "third party top-up" to allow her to continue to live in that home. This followed a 12-week period in which the Council paid the fees (minus the "top-up") due to the legal requirement to disregard property-related assets for the first 12 weeks of care. During this period, the third party was required to make the 'top-up', but not the service user. Then she moved to payment by the Council, alongside her own service user contribution and that of the third party. During these changes of arrangement, the usual system of assessment, personal budget, support plan, identification of options, contracting and financial assessment was not followed in the 'typical' linear way.

2.3 This should not, in itself, have meant that the important steps in the journey were missed, but it must nevertheless be acknowledged in this case that there were lapses in the process followed by the Council. In addition, the complexities of the

funding system are part of the case made by the Local Government Ombudsman about the importance of the Council paying the full amount and recharging service users. To 'contract out' the income collection to the care home transfers some of this financial complexity to individuals and their families, at a time in their lives when there are many other issues causing them concern and anxiety. It is the Ombudsman's contention that avoiding this confusion is the intention of the Care Act when it comes to financial aspects of social care provision, and this is certainly consistent with the Care Act's emphasis on good information and advice, and provision of support to service users on making informed choices.

2.4 An overview of the issues as they present more widely in the service is as follows:

Issue	Estimated prevalence in B&D
Paying net of service user contribution for residential care	All service users as standard
Paying net of third-party contribution for residential care	A very small number of third-party contributions are in place (ca. 30, and we continue to be informed about more arrangements made by care homes) In all of these cases, we pay net
Information and advice provision about charging and third-party top-up	Inconsistent and needs review. Record of having provided I&A not currently taken
Personal budgets recorded for residential care cases	The system requires a budget in order to make the payment, but we do not currently term this the 'personal budget'. Need, therefore, to be consistent on language and terminology.
No support plan in place for residential care placements (reliant on the care home holding the plan)	Support plan is required in the new LiquidLogic system to progress to the next stage of the care planning process. Checks suggest that this non-compliant case was an exception migrated from the old system.
Recording of offer of alternative place within the personal budget amount where a third party top-up is in place	Not currently recorded in all cases with a third party top up.
Top-up agreements currently between care home and third party, not between Council and third party	Currently non-compliant for all third party top-up arrangements

- 2.5 The actions being taken in respect of these issues are detailed in section 3, below.

Publication of the report

- 2.6 The report was published on 17 April 2019. A notice, as required, was published in the Barking & Dagenham Post on 24 April. It is then a further requirement that the details of the judgment is laid before Council, which is the subject of this report.

3. Proposed actions

- 3.1 The LGO's observations in this case sit alongside some other work internally which has highlighted that we need to review and strengthen the arrangements for business support to the social care function. It is therefore fortunate that the Council has the opportunity to build the changes required by the LGO into a larger piece of work on the social care finance and business function, including all aspects of financial assessment, charging, payment and contracting for care. This will have significant benefits for both service users and providers when implemented, and the consistency and ease with which people go through the system. The LGO accepts entirely that the shift in systems is not something that can be achieved overnight. We are therefore proposing to go to gross payment from 1 April 2020.
- 3.2 We are currently scoping the resource implications of implementing these changes but are confident it can be managed within the wider transformation activity. We are also aware that there may be enhanced demand on the income recovery function, but on first assessment we anticipate that, relative to the scale of income recovery activity corporately, this is unlikely to be a significant additional burden.

The proposed action plan

- 3.3 For the wider criticism levelled at the Council, much of the actions are about data recording improvements and some practice development. Immediate communications have been undertaken about the issues involved, and there are workstreams on assessment processes and practice that will provide opportunities to strengthen this. Work is already underway to redesign the whole information and advice offer in adult social care, working with Community Solutions and other partners.
- 3.4 Actions being worked on are currently:

Action	Proposed date
Move to payment of gross fees instead of net	<i>Arrangements being scoped now, linked to a wider programme of improvements in business support in social care. Aiming for introduction on 1 April 2020, together with a number of other modifications to charging arrangements</i>

<p>New form of third-party top-up agreement between council and third party, clearly setting out the amounts involved, compliant with Care Act requirements, and including record of third party's request to pay the provider directly, where this is desired</p>	<p><i>Underway, currently finalising review by Legal Services, aiming for introduction from 1 July 2019</i></p>
<p>Revise the contract for residential care to be compliant with these changes</p>	<p><i>Some amendments have already been drafted for introduction in early 2019/20, but we will need to keep it under review ready for the change of payment arrangements from 1 April 2020</i></p>
<p>System change to explicitly agree a personal budget equal to the 'usual rate' for every residential care placement</p>	<p><i>Whilst we believe this is, in practice, what is happening, the system changes required to more explicitly record it will be introduced from July 2019</i></p>
<p>Review all residential care placements on LiquidLogic to ensure that a support plan is included.</p>	<p><i>On first assessment, there are relatively few placements where this is not the case, and the review work (and resolutions as needed) will be completed by July 2019</i></p>
<p>System change to ensure that clear record is made of the offer of at least one placement within the personal budget rate whenever there is a third-party top-up agreement</p>	<p><i>Again, it is our contention that no-one is forced into a third-party top-up by our inability to provide choices at the 'usual rate'/personal budget for residential care; however, we will introduce improved recording of the choices offered from April 2019</i></p>
<p>Confirmation of removal of all direct third- party payment arrangements by care homes, and prohibition of such under the terms of the contract with the Council</p>	<p><i>This is underway, having asked all residential/nursing homes to confirm the third-party top-up arrangements that they have in place. We are working through the remaining providers who are yet to provide information in response to our request. Once we have clear understanding, we will transfer them to an agreement between the Council and the third party by July 2019.</i></p>
<p>Revision of information and advice provided at the point of choosing a care home, and linked to the final agreement(s) as follows</p>	<p><i>As part of a wider piece of work in revising all of our suite of information and advice, we are prioritising the stages in the support planning process around choice of residential care home and the associated finances.</i></p>

- 3.5 These actions are all broadly straightforward in their link back to the findings in the report but, obviously, with the wider programme under development there may need to be some flexibility to apply timescales and exact activity.
- 3.6 For this reason, it is proposed that Assembly refer the matter to the Overview & Scrutiny Committee for consideration of the impact of the changes, to be considered in the first quarter of 2020, at which point many actions will be completed and the preparations will be in place to move to gross payment from 1 April 2020.

4. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager- Service Finance

- 4.1 This report sets out the findings of the Local Government Ombudsman on a matter relating to Residential Care contributions. The direct financial implication of the report is the requirement to repay a sum of around £5,000 to the complainant. This will be found from with the Council's Adult Social Care budget.
- 4.2 The Ombudsman has also made a range of other findings and recommendations that will have an indirect financial impact on the council including the need to change processes for care contributions and third party top up. There is currently already a review of related systems and processes underway for which funding and resources have been identified which will include this work.
- 4.3 The move to paying providers gross and collecting client contribution will have a small adverse impact on Council cashflow and increase its financial risk. However, this is hard to quantify and is not likely to be significant in the context of the Council's overall budget.

5. Legal Implications

Implications completed by: Dr. Paul Feild, Senior Governance Lawyer

- 5.1 The Councils Constitution (Part 2 Chapter 4 (xvi)) provides that the Assembly shall receive reports and recommendations from the Ombudsman and Government or other Inspectorates.
- 5.2 The Local Government Ombudsman was established by the Local Government Act 1974. Its role is to investigate complaints about 'maladministration' and 'service failure' by councils and certain other bodies. This includes individuals, organisations or companies providing services on the Council's behalf. The Ombudsman will also consider whether any fault has had an adverse impact ('injustice').
- 5.3 If fault has caused an injustice, the Ombudsman will make a report which the Council must consider and provide evidence to that effect and it shall confirm to the Ombudsman within three months the action it has taken or proposes to take. In this report to the Assembly the fault has been identified and accepted by officers and a proposed way forward identified.

- 5.4 Finally, to ensure service improvement officers have recommended that the Assembly refer this matter in due course of six months to the Overview and Scrutiny Committee to review and ensure best practice is implemented.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- Appendix 1: Report of the Local Government & Social Care Ombudsman, Investigation into a complaint against London Borough of Barking & Dagenham and Moreland House Care Home, 11 March 2019