



CABINET – 25 OCTOBER 2022

**LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN REPORT
REGARDING ADULT SOCIAL CARE**

**REPORT OF THE DIRECTOR OF LAW AND GOVERNANCE AND
DIRECTOR OF ADULTS AND COMMUNITIES**

PART A

Purpose of the Report

1. The purpose of this report is to advise the Cabinet of a report of the Local Government and Social Care Ombudsman (LGSCO) in relation to the investigation of a complaint against the County Council as required by the relevant legislation where the LGSCO intends to issue his findings in a public report.
2. The complaint relates to the Council's duties to assess and provide support for eligible adult social care needs (Care Act 2014 and Care and Support Statutory Guidance). The LGSCO found fault by the Council which caused injustice to the complainant in the case. The LGSCO report is appended to this report.

Recommendations

3. It is recommended that:
 - a) The public report of the Local Government and Social Care Ombudsman (LGSCO) be noted;
 - b) The Director of Adults and Communities be required to implement the recommendations of the LGSCO as set out in paragraphs 59 to 62 of the LGSCO report.

Reasons for Recommendations

4. To bring to the attention of the Cabinet the facts of the case and to explain the various actions which the Council is taking in light of the Ombudsman's findings.
5. When a public report is issued by the LGSCO, there is a statutory requirement that it is 'laid before the authority concerned' and there is an obligation for the Council to report back to the LGSCO to confirm this action has been taken.

Timetable for Decisions (including Scrutiny)

6. A report on complaints, including complaints to the LGSCO, and outcomes is made to the Corporate Governance Committee annually and the outcome of this report will form part of the next annual report to that Committee.
7. The LGSCO requires the actions to be undertaken between three and six months of the date of the report.

Policy Framework and Previous Decisions

8. The Department of Health and Social Care issues Care and Support Statutory Guidance. Local Authorities have a duty to have regard to the guidance and this means that the Council is required at each stage of decision making to take into account the approach suggested in the guidance and to not depart from it on the basis of general disagreement but only on the basis of considerations relevant to the particular case which require a different approach. Local Authorities must comply with regulations made under the Care Act 2014.
9. The Care Act 2014 states that Local Authorities must carry out an assessment for any adult with an appearance of need for care and support.¹
10. Local Authorities also have a duty to provide a care and support plan. The support plan must include a personal budget which is the money the Council has calculated it will cost to arrange the necessary care and support for the individual.²

Resource Implications

11. The LGSCO has asked that the Council review all care needs assessments carried out between March 2020 and March 2021 to identify any other cases where no support was provided despite eligible care needs having been identified.
12. This will entail a review of approximately 606 individual case records. There can be a variety of reasons why care and support was not arranged, including for self-funders or when care needs are being met from another funding source, such as NHS Continuing Healthcare. The LGSCO has allowed six months for this work to be concluded (as opposed to a deadline of three months for the other actions). A summary of the findings is required to be submitted back to the LGSCO and the expectation is that if there are other cases where eligible needs were not met, a financial remedy should be offered.

¹ Section 9 -10 Care Act 2014

² Section 24 Care Act 2014

13. Until the above work is concluded the full resource implications cannot be quantified.
14. The Director of Corporate Resources has been consulted on this report.

Circulation under the Local Issues Alert Procedure

15. None.

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PART B

Background

The Complaint

16. The LGSCO has investigated a complaint that the Council failed to properly undertake a social care assessment and provide support for eligible care needs.
17. In March 2020, the Council assessed the complainant for the first time. The assessment identified eligible care needs in a number of areas.
18. The Council's initial position had been that it had agreed with the complainant to defer services as there was no possibility to commission the identified support at the time due to the pandemic. The Council advised the complainant to re-refer to the Council after the pandemic was over and where she could expect support from a Personal Assistant (PA) under the Direct Payments Scheme.
19. In March 2021, the Council carried out another needs assessment which recognised the same eligible needs and proposed these would be met by 12 hours of weekly PA support.
20. The Council initially declined to backdate direct payments to April 2020 arguing that the complainant had agreed to defer the support until the risk of infection caused by the pandemic had decreased. It later agreed to backdate payments to December 2020, only recognising that at this point a reassessment should have taken place.
21. The LGSCO concluded:
 - (a) The Council had not applied for any Care Act easements³ to be put in place to help Councils manage acute pressures during the pandemic. The Council was therefore obliged to follow existing processes and legislation. It had a duty to support the complainant's eligible needs.
 - (b) That there was contradictory evidence provided to support the Council's position that the complainant had agreed to defer any support. On balance of probabilities the Ombudsman determined the complainant had not agreed to this.
 - (c) That there was significant delay in carrying out the March 2021 assessment given it was requested in December 2020 and the Council knew of the complainant's eligible needs.
 - (d) There was further delay in providing the support identified which was only put in place in January 2022; 55 weeks after being requested.

³ Coronavirus Act 2020

The LGSCO's Recommendations

22. The LGSCO's recommendations are that the Council:
- (a) Gives an apology to the complainant for the faults identified;
 - (b) Makes a financial payment of £7,220 to the complainant in recognition of lost services. An additional payment of £2,800 should be made in recognition of the time, trouble and distress pursuing the complaint.
 - (c) Review its processes to ensure that preparing care and support plans for residents with eligible needs is an integral part of the assessment process, that all staff are aware of this and that there are specific timescales for this part of the process.
 - (d) Review all care needs assessments carried out over a 13 month period (1 March 2020 to 31 March 2021) to identify the ones where no support was provisioned despite eligible needs and provide a summary of its findings to the Ombudsman which will include actions taken to remedy any injustice caused through any identified failure to provide support.
 - (e) Remind relevant staff of the need to keep records when making decisions for Disability Related Expenditure and waiving care charges.

The Council's Response

23. The Council has accepted the recommendations set out in paragraph 22 (a)-(e) above and has already started work in identifying any other residents similarly affected. It is anticipated that all actions will be completed within the stipulated timescales of three months for recommendations (a) and (b) above and six months in relation to recommendations (c) to (e) above.

Legal Implications

24. Section 31(2) of the Local Government Act 1974 requires the Council to lay the LGSCO report before elected members for consideration.
25. It is expected and usual practice for the Council to comply with all recommendations of the LGSCO. In this instance, the Council fully accepted the findings and considers the recommendations to be fair and reasonable.
26. If the LGSCO is not content with the approach that the Council has adopted he may issue a further report setting out that he is not satisfied with the action of the Council and he may make further recommendations.
27. Following the issuing of a public report there are also various requirements in relation to publicity and as with most LGSCO reports these are publicly available documents. The LGSCO requires that the Council publish a notice in

the local press on two consecutive occasions and also shares the final report with the Cabinet.

Equality and Human Rights Implications

28. Any failure to carry out the statutory duties as set out in the Care Act 2014 will have an impact for people who also have a range of protected characteristics as listed in the Equality Act 2010. The implementation of the recommendations made by the LGSCO in relation to the reviews and reminders to staff will assist the council in meeting its Public Sector Equality duty in the Equality Act 2010 which requires the Council to have regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not.

Background Papers

- [Care and Support Statutory Guidance](https://bit.ly/3VOiwN9)
<https://bit.ly/3VOiwN9>
- Report of the LGSCO Investigation into a complaint against Leicestershire County Council (reference number: 21 010 888), appended to this report
<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6745&Ver=4>
<https://bit.ly/3gqMtIO>

Appendix

Report of the Local Government and Social Care Ombudsman