

# North Yorkshire County Council

## Executive

24<sup>th</sup> March 2020

### Local Government and Social Care Ombudsman Report

#### Report of the Corporate Director – Health and Adult Services

#### 1.0 Purpose of Report

- 1.1 This report informs Members of a Public Report from the Local Government and Social Care Ombudsman in respect of Adult Social Care, and the actions taken to address the recommendations.

#### 2.0 Background

- 2.1 The Local Government and Social Care Ombudsman (LGSCO) has recently published a report outlining its findings into a complaint about North Yorkshire County Council. The Ombudsman upheld the complaint after it found fault with the County Council's delay in completing a remedy from an earlier Local Government and Social Care Ombudsman Complaint. A copy of the report is attached at Appendix 1.
- 2.2 The Council has accepted the recommendations of the report, and acknowledges that there are improvements to be made in some of the practices and processes, which have already been implemented.
- 2.3 In circumstances where the LGSCO concludes that the complainant has suffered injustice as a result of fault, under the 1974 Local Government Act the Local Authority must take the following actions:
- Lay the report before either full Council, Cabinet or another Committee with delegated authority.
  - Place two public notice announcements in local newspapers/newspaper websites within two weeks of the report being published. Copies of the report should be made available free of charge at one or more Council offices.
  - Within three months of receiving the report we must tell the LGSCO the action we have taken or propose to take.

#### 3.0 The Case

- 3.1 The detail of the complaint can be found in the attached report but, in summary, Mr & Mrs X complained on behalf of their daughter, Miss X, that the Council failed to complete a financial assessment that it agreed to carry out to remedy an earlier complaint upheld by the Ombudsman against the Council.

#### 3.2 LGSCO Recommendations

The Council should:

- To remedy the injustice caused by the fault found, within a month of the date of this report, the Council will apologise to Mr & Mrs X for its failure to complete the assessment for 15 months after the deadline it agreed with the Ombudsman.

- Pay Mr & Mrs X £250 for their unnecessary time and trouble in pursuing a matter that should have been resolved more than a year earlier. The Council will make this payment within a month of the date of this report, independent of any amount owed by either party as a result of the financial settlement or any ongoing complaint about it.
- The Council must consider the report and confirm within three months the action it has taken or propose to take, The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this.

**3.2** There are a number of circumstances in which the LGSCO may issue a public report. It has previously indicated that it would like to see more public interest reports published, including cases where no fault has been found. This has been reflected in an increase in the number of reports it has published over the last few years, particularly where they relate to issues of national public interest.

**3.3** The LGSCO states there are six key reasons for publishing a report:

- i. Recurrent fault
- ii. Significant fault, injustice or remedy.
- iii. Non-compliance with an Ombudsman's recommendation.
- iv. High volume of complaints about one subject.
- v. Significant topical issue (e.g. new legislation).
- vi. Systemic problems and/or wider lessons.

**3.4** Any of these reasons may lead to a public interest report. In conversations with the LGSCO, they have confirmed that the fault in this case was reason iii.

#### **4.0 North Yorkshire County Council's Response**

**4.1** The County Council accepts that it did not appropriately complete the Ombudsman's recommendation from the earlier complaint, and this has now been completed, and the financial assessment carried out. It has written to the complainant apologising for the failures identified and paid Mr and Mrs X £250 in recognition of their time and trouble in pursuing this matter.

**4.2** This case refers to events in 2018, and a number of areas of process and practice have been strengthened both before and since the issue was identified by the LGSCO. The actions taken have been shared with the Executive Member for Adult Social Care and Health Integration.

**4.3** In addition to these improvements within Health and Adult Services, the Ombudsman now asks Councils for evidence to be submitted to verify that remedies have been completed within the timescales specified by the Ombudsman.

**4.4** As indicated in paragraph 2.3 within three months of receiving the report, the Council must tell the LGSCO the action we have taken or propose to take.

#### **5.0 Financial Implications**

**5.1** The recommendations in this case requires the County Council to make a payment to the complainant.

**5.2** In this case the payment of £250 has been made to Mr and Mrs X.

#### **6.0 Actions Taken**

- Apology letter to Mr & Mrs X
- Financial Assessment has been completed
- Press notification of Public Report in two local papers; Selby Times & Yorkshire Post
- Copies of the Public Report have been made available if requested by the public.

**6.5** Working practice within the Customer Response Team has since changed to ensure that all cases are left open until remedies have been completed and evidence has been provided by the relevant teams to share with the Ombudsman to confirm that the remedy is complete, in line with its Complaints Process.

**6.6** The Ombudsman now only issue remedy satisfaction letters and close cases once they have received the evidence from the Council for all individual remedies. This is a far more robust process

## **7.0 Impact on Other Services/Organisations**

**7.1** As previously mentioned, the changes arising from the recommendations have been to internal Health and Adult Services processes.

## **8.0 Recommendation**

**8.1** The Executive are asked to note:

- (i) The findings and recommendations in the Local Government and Social Care Ombudsman Public Report
- (ii) The actions taken

**Richard Webb**  
**Corporate Director – Health and Adult Services**  
County Hall  
Northallerton  
20<sup>th</sup> February 2020

Author of report – Sarah Abram, Customer Feedback Manager

Background Documents – Report from Local Government and Social Care Ombudsman

Appendix 1 – Ombudsman Report

**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint against  
North Yorkshire County Council  
(reference number: 19 010 955)**

**7 February 2020**

## The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

### Key to names used

|              |                                |
|--------------|--------------------------------|
| Ms X         | The complainant                |
| Mr and Mrs X | Her parents, who represent her |

## **Report summary**

### **Council: assessment**

Mr and Mrs X complain on Ms X's behalf. They complain that the Council took 15 months too long to complete a financial assessment it agreed to carry out to remedy an earlier complaint we upheld. This has delayed the resolution of Mr and Mrs X's concerns about the Council's calculation of disability related expenditure.

### **Finding**

Fault found causing injustice and recommendations made

### **Recommendations**

To remedy the injustice caused by the fault found, within a month of the date of this report, the Council will apologise to Mr and Mrs X for its failure to complete the assessment for 15 months after the deadline it agreed with us.

We welcome the Council's offer to pay Mr and Mrs X £250 for their unnecessary time and trouble in pursuing a matter that should have been resolved more than a year earlier. The Council will make this payment, within a month of the date of this report, independently of any amount owed by either party as a result of the financial settlement or any ongoing complaint about it.

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

## The complaint

1. The complainant, whom I shall call Ms X, is represented by her parents, Mr and Mrs X. They complain on Ms X's behalf that the Council failed to complete a financial assessment that it agreed to carry out to remedy an earlier complaint upheld by us against it. This has delayed the resolution of Mr and Mrs X's concerns about the Council's calculation of disability related expenditure (DRE).

## Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. Councils must assess a person's finances to decide what contribution he or she should make to a personal budget for care. If a person incurs expenses directly related to any disability he or she has, known as disability related expenditure (DRE), the Council should take that into account when assessing his or her finances. (*Care Act 2014 Department for Health, 'Fairer Charging Guidance' 2013, and 'Fairer Contributions Guidance' 2010*)
4. Disability Living Allowance (DLA) is a benefit payable to disabled persons. It has two components, one of which provides help with mobility. This is paid at one of three financial levels. DLA is currently being replaced with personal independence payments for people aged between 16 and 64 (PIPs).
5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this report with Ofsted.

## How we considered this complaint

6. We have produced this report after examining the relevant files and documents provided by both parties. Both parties have had the opportunity to comment on a draft of this report and we have considered their comments.

## What we found

7. We found fault by the Council in a previous complaint ([14 017 083](#)) by Mr and Mrs X on Ms X's behalf. Among other things, the Council agreed on 13 June 2018 to carry out a fresh financial assessment for Ms X within one month. This was to include her housing costs and consider if her transport costs exceed the lower level DLA mobility component.
8. The Council confirmed to us that it had visited Ms X to assess her needs. We have seen evidence that this happened on 25 July 2018. We confirmed on 17 September 2018 we were satisfied it had implemented the remedy.
9. Mr X contacted us on 13 September 2019. He said the Council had still not shared the assessment with him, despite him asking for this more than once.
10. Mr X later provided a copy of an email exchange with the Council in the form of questions and answers dated 23 September 2019. This stated the financial

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assessment had been held up because “colleagues in the benefits and charging team haven’t been able before now to agree the DRE information relating to transport.” It said it had told Mr X of this issue on 18 October 2018. The email exchange also said two successive workers allocated to the case had left the Council. It apologised that Mr X “went for such a long period without any contact with a member of our social care team.”

11. When we contacted the Council at its request on 27 September 2019, it confirmed it had not completed the financial assessment. It said it would offer Mr and Mrs X £250 for their time and trouble.
12. The Council sent us the completed financial assessment on 11 October 2019. Mr and Mrs X dispute the Council’s calculations and the basis on which the Council made them.

## Conclusions

13. The Council accepted our recommendations in Mr and Mrs X’s previous complaint that it would carry out the fresh financial assessment within one month of the decision date (13 June 2018). Despite visiting the family on 25 July 2018, which was already slightly late, it failed to produce a calculation until October 2019. We find the Council at fault for failing to implement part of the remedy it agreed in relation to complaint 14 017 083.
14. This has prevented Mr and Mrs X from challenging the calculation it has now made for 15 months longer than necessary. Financial matters between the parties are still unresolved. This means Mr and Mrs X have had unnecessary time and trouble.
15. We note both parties agree it is likely to be Ms X who will owe the Council money, not the other way around, so we do not find she has lost out financially.

## Recommendations

16. To remedy the injustice caused by the fault found, within a month of the date of this report, the Council will apologise to Mr and Mrs X for its failure to complete the assessment for 15 months after the deadline it agreed with us.
17. We welcome the Council’s offer to pay Mr and Mrs X £250 for their unnecessary time and trouble in pursuing a matter that should have been resolved more than a year earlier. The Council will make this payment, within a month of the date of this report, independently of any amount owed by either party as a result of the financial settlement or any ongoing complaint about it.
18. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)