

North Yorkshire Council

Executive

28th November 2023

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 Interest Report from the Local Government and Social Care Ombudsman in respect of Adult Social Care, and the actions taken to address the recommendations.

Executive Summary

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 Council. The Ombudsman upheld the complaint after it found fault with the County Council's use of language when describing / explaining its calculations. A copy of the report is attached at Appendix A.
- 2.2 The Council has accepted the recommendations of the report and acknowledges that improvements are required to ensure the correct language is used when undertaking financial assessments and calculations, to avoid doubt or ambiguity.
- 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.

The Case

- 3.0 The detail of the complaint can be found in the attached report but, in summary, Mr X complained about the Council's financial assessment for his mother, Mrs Y's residential care charges and its decision to treat monetary gifts to her children and grandchildren as notional capital. Mr X says this means Mrs Y was responsible for the full cost of her care for longer than she should have been. It resulted in significant arrears of care fees and a risk to Mrs Y's place at the care home.

3.1 LGSCO Recommendations

The Council should:

- Complete a financial assessment for Mrs Y based on her actual capital since 2022 and calculate when her capital would have fallen below the capital limit and what her contribution towards her care should have been from that point onwards.
- Reimburse Mrs Y any overpayments the new financial assessment shows she has made to the care home for her care since her capital fell below the capital limit. Any repayment of over £1,000 should include interest. Or, if the fees are still outstanding, the Council should calculate the sum it is responsible for and pay this directly to the care home. Based on the re-assessment above, it has been calculated that the following will be reimbursed:

Option	Details	Amount to Reimburse
One	Any repayment of over £1,000 should include interest and paid to Mrs Y	£17,467.84 (Based on IPA rate of £937.00 for the period of 27/06/2022 – 29/12/2022 and includes Interest of £871.32)(Barclays Base Rate of 5.25%)
Two	if the fees are still outstanding, the Council should calculate the sum it is responsible for and pay this directly to the care home	£16,596.52 (Based on IPA rate of £937.00 for the period of 27/06/2022 – 29/12/2022)

- Pay Mr X £350 to recognise the distress and anxiety caused by the inclusion of the notional capital in Mrs Y's financial assessments.
- Review the financial assessments completed for other service users over the last 12 months where gifting has not been deemed a deprivation of assets but has been included as notional capital. The Council should make appropriate reimbursements to any service users where new financial assessments show they have overpaid for their care. 4 Cases identified details as below:

Case Number	Comments	Amount to reimburse
1	Remove the notional capital from the financial assessment	£20.00
6	Resolved – completed as a complaint review – no refund required	Nil
9	Remove the notional capital from the financial assessment	£800.00
10	Over capital limit without the notional capital, new capital limits assessment to be completed	Nil

- Undertake a thorough review of its approach to deprivation of assets, gifting, and notional capital, to ensure that its approach is robust and in line with the guidance.
- 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 ii, v, vi.

4.0 North Yorkshire Council’s Response

4.1 The Council accepts the fault identified by the Ombudsman in the language it used. The Council was at fault for its use of language when describing /explaining its calculations. We included a sum of £18,940 as notional capital, when it should have been deemed as deprivation of assets. This is fault, as there is no provision to do this with legislation or statutory guidance.

4.2 The Council disputed that this case met the criteria for a public report and robustly challenged this with the Ombudsman. Despite this, the Ombudsman advised it was still their intention to issue a Public Interest Report.

4.3 The Council has written to the complainant apologising for the failures identified and paid Mr X £350 in recognition of his time and trouble in pursuing this matter.

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

5.0 Financial Implications

5.1 Recommendations in this case requires the Council to make a payment to the complainant of £350.

5.2 Reimburse Mrs Y any overpayments the new financial assessment highlight

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One	Any repayment of over £1,000 should include interest and paid to Mrs Y	£17,467.84 (Based on IPA rate of £937.00 for the period of 27/06/2022 – 29/12/2022 and includes Interest of £871.32) (Barclays Base Rate of 5.25%))
Two	if the fees are still outstanding, the Council should calculate the sum it is responsible for and pay this directly to the care home	£16,596.52 (Based on IPA rate of £937.00 for the period of 27/06/2022 – 29/12/2022)

- 5.3** Make appropriate reimbursements to the 4 cases identified where gifting was not deemed as deprivation of assets but was included as notional capital. These total £820.

Case Number	Comments	Amount to reimburse
1	Remove the notional capital from the financial assessment	£20.00
6	Resolved – completed as a complaint review – no refund required	Nil
9	Remove the notional capital from the financial assessment	£800.00
10	Over capital limit without the notional capital, new capital limits assessment to be completed	Nil

6.0 Actions Taken

- 6.1** Apology letter to Mr & Mrs X
- 6.2** Financial Assessment has been completed
- 6.3** Press notification of Public Report in two local papers; Harrogate Advertiser & Yorkshire Post
- 6.4** Copies of the Public Report have been made available if requested by the public.
- 6.5** Working practice within the Benefits, Assessments & Charging Service teams across the directorate have been reviewed and a thorough appraisal of its approach to deprivation of assets, gifting and notional capital has been completed and staff training, webinars, and workshops are being undertaken.

7.0 Impact on Other Services/Organisations

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

8.0 Recommendation

- 8.1** The Executive is recommended to note:
- i. The findings and recommendations of the Local Government and Social Care Ombudsman Public Report.
 - ii. The actions taken.

Richard Webb
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 Northallerton
 14th November 2023

Author of report – Sarah Abram, Customer Feedback Manager

Background Documents – Report from Local Government and Social Care Ombudsman
 Appendix A – Local Government and Social Care Ombudsman (LGSCO Report)