

Decision Maker: **Executive**

Date: **20<sup>th</sup> July 2011**

Decision Type: Non-Urgent Executive Key

**TITLE: OMBUDSMAN'S REPORT**

Contact Officer: Jim Kilgallen, Senior Lawyer  
Tel: 020 8 313 4763 E-mail: jim.kilgallen@bromley.gov.uk

Chief Officer: Mark Bowen, Director of Resources

Ward: All

---

1. Reason for report

- 1.1 An adverse report has been published by the Ombudsman against the Council containing a finding of maladministration causing injustice A copy of the report may be found at <http://www.lgo.org.uk/complaint-outcomes/social-care/social-care-archive-2011-12/london-borough-bromley-08-019-214>
- 1.2 Where the LGO reports that there has been maladministration in connection with the exercise of a local authority's administrative functions section 31 Local Government Act 1974 requires that the report be considered by members. The Monitoring Officer is also required to produce a report under section 5A Local Government & Housing Act 1989. This is a joint report fulfilling the statutory requirements. The local authority is further required to notify the LGO, within 3 months, of the action the Authority have taken or propose to take.

---

2. **RECOMMENDATION**

- 2.1 **That the Executive consider the report and it's findings and agree to respond to the Ombudsman in the form of the letter attached**

### Corporate Policy

1. Policy Status: N/A
  2. BBB Priority: N/A
- 

### Financial

1. Cost of proposal: <please select> £4000.00
  2. Ongoing costs: N/A
  3. Budget head/performance centre: Care Services
  4. Total current budget for this head: £96,000,000.00
  5. Source of funding: ACS Revenue Budget 2011/12
- 

### Staff

1. Number of staff (current and additional) – N/A
  2. If from existing staff resources, number of staff hours – N/A
- 

### Legal

1. Legal Requirement: Statutory requirement: Section 31 Local Government Act 1974 and 5A Local Government & Housing Act 1989
  2. Call in: Call-in is applicable
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected) - N/A
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 An Ombudsman report in respect of complaint no 08 019 214 dated 9<sup>th</sup> June 2011 has been published a finding against the Council of maladministration causing injustice.
- 3.2 The report relates to Mr. A and arrangements made by the Council in respect of his father's Mr.B's care arrangements' A complained the Council failed properly to arrange and provide a satisfactory standard of residential care for his father, Mr B; it failed to monitor and review his placement in D House; and failed properly to respond to his complaints about the matter until after Mr B had been accommodated elsewhere. Mr A was not given the option of Mr B paying his contribution to the Council rather than to the care home.
- 3.3 The recommendations made by the Ombudsman to remedy this maladministration are as follows:
- make a payment of £1,000 to Mr B,
  - write off £2,000 owing to the Council, in recognition of the injustice he was caused by failures
  - make a payment to Mr A of £1,000 in recognition of his separate injustice,
  - review procedures for reviewing and monitoring care home placements,
  - review its accounting procedures,
  - review its complaints procedures so extraordinary and inexcusable delays seen in this case are avoided in future and
  - report to the Ombudsman in three months' time, the outcome of it's' reviews of procedure and recommendations.
- 3.4 The Executive members will need to consider the proposed recommendations in the light of the history of this matter and the provisions already put in place by the Council.
- 3.5 Mr A asserts his father was living in unsatisfactory conditions for about a year longer than would otherwise have been the case, and he has been put to avoidable time and trouble in pursuing the matter.
- 3.6 The contract for Mr B's placement was completed by the Council, the contract said the provider would collect Mr B's contribution to the costs of his care direct from him (or his representative), and the Council would only pay the provider the difference. Mr A (Mr B representative) did not appear to have been given the option to pay Mr B's contribution directly to the Council, instead of the care home.
- 3.7 The contract stated the Council would review Mr B's placement initially at four weeks, six months, and annually thereafter. Mr B was placed on the 16 February 2006 and reviewed on the 20th April 2006 and 20th December 2007
- 3.8 In January and June 2006, the Commission for Social Care Inspection (CSCI, the predecessor of the Care Quality Commission) carried out an announced followed by an unannounced inspection. As a result, D House received a zero rating, indicating overall standards were judged to be poor. Further unannounced inspections took place in January and August 2007, with the same outcome.
- 3.9 In 2008 Mr A asked for a reduction in the level of fees and a refund due to the poor quality of care received by Mr B, throughout this time period Mr. B was held liable for care home fee contributions. Mr A complained about the delay in carrying out a review of Mr.B's needs. This matter was treated by the Council as a complaint and was concluded in February 2009.

- 3.10 Mr A was unhappy with the response from the Council and an independent investigator was appointed and in July 2009 the investigation was concluded.
- 3.11 The investigating officer upheld Mr.A's complaints The Council responded to the complaint investigation report by writing to Mr A on 7 August 2009. It accepted the findings and Mr A's complaints were upheld.
- 3.12 The Council expressed regret the standards of care at D House were unsatisfactory, but stopped short of apologising because it said the care standards were the responsibility of D House.
- 3.13 The Council did not; agree to any refund of fees in respect of Mr B's time at D House.
- 3.14 The Council made a without prejudice offer, to waive £1,000 in respect of an outstanding bill for respite to the family. This debt was not associated with D House.
- 3.15 Mr A remained unhappy and complained to the Ombudsman. In February 2010, the ombudsman invited the Council to settle the complaint by making payments to Mr A of £5,600 of which £1000 in recognition of uncertainty caused by the Council's actions in respect of the outcomes for Mr B, and of Mr A's time and trouble in pursuing the complaint.
- 3.16 The Council responded to this invitation in May 2010 and offered an increased waiver of £2000. The Council concluded on balance the delay by the Council in carrying out a review of Mr B's care between October 2006 and December 2007 was not material to Mr B's deterioration and during this time his family did not seek an alternative placement due to poor care. Furthermore the professionals review in December 2007 concluded Mr B's care was adequate and naturally the Council accepted this decision.
- 3.17 The Council in placing Mr B acquiesced to Mr A's wish for his father to be placed in a care home near to the family, in an out of borough placement. In doing so the Council ensured the placement would meet Mr B assessed needs.
- 3.18 The Council accepted the failings outlined in the draft report from the ombudsman and responded with an increased remedy and apology. However it did not agree there are grounds for an additional refund of care home fees because:
- (a) although there were poor ratings of the home, there is no evidence that Mr B suffered any personal detriment while there because;
  - (b) there is no evidence that a change of placement would have happened had the annual review taken place when it should have done, at least in part
  - (c) because the December 2007 review did not recommend a change of placement and Mr A was not seeking one;
  - (d) Mr B's health conditions are ones which are degenerative and would have worsened regardless of the environment, so any suggestion that conditions in the home had an impact is pure speculation; and
  - (e) When Mr B moved to another home, the rating of D House had improved (the Council's implication is that the move was not the result of conditions at the home, but of Mr B's changing care needs).
- 3.19 However, The Council recognises that to protract this matter further is neither helpful to the complainant nor efficient use of resources and proposes the following actions which will meet the LGO's recommended remedy

#### **4. ACTIONS TAKEN BY COUNCIL TO REMEDY MALADMINISTRATION**

- 4.1 Since the complaint in 2008, the Department of Health complaint regulations have changed. The revised procedure became operational in April 2009, and reviewed in 2010 along with our complaints operations. Complaint response times were reported to PDS in this year's annual complaints report, 74% of formal complaints have been responded to within the department's timescale of 20 working days.
- 4.2 All people placed by the Council in care homes have their care reviewed by care management staff. The standards are reviews take place initially after 4 weeks, followed by 6 months and then annually. Where someone is placed in a home which receives a poor or adequate rating from the care quality commission, the frequency of care management reviews is increased to 6 monthly.
- 4.3 Further the procedures for reviewing and monitoring care home placements has been reviewed with particular emphasis on one star and zero star homes, One and zero star homes are visited annually by the Contracts Team, who also view the inspection reports published by CQC for these homes. A questionnaire is sent to the councils in whose area all the out-of-borough one star placements are located asking their views on the standards in these care homes. Care Management teams performance on annual reviews and the twice annual reviews for one and zero star homes is reported to a monthly monitoring meeting which holds them to account for their performance.
- 4.4 Over the last four years a number of improvements have been made to the Council's accounting procedures to ensure that accurate invoices are raised in a timely manner, and where invoices are raised for more than one service period the invoices are raised in chronological order.
- 4.5 As part of the improvements, the Council took further steps to centralise its accounts receivable functions by moving the responsibility for raising invoices for Adult and Community Services to a centralised income team. This has resulted in an improved and consistent standard of service in this area.
- 4.6 Specifically in relation to charges for respite, the procedures have been amended to ensure that invoices are raised at the earliest possible opportunity following the period of respite.
- 4.7 The following actions are proposed:
- (i) Pay the sum of £1000.00 to Mr.B and confirm that the £2000.00 outstanding in respect of care home fees owing has already been written off.
  - (ii) Pay the sum of £1000.00 to Mr. A in recognition of his separate injustice
  - (iii) Report to the Ombudsman within three months

#### **5. POLICY IMPLICATIONS**

- 5.1 Council policies have been amended to remedy the defects identified by the Ombudsman

#### **6. FINANCIAL IMPLICATIONS**

- 6.1 The Ombudsman has recommended that the Council should pay compensation totalling £4,000. This amount can be funded from within the Adult Social Care budget for 2011/12.

## 7. LEGAL IMPLICATIONS

- 7.1 The Council is not obliged to accept the Ombudsman's findings but if it does not do so she will issue a second report. The Head of Resources and the Council's Monitoring Officer considers that the Ombudsman's report should be accepted in this case.

<b>Non-Applicable Sections:</b>	Personnel Implications
Background Documents: (Access via Contact Officer)	