

North Tyneside Council

Report to Cabinet

Date: 11th August 2014

ITEM 6(c)

Title: Report of the Local Government Ombudsman

Portfolio(s): Adult Social Care

Cabinet Member(s): Councillor Lesley Spillard

Report from Service

Area: Law and Governance

Responsible Officer: Vivienne Geary, Head of Law and Governance

Tel: 0191 643 5339

Wards affected: All

PART 1

1.1 Purpose:

Cabinet is requested to note the content of the report of the Local Government Ombudsman (LGO) dated 9th June 2014, the finding of maladministration causing injustice as a result of the actions of a Social Worker, the recommendations made by the LGO investigator, and actions proposed to address those recommendations.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) notes the findings and recommendations of the LGO as described in this report and as set out in the LGO's report at Appendix 1; and
- (2) notes the actions proposed to comply with the recommendations of the LGO's report.

1.3 Forward Plan:

It has not been practicable to give twenty eight days notice of this report. However, it is required to be considered without the twenty eight days notice being given because the Authority is required to notify the LGO of the action the Authority has taken or proposes to take within three months of receiving the report. The final report was received from the LGO on the 9th June 2014, however following consultation between Officers a proposal to the complainant regarding resolution to the complaint was not issued until the 16th July 2014.

1.4 Council Plan and Policy Framework

This report relates to the following themes/programmes/projects in the 2014-18 Our North Tyneside Plan: Our People will be cared for and be cared for if they become vulnerable.

1.5 Information:

1.5.1 Background

The details of this complaint and the findings of the LGO investigator are set out in detail in Appendix 1.

Mr X, the complainant, complains that a Social Worker acted beyond her remit. Mr X says the Social Worker unfairly and unreasonably contacted a travel company and gave personal information about his 99 year old mother (Mrs Y) which resulted in the travel company cancelling his mother's flight to visit him in Florida. He says in doing so the Social Worker breached confidentiality and the Data Protection Act 1998.

Mr X contacted the travel company to enquire about the flight cancellation. He says the travel company told him its records show it was the Social Worker who cancelled the flight. Mr X says the Social Worker was able to authorise this as she gave inaccurate information to the travel company about her relationship to his mother, saying she was a friend of his mother's. He also says this travel company has now banned his mother from making lone travel arrangements.

Mr X says his mother had the capacity to make her own decisions about her travel arrangements. He says the Social Worker's actions were disproportionate and caused his mother unnecessary anxiety and distress. He has also incurred a financial loss. He paid for his mother's flight and this was lost when the flight was cancelled. He then had to purchase another ticket at an increased cost for his mother who travelled at a later date with a different airline.

Mr X also complains that the Social Worker discussed his mother's personal circumstances with third parties without either his or his mother's consent. These third parties include the travel company, the Police, a GP, a pharmacy, a personal friend of his and extended family. Mr X says the Social Worker involved the Police and threatened to obtain a court order to prevent his mother leaving the country. He also says the Social Worker contacted his mother's GP and the pharmacy responsible for dispensing his mother's medication.

Mr X says his mother did eventually travel to see him but this holiday was blighted by her fears about returning home. Prior to the above events his mother had been in hospital and he had arranged care to be provided to her by Age UK on her discharge. He says this was cancelled and he is not clear if the Social Worker is responsible.

1.5.2 Findings

The findings of the LGO were as follows:

- The Authority failed to act in accordance with the law in attempting to prevent Mrs Y from travelling abroad by air;
- The Authority failed to adhere to the Code of Practice set out in the Mental Capacity Act 2005. This caused Mrs Y unnecessary stress, distress and disruption to her travel plans.
- A social worker gave information about Mrs Y to an airline without authorisation to do so which resulted in the airline cancelling Mrs Y's flight abroad. This is fault.
- A social worker gave confidential information about Mrs Y to third parties without Mrs Y's consent. This was a breach of Mrs Y's confidentiality. This is fault.

1.5.3 Recommendations

The LGO investigator has found maladministration and injustice against the Authority and has made 6 recommendations, as set out under paragraph 78 of Appendix 1. Authority Officers are currently in communication with the complainant in relation to satisfying the recommendations which are as follows:

- provide Mrs Y with a full written apology;
- provide Mr X with a full apology;
- ensure its Officers are aware of the principles, and act in accordance with the Mental Capacity Act 2005;
- pay the difference between the cancelled flights and the re-booked flights;
- pay Mrs Y £500 for stress and distress; and
- pay Mr X £250 to compensate him for the time and effort in pursuing this complaint.

1.5.4 Actions taken in response

The following actions have been taken in response to the LGO's recommendations:

The Authority has written to Mr X offering a full apology and has obtained details in relation to the difference in cost of the cancelled flights £723.76 and the accounts the compensation amounts are to be paid into, this will be actioned as soon as practicable. In addition Officers have asked Mr X's guidance on how the apology should be delivered to his mother Mrs Y, as she has fluctuating capacity.

The Authority will ensure Social Workers are aware of the principles of the Mental Capacity Act 2005 through awareness sessions. The Authority will use this particular case example and lessons learned to strengthen guidance, and process, and audit the completion of Mental Capacity Assessment documentation.

1.5.5 Officer Comments

Although the Authority has accepted the findings of the LGO this was a decision that was not made lightly. Throughout this complaint and investigation Officers have taken the position that the Social Worker acted in good faith, on the basis of concerns that others, including the GP and family members based locally, were sharing. The Social Worker's actions were proportionate to the risks that were being presented at the time, coupled with the timeframe for decisions being made, the situation developed very quickly over a matter of two weeks.

Mrs Y was at the time in receipt support from reablement four times a day and was demonstrating difficulties in retaining information and understanding why she needed support, both of which it was felt would put her at risk during a long haul flight. However Officers do acknowledge that some of the documentation supporting the decisions and actions taken was not as thorough as it should have been, and this would place the Authority in a position of risk should we dispute the investigator's findings. Furthermore, whilst there is a record of the Social Worker's case recordings, Officers did not have access to the information provided by the Travel Company (the LGO did have access to this), and this was a further risk, as Officers had no way of verifying what the Travel Company had recorded in terms of the conversation the Social Worker had with them.

It is recognised that the Social Worker should have asked the GP to raise her concerns about Mrs Y's ability to travel with the Travel Company, rather than do this on the GP's behalf.

Therefore given the relatively low costs associated with the finding and the possible risks identified in challenging the decision, the Authority decided to accept the findings.

1.6 Decision options:

Cabinet is requested to note the findings of the report (Appendix 1), its recommendations and actions taken to address the LGO's recommendations.

1.7 Reasons for recommended option:

Cabinet is required to consider the findings of the LGO within 3 months. The recommended option addresses the findings and provides a resolution to this complaint.

1.8 Appendices:

Appendix 1: The Ombudsman's final decision report, date 9th June 2014 Ref 13 015 861

1.9 Contact officers:

Vivienne Geary, Head of Law and Governance, tel. (0191) 643 5339

Jacqui Old, Head of Adult Social Care, tel. (0191) 643 7317

Yvette Monaghan, Customer, Member and Governor Services Manager, tel. (0191) 643 5361

Alison Campbell, Finance Business Manager, tel (0191) 643 7038

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) Appendix 1: The Ombudsman's final decision report, date 9th June 2014 (attached)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

There is a financial implication directly arising from this report as set out in 1.5.3 and 1.5.4. The total amount of compensation of £1,473.76 can be met from the Adult Social Care budget and will be paid directly to the complainant and his mother as set out in the recommendations of the LGO.

2.2 Legal

In the Ombudsman's conclusions there is reference to capacity assessments and the underlying principles of the Mental Capacity Act 2005.

The Code of Practice to the Mental Capacity Act 2005 provides guidance for anyone working with adults who lack capacity and describes their responsibilities when acting or making decisions on behalf of individuals who lack the capacity to make those decisions.

The five main statutory principles underlying all legal requirements under the act are:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practical steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done or decision made under the Act for or on behalf of a person who lacks capacity must be done or made in his best interests.
5. Before the act is done or the decision made regard must be had as to whether the purpose for which it is needed can be effectively achieved in a way that is less restrictive of the person's rights and freedoms.

The starting assumption must therefore be that a person has capacity. It should be noted that capacity should be assessed specifically in terms to the particular decision at a specific time. Therefore a person may lack capacity in some areas but not in respect of the particular decision to be made. They may also lack capacity at different times but have capacity when the specific decision is made.

In accordance with the Local Government Act 2000 and the regulations made under that Act in relation to responsibility for functions, Cabinet is responsible for determining this matter.

2.3 Consultation/community engagement

There are no consultation/community engagement implications directly arising from this report.

2.4 Human rights

Mrs Y got to visit her son no later than originally planned, however she was distressed about the prospect of not being able to go, and this has been remedied by the LGO investigation and compensation.

2.5 Equalities and diversity

Mrs Y was classed as a vulnerable adult at the time of the events. However there is nothing in the findings of the LGO which identifies that she was discriminated against on the grounds of the protected characteristics that would apply to her (age and disability). Therefore there are no equalities and diversity implications directly arising from this report.

2.6 Risk management

There are no risk management implications arising as a result of this report.

2.7 Crime and disorder

There are no crime and disorder implications directly arising as a result of this report.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising as a result of this report.

PART 3 - SIGN OFF

- Deputy Chief Executive
- Head of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Strategic Manager–
Strategic Services