

North Tyneside Council

Report to Cabinet

Date: 9 MAY 2016

ITEM 6(f)

Title: Report of the Local Government Ombudsman

Portfolio(s): Adult Social Care

Cabinet Member(s): Councillor Allison Waggott-Fairley

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 Executive Summary:

The Local Government Ombudsman (LGO) have issued a report dated 25 February 2016 finding maladministration causing injustice as a result of the way the Authority communicated a move to alternative accommodation for Mr A. The complainant was Ms X on behalf of Mr A, and failed to involve an Independent Mental Capacity Advocacy (IMCA) in the Best Interest decision meeting once it was known that his advocate, Ms X, wasn't able to attend. This failure meant that Mr A, who did not have capacity, did not have the opportunity to be properly represented. The Authority have acknowledged this injustice and agreed to pay Mr A £2,000 compensation and to review the arrangements for his future accommodation, as recommended by the LGO.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) note the findings and recommendations of the LGO as described in this report and set out in the LGO's report at Appendix 1; and
- (2) note the actions taken by the Authority to comply with the recommendations of the LGO's report, as set out in 1.5.4 of this report.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 1 April 2016.

1.4 Council Plan and Policy Framework

This report relates to the following priority in the 2014/18 Our North Tyneside Plan:

- (1) Our People will be cared for and kept safe 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 Appendix 1.

“Mr A is a man in his 40s who has a learning disability and suffers from anxiety. Ms X has been his citizen’s advocate (working from an independent advocacy agency) for 13 years. Until August 2014, Mr A lived in a block of flats which the Council describes as being part of a communal hub where several people with learning disabilities could learn to live as independently as possible in the community. Mr A had 25 hours a week support from a care agency and his care was supervised by the Community Learning Disability Team (CLDT).

The other blocks of flats were occupied by young mothers in safe accommodation. The Council says tensions arose between the young mothers and some of the clients with learning disabilities, to the extent that it was considered in the best interests of the service users with learning disabilities to move them sooner to different accommodation for their own safety. The Council says that tensions escalated because of the number of false fire alarms due to one of the service users setting off the fire alarm deliberately. In addition a fire risk assessment raised concerns.

Unfortunately someone (the Council says it does not know who) told the service users, including Mr A, about the impending move before social work staff were able to meet the tenants and explain the matter in a structured way. The Council says once the social work team knew that tenants had heard about the move, they took steps to meet them the following day.”

At this point Mr A had mental capacity to partake in the meetings. However, news of the impending move caused Mr A’s anxiety to escalate and symptoms of deteriorating mental health became evident.

“Efforts were being made to re-house all of the tenants living in the flats. Ms X says she was contacted by a member of the CDLT staff who asked if she would like to accompany Mr A to see the property. She says this flat was not in the area close to Mr A’s friends. The notes of the first visit show that Mr A was very quiet at the visit but said he would like to go back and see it again. Ms X says in fact Mr A had a mild panic attack while he was there. The care provider staff told the CLDT that if Mr A liked the property, it would be best if he moved quickly as his anxieties were increasing. Unfortunately the existing tenant said he did not want to live with Mr A, who he felt was too quiet.

Mr A’s anxieties increased with the delay in finding alternative accommodation. By mid-September the support workers reported that Mr A was refusing to eat and had thrown a glass at one support worker. Mr A was seen by his GP and mental health professionals due to the ongoing deterioration in his mental health and by this time he did not have mental capacity to make decisions about future accommodation.

A meeting was held on 9 October to make a decision about Mr A’s future accommodation. Ms X was unable to attend the meeting. She says she does not believe the Council made sufficient efforts to enable her to attend (she was unable to arrange childcare and the Council would not allow her small children to come with her). Ms X says she contacted CLDT by telephone on a number of occasions, to try and make suitable arrangements to attend the meeting. She asked if she could dial-in to the

meeting, or speak to someone on the telephone before or during the meeting. She says these suggestions did not receive the promised return telephone call. The notes of the meeting say, "*Advocate not present, however consulted by phone*". Ms X had told the social worker that Mr A had refused to visit another suggested property and though she had taken photographs to show him, he said he did not want to live there. The meeting took a "*best interests*" decision that Mr A would move into another property. The care provider would recruit staff familiar to Mr A. Ms X says her phone calls to the meeting were *not* pre-arranged and, in her view, could not be considered a 'consultation'. She says she contacted the CLDT in her on-going role as Mr A's advocate, in order to relay information about Mr A's preferences for his future housing. She says she was not aware that the MDT meeting had been changed to a '*best interests*' meeting."

Mr A was subsequently admitted to hospital for treatment of his mental health. He was discharged back to community living in February 2016.

1.5.2 Findings

The findings of the LGO were as follows:

"It was not the Council's fault that the move had to take place. But the Council should have had in place a communication strategy which avoided the possibility that the news was leaked early to the service users before the proper means of communication, in a supported way, could be put into action. It was clear there was a volatile situation developing: it was unfair that the people whose lives would be most affected by the move were not able to be told, in a structured way with suitable representation, before the news was given to them informally."

"The Council undertook an assessment of Mr A's capacity to make a decision about his future accommodation. The assessment concluded Mr A did not have capacity to make the decision. The Council also documented the way in which it undertook to make a "*best interests*" decision for Mr A. The record indicates that where the Council or the NHS intends to move someone to accommodation for longer than 8 weeks, it must instruct an IMCA. The Council did not instruct an IMCA. It recorded "*Mr A has an independent advocate who has known him for 13 years. She has been part of the decision making process and has acted in (Mr A's) best interests*". The Council recorded its decision that it was in Mr A's best interests to move into a selected property. Under the section of the formal document entitled, "*What has been done to encourage the person to take part, or improve their opportunity to take part?*", the Council recorded, "*Ms X has liaised with services on (Mr A's) behalf and has put forward his views and wishes*"."

"Ms X says she was not aware of the mental capacity assessment that concluded Mr A did not have the capacity to make decisions about his future accommodation. She says she was not aware that a '*best interests*' meeting was to take place with a view to making a decision about Mr A's future accommodation. She did not know about the property the Council had now identified and was therefore never in a position to put forward Mr A's views about this property. She says she was not asked by the Community Learning Disability Team (CLDT) about Mr A's thoughts with regard to this property. She says as far as she knows, Mr A had no knowledge of the property prior to the '*best interests*' decision being taken."

"Although there was no option but for the Council to seek alternative accommodation for Mr A, communication about the move was poor. Once it became clear that Mr A's advocate was unable to attend, the Council should have involved an IMCA in the Best Interest decision meeting after Mr A was deemed to lack capacity. The failure to do so

meant that Mr A did not have an opportunity to be properly represented. The Council's failure to properly manage the move and to ensure Mr A had proper representation caused him considerable injustice. The Council has agreed to acknowledge the injustice caused to Mr A by a payment of £2,000."

1.5.3 Recommendations

The LGO investigator has found maladministration and injustice against the Authority and has made the following recommendation, as set out under paragraphs 52 and 53 of Appendix 1:

1. To thoroughly review the arrangements for Mr A's future accommodation
2. To pay Mr A £2,000 in recognition of the distress he suffered, and
3. to consult Ms X about the most beneficial way for Mr A to receive the payment.

1.5.4 Actions taken in response

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

1. Review arrangements for Mr A's accommodation - Mr A has moved into the property that was identified for him prior to his admission to hospital. The transition from hospital has been lengthy and reflects the pace at which Mr A is able to adapt and cope with change. It also provides those supporting him with added insight into Mr A's needs and his vulnerability to unexpected or sudden change. He has been and continues to be supported by his social worker, enablement workers and his advocate Ms X. To date Mr. A's mental health has improved significantly.
2. £2000 compensation has been paid to Mr A's account following consultation with Ms X.
3. The Authority has undertaken a range of training workshops and presentations for staff as part of its introduction to the Care Act 2014 and new advocacy regulations.
4. The Authority is currently re-commissioning advocacy services with a range of functions (IMCA, IMHA and Care Act).

1.5.5 Officer Comments

The situation was unique in the way the move was disclosed to the residents and the Council feel they did all they could at the time to minimise the disruption to the tenants.

Whilst the Council always value the views and opinion of advocates it is important to understand that Mr A was mentally very unwell, therefore the Council was also being guided by medical opinion as to the best way to carry out the assessment and the move.

Finally, legal opinion was sought on this case and there was not a legal necessity to appoint an IMCA, however on reflection this would have been best practice given the circumstances and complexity of Mr A's presenting needs.

1.6 **Decision options:**

The following decision options are available for consideration by Cabinet:

Option 1

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

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Not applicable

1.8 Appendices:

Appendix 1: The Ombudsman's final decision report, date 25 February 2016 Ref 14 018 444

1.9 Contact officers:

Jacqui Old, Head of Health, Education, Care and Safeguarding Management, tel. (0191) 643 7317

Sue Wood, Senior Manager Personalisation MH/LD, tel. (0191) 643 7003

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 25 February 2016

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The compensation of £2,000 has been met from the Learning Disability Team budget and has been paid directly to the complainant as set out in the recommendations of the LGO.

2.2 Legal

Where the LGO reports that injustice has been caused to a person aggrieved in consequence of maladministration, the report must be laid before the Authority who has a duty to consider the report and, within the period of three months beginning with the date on which the report was received, or such longer period as the LGO may agree in writing, to notify the LGO of the action which the Authority has taken or proposes to take.

2.3 Consultation/community engagement

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

2.4 Human rights

Mr. A was assessed under The Deprivation of Liberty Safeguards but was not deprived of his liberty under this legal procedure.

Mr. A was assessed and detained in hospital under the Mental Health Act.

2.5 Equalities and diversity

The Authority acknowledges its failings and is currently re-commissioning advocacy services with a range of functions (IMCA, IMHA and Care Act) and has undertaken a range of training workshops and presentations for staff as part of its introduction to the Care Act 2014 and new advocacy regulations to prevent this happening in future.

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 arising as a result of this report.

2.8 Environment and sustainability

There are no environment and sustainability implications 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
- Head of Corporate Strategy