

Ombudsman's Public Report

Date: 21 September 2022

Report of: Director of Adults and Health

Report to: Executive Board

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Summary

The Ombudsman made a finding of maladministration with injustice with regard to a complaint and has issued a public report against the Council. The report relates to the complainant Mrs B about the care of her mother Mrs C. The report is attached at Appendix 1.

The case involved residential care provided on behalf of the Council by Indigo Care Services Limited using the trading name Orchard Care Homes. The placement was arranged and part-funded by the Council before Mrs C went on to self-fund for a time. Mrs B's complaint relates to two issues: (a) the standard of care her mother received and (b) charges made for care.

The Ombudsman did not support the use of dual contracts when ascertaining someone's financial status for paying for their care and requires the Council and care home providers to change this practice.

The Council's Adults and Health Directorate has worked with the Care Home Provider to resolve the complaints for Mrs B and Mrs C. Both organisations accepted the Ombudsman's findings and recommendations and are working to implement the lessons learned in order to improve services for the many. Despite this, the Ombudsman published the report because it considered it in the public interest to do so given the injustice caused to the complainants and the wider systemic problems around charging which the complaint revealed.

Recommendations

- a) Executive Board to note the actions being taken by the Council in response to the Ombudsman's recommendations. A copy of the Action Plan is attached at Appendix 2.
- b) Executive Board to note the Ombudsman's Report and the Ombudsman's comments (under point 90 of the report) acknowledging that both the Council and the Care Home Provider have accepted the Ombudsman's findings and agreed to implement the recommendations.

What is this report about?

- 1 Section 31(2) of the Local Government Act 1974 requires that where the Ombudsman issues a report with a finding of maladministration and injustice, the authority will consider the report. This requirement is fulfilled by reporting to the Executive Board.
- 2 The purpose of this report is to update and provide assurance to the Executive Board that the Council has taken effective action in response to the Ombudsman's recommendations.
- 3 The Ombudsman made a finding of maladministration with injustice with regard to a complaint and has issued a public report against the Council. The report relates to the complainant Mrs B about the care of her mother Mrs C. The report is attached at Appendix 1.
- 4 The case involved residential care provided on behalf of the Council by Indigo Care Services Limited using the trading name Orchard Care Homes. The placement was arranged and part-funded by the Council before Mrs C went on to self-fund for a time. Mrs B's complaint relates to two issues: (a) the standard of care her mother received and (b) charges made for care.
- 5 The complaint about an unacceptable standard of care at the care home has been recorded against the Council as it had contracted with the Care Home Provider to provide care when these events took place. This is because the Ombudsman has made it clear that, when a Council commissions care from another organisation to provide services on its behalf, the Council ultimately remains responsible for those services and for the actions of the organisation providing them. The Ombudsman has, therefore, held the Council, as commissioner of the service, accountable for the failings in this case.
- 6 The Council has robust processes for monitoring the quality of care in care homes. This is done by social workers undertaking individuals reviews and by commissioning staff undertaking regular monitoring visits. When people are placed in a care home a detailed care and support plan is drawn up by the social worker in conjunction with the individual and their family to ensure they are supported in a personalised way. When the social worker undertakes a review they check that all aspects of the care plan have been met and whether the person feels happy and settled in their new home. This also includes hearing the views of family members.
- 7 Commissioning staff undertake unannounced visits to care homes. They check whether a home has a quality assurance system in place and look for evidence that quality audits are being undertaken and that any issues of concern are being addressed. They sample care plans to see if they are sufficiently person-centred and that the person's wishes for their care are being fulfilled. They check on adherence to medication regimes and that the person is supported to access health services if needed. They also check that there are activities going on in the residential home so people are engaged and stimulated. The Care Quality Team is a different arm of the commissioning department and they work proactively with care homes to drive up quality. This can include issues around dementia care, medication and infection prevention and control measures for example.
- 8 Mrs C was placed in her care home in June 2020 in the first period of lockdown when visits to care homes were severely restricted because of the infection risk so the Council was less sighted than normal with regard to care home quality issues.
- 9 Some of the complaints are against the Care Home Provider directly and relate to the time when the Council's contract with the Care Home Provider had come to an end and Mrs C was funding her own care. Part of Mrs B's complaint is also about charges made for care.

- 10 In terms of charging for care, historically, prior to June 2019, once an individual was assessed as needing a care home placement and the placement had commenced, the Care Home Provider would not receive any funding for the individual until the financial assessment was completed. Care Home Providers raised concerns over the length of time taken for some financial assessments and the level of debt being incurred due to the lack of payments for residents until a financial assessment was completed. In some instances, some providers indicated that this was jeopardising the viability of their business. This process meant providers lost income as they were not able to charge the self-funder rate even when it was clear that an individual was going to be determined as a self-funder.
- 11 In order to address this issue, the Council agreed to pay Care Home Providers from day one of a person's placement in the home, at the Council's fee rate, pending completion of the financial assessment.
- 12 In this case an emergency placement was necessary to meet Mrs C's need. The Council, therefore, entered into a formal Contract with the Care Home Provider at that point at the agreed Council rate until a financial assessment could be undertaken. At the same time, the Care Home Provider required Mrs B to enter into a separate contract to run concurrently with the Council's contract which allowed the Care Home Provider to charge a higher rate than the Council agreed fee if Mrs C was deemed to be a self-funder following completion of the financial assessment.
- 13 Once the financial assessment was completed, it was established that Mrs C was a self-funder and the Care Home Provider sought to charge the difference between the fee the Council had been paying and the self-funding fee set by the Care Home Provider in their contract.
- 14 The Ombudsman found that to have a second contract in place asking Mrs C to pay more than the Council had agreed to pay the Care Home Provider was inherently flawed and the Council could only expect Mrs C to pay the cost of care it agreed to pay to the Care Home Provider. The Ombudsman stated: "where the Council maintains responsibility for meeting a person's care needs (for so long as it is contracting with a care provider to do so), it is responsible for securing the placement within the person's personal budget (the fee agreed between the Council and the Provider)".
- 15 The Ombudsman, therefore, found injustice caused by these faults in the overcharging causing a loss to Mrs C's finances and the unnecessary confusion and frustration caused to Mrs B.
- 16 The Ombudsman has recommended that the Council should end this practice of enabling two separate contracts to be in place concurrently, one between the Council and individual (or their relatives) at the Council's fee rate and another between the Care Home Provider and individual (or their relatives) at the Care Home Provider's self-funder rate. The Ombudsman recommends that an individual should only be exposed to the self-funding rate of care where the Council is arranging care if the Council itself agrees to fund care at that rate or at the point the Contract ends.
- 17 The Council's Adults and Health Directorate has worked with the Care Home Provider to resolve the complaints for Mrs B and Mrs C. Both organisations accept the Ombudsman's findings and recommendations and are in the process of putting measures in place to address the charging arrangements and to make improvements in the quality of care being delivered by the Care home provider. The Ombudsman has however decided to publish the report because it considers it to be in the public interest to do so given the injustice caused to the

complainants and the wider systemic problems around charging which the complaint revealed.

What impact will this proposal have?

- 18 In carrying out the action plan the Council will need to review its Framework Agreement and other standard correspondence with Care Home Providers making it clear not to enter into a separate contract with residents or their family when the provisional contract with the Council is in place. This requirement will be discussed with the Leeds Care Association (LCA) as the representative body for care home providers and will subsequently be communicated in writing to all residential care home providers in Leeds.
- 19 The simplification of the contracting arrangements should improve the customer experience and avoid the confusion and distress which Mrs B experienced.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing Inclusive Growth Zero Carbon

- 20 One of the key outcomes of the Health and Well-being Strategy is that people's quality of life will be improved by access to quality services with the best care in the right place at the right time. This proposal will ensure that people only pay what they are assessed as needing to pay while the Council commissions their care.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted? Yes No

- 21 The Executive Member for Adult and Children's Social Care and Health Partnerships has been briefed on this decision.

What are the resource implications?

- 22 It will be noted from the recommendations in the Ombudsman report that the Council should financially compensate the Estate of the late Mrs C and to compensate Mrs B for her time, trouble and distress in pursuing her concerns. The breakdown of the recommended financial compensation is detailed in the report.
- 23 The total compensation to be paid to Mrs B is £600.
- 24 The total refund recommended to be paid to Mrs C's Estate is £2,386.72. As stated in the Ombudsman's report, the Council may offset the refund due to Mrs C's Estate against the outstanding amount due to the Council. This, therefore, reduces the amount due to the Council by the said amount of £2,386.72.

What are the key risks and how are they being managed?

- 25 A key risk will be if providers do not agree to accept the agreed Council fee rate for a person where a financial assessment is pending. This could increase the cost to the Council of the

placement. Further discussions with Leeds Care Association and Care Home Providers will be had on this point.

- 26 The Ombudsman's report, by holding the Council responsible for remedying the injustice for commissioned providers' failings, poses a potential financial and reputational risk. To mitigate these risks, the Council's Adults and Health Directorate has a protocol addressing complaints with its commissioned service providers. The protocol provides a framework for collaboration in responding to complaints and ensuring regular communication in relation to the quality of services commissioned from external providers. This enables the Council to maintain an overview of complaints about commissioned services as well as enabling the Council to quality assure the response that the providers send to complainants. Lessons learnt from complaints are used to inform contract monitoring, improve services and inform commissioning activities.

What are the legal implications?

- 27 The statutory requirement under Section 31(2) of the Local Government Act 1974 stipulates where the Ombudsman issues a report with a finding of maladministration and injustice, the Council is required to consider the report and formulate the action to be taken within 3 months. This requirement is fulfilled by reporting to the Council's Executive Board Committee.
- 28 The Council is also required under section 30(4) of the 1974 Act to make copies of the report available to members of the public for three weeks from the date of publication of the report. The Ombudsman recommends that a Public Notice is published in two local newspapers providing members of the public with details of where they can view the report and/or request a copy. Arrangements have been made for the Public Notice to appear in the Yorkshire Post and Yorkshire Evening Post newspapers on the date of publication of the report.
- 29 An Equality Impact Assessment Screening Tool has been completed for this report and is included as Appendix 3.

Options, timescales and measuring success

What other options were considered?

- 30 Not applicable.

How will success be measured?

- 31 The main value of lessons learned from complaints lies in how they have informed and supported everyday improvements as can be evidenced in this case. At a time of stretched resources, they represent an important source of intelligence. This is evidenced by the actions to be undertaken, detailed in the Action Plan in response to the Ombudsman's recommendations.
- 32 Success will also be measured by way of simplification of contracting for the customer and with Care Home Providers to ensure that arrangements are easily understood by all parties. The Action Plan with associated timescales evidence key milestones and tasks to achieve this.

What is the timetable and who will be responsible for implementation?

33 The Action Plan in response to the Ombudsman recommendations indicates timescales and details of persons responsible for implementing the same.

Appendices

- The Ombudsman's report – Appendix 1.
- Action Plan in response to the Ombudsman's recommendations – Appendix 2.
- The Equality Impact Assessment Screening Tool – Appendix 3.

Background papers

- None.