

Report of: Monitoring Officer, Acting Director of Law and Governance

Executive	Date:19.07.18	Ward(s): All
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SUBJECT: The Local Government & Social Care Ombudsman finding of Maladministration
1. Synopsis

- 1.1. The Local Government and Social Care Ombudsman (LGSCO) has issued a report finding maladministration against the council. The LGSCO has advised that they will publish their report on the basis that it has wider public interest.
- 1.2. The LGSCO decision was made on 29 May 2018 and relates to the council failing to provide assistance to Miss X, a 16-year-old who was threatened with homelessness.
- 1.3. Miss X's mother, Ms Y, was evicted from her housing association accommodation. Ms Y applied to the council as a homeless person and both her and her daughter, Miss X, were placed in interim temporary accommodation in another council's area (council B) pending investigation of her application.
- 1.4. Upon completion of its investigation, the council found that Ms Y was intentionally homeless and that it did not have a duty to continue providing interim accommodation for her. Ms Y was advised accordingly and Miss X was referred to Children's Services in council B's area.
- 1.5. Ms Y made various complaints to the council including:
 - (a) that council B had no record of the referral for her daughter;
 - (b) that she and her daughter no longer lived in council B's area as she had been evicted from her temporary accommodation; and
 - (c) that she and her daughter were staying at various addresses within the Islington area.

- 1.6. The council explained to Ms Y that they had faxed the referral to council B but could not comment on why they had not received it and; maintained that it was under no duty to provide Ms Y or her daughter with accommodation.
- 1.7 Ms Y complained to the LGSCO. Upon investigating Ms Y's complaint, the LGSCO found in her favour. Several recommendations were made to the council to address the findings of fault (maladministration).
- 1.8. The council has accepted the LGSCO's findings.

2. Recommendations

- 2.1. To note the contents of the LGSCO's report dated 29 May 2018, a copy of which is attached as appendix one.
- 2.2. To note that the findings and remedies recommended by the LGSCO have been accepted by Children and Employment Services.
- 2.3. To note the actions taken by the council to implement the recommendations by the LGSCO.
- 2.4. To note that copies of this report have been sent to all members of the council.
- 2.5. To agree that no further report or action needs to be taken in relation to the matters set out in this report.
- 2.6 To agree that a copy of this report and the Executive minutes will be sent to the LGSCO.

3. Background

- 3.1. The Ombudsman service was set up following the Local Government Act 1974. Key changes to the Act were included in the Local Government and Public Involvement in Health Act 2007 and the Health Act 2009. The Act sets out how the Ombudsman is organised, the Ombudsman's powers, and the restrictions on those powers. The main statutory functions for the Ombudsman are: to investigate complaints against councils and some other authorities; to investigate complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009); and to provide advice and guidance on good administrative practice. In June 2017 the Local Government Ombudsman's title was changed to the Local Government and Social Care Ombudsman.
- 3.2. All complaints result in a decision. The LGSCO issues these decisions, either by way of a statement of reasons for the decision or a report. If the LGSCO decides that the council has done something wrong and that this fault has caused an injustice to the complainant, the LGSCO will suggest what the council should do to put this right. Most complaints result in a decision in the form of a decision statement. If the LGSCO decides to issue a public report on a complaint, the LGSCO will tell the council in advance and the council will have an opportunity to comment on a draft of the report before it is finalised. In the case of complaints about the council, the outcomes of these complaints is reported to Members by way of (1) an annual report and (2) a six-monthly Monitoring Officer report to Audit Committee.

- 3.3. Additionally, where a complaint of fault (i.e. maladministration, service failure, or failure to provide a service) is upheld and a formal report (or public interest report) is to be issued, this must be considered by Executive (for executive functions) (or Full Council or committee (for non-executive functions)).
- 3.4. It is rare for the council to receive a formal report. This is the first public interest report the council has received in at least five years.

Complaint Summary

- 3.5. Miss X's mother, Ms Y, was evicted from her housing association accommodation. Upon making a homelessness application to the council, she was placed in interim accommodation in another council's area (council B) pending investigation of her application.
- 3.6. The council found that Ms Y was intentionally homeless and that the council did not have a duty to continue providing interim temporary accommodation to her. Her daughter, Miss X, was referred to Children's Services in council B's area.
- 3.7. Ms Y made various complaints to the council including:
 - (a) that council B had no record of the referral for her daughter;
 - (b) that she and her daughter no longer lived in council B's area as she had been evicted from her temporary accommodation; and
 - (c) that she and her daughter were staying at various addresses within the Islington area.
- 3.8. The council maintained that it was under no duty to provide Ms Y or her daughter with accommodation.
- 3.9. Ms Y complained to the LGSO. The LGSCO found the council to be at fault for failing:
 - (a) to provide services to Miss X as a 16-year-old at risk of homelessness, in particular in not carrying out an assessment as to what duty it owed to Miss X at the time Ms Y complained that they were no longer living in Council B's area.
 - (b) to contact Council B when it was under a duty to secure co-operation from Council B to address Miss X's needs.
 - (c) to help Miss X when Ms Y complained, and in particular to identify that the Ms X was threatened with homelessness and may be entitled to assistance from the council's housing service.The LGSCO found no fault in the council referring Miss X to council B initially when she was living in Council B's area.
- 3.10. The LGSCO found that the council's faults had caused Miss X significant distress as a result of the uncertainty in relation to her housing.
- 3.11. The LGSCO recommended, and the council agreed, that the council should try to contact Miss X and offer to carry out an assessment of her needs under the Children Act 1989 and to work with Council B to resolve any disputes (and provide any necessary services to Miss X while any disputes were settled). The LGSCO further recommended, and the council agreed, to pay Miss X £400 for the distress caused.

3.12 Following receipt of the draft LGSCO decision, Children and Employment Services undertook a complaint learning meeting to consider the LGSCO's findings. The council tried to contact Ms Y and Miss X to offer to carry out an assessment, but they have not engaged with the council and made clear, via a family member, that they do not want any contact or services from the local authority. A cheque has been issued to Miss X at her last known address. Although the LGSCO's report indicates that the council's failure to offer services in a timely and proper manner has resulted in a situation where there is considerable uncertainty about the welfare of Miss X, the council's own follow up indicates that Miss X no longer requires services from the council.

Chief Finance Officer (s151) comments

3.13. The council has agreed to pay the complainant's daughter £400 as recommended by the LGSCO. This will be met from within the existing Children's Service's budget.

3.14. A cheque has been raised and issued for the said sum. It was delivered and signed for on the 05.01.18, but to date it has not been cashed.

Head of Paid Service (Chief Executive) Comments

3.15. The council notes the LGSCO's recommendations and has accepted them in full.

3.16. Numerous attempts to contact Ms Y and Miss X have been made via letter, telephone and personal visits in order to action the LGSCO's recommendations. To date, we have not received a direct response from either Ms Y or Miss X. We have been advised via a family member that Ms Y and Miss X do not want any contact or services from the local authority.

3.17. The LGSCO's decision is not indicative of the usual high standards of practice by this service area. It is clear that there are aspects of our practice in this case that should have been better managed and we have reviewed why this occurred and the learning going forward.

Director of Children and Employment Services Comments

3.18. We note the LGSCO's recommendations and accept them in full. We have disseminated the learning from this decision across the department to avoid a similar reoccurrence in the future and ensure we maintain our usual high standards.

Monitoring Officer Comments

3.19. Where the LGSCO completes an investigation s/he must prepare a report and send a copy to the complainant, the local authority and other parties relevant to the complaint, s30(1) of the Local Government Act 1974.

3.20. Where fault is found and a formal report is to be issued by the LGSCO, the Monitoring Officer is under an obligation to prepare a report for the Executive under s5A (for executive functions) of the Local Government and Housing Act 1989. The Executive is also under a duty by virtue of s31(2) LGA 1974 to consider the report of the LGSCO.

- 3.21 The Head of Paid Service (Chief Executive) and s151 Officer (Corporate Director of Resources) are required to be consulted so far as reasonably practicable in the preparation of a maladministration report, s5A (5) the Local Government and Housing Act 1989. Both the statutory officers have been duly consulted and their comments are set out above.
- 3.22. The Monitoring Officer is also required to arrange for a copy of this report to be circulated to all members of the authority. The Executive agenda and papers are sent to all the council's members; accordingly, the circulation of this report complies with that requirement.
- 3.23. Further, the authority is under an obligation (s5A(6)(a) and (8)) to:
- (a) consider the report within 21 days of the report being sent to all members of the council; and
 - (b) as soon as practicable after the Executive has considered the report, the Executive must prepare a report which specifies: (1) what action, if any, the Executive has taken in response to the report, (2) what action, if any, the Executive proposes to take in response and when it proposes to take that action, and (3) the reasons for taking the action, or as the case may be, no action.
- 3.24. Copies of the Executive's report on the action it has taken or proposed to take must, as soon as practicable, be sent to each member of the authority and the authority's monitoring officer (s5A (9)). It must also be sent to the LGSCO within 3 months.
- 3.25. The local authority must give public notice in newspapers and such other ways as appear appropriate and copies of the report shall be available for inspection by the public for a period of three weeks (s30(4), (5) LGA 174).
- (a) The public notice was placed in the Islington Gazette on Friday 15 June 2018 and the Islington Tribune on Thursday 14 June 2018;
 - (b) The report was available for public inspection at .at the Town Hall, Upper Street, London and 222 Upper Street, London from the 14 June 2018;
 - (c) The notice and report have also been published on the council's website, and
 - (d) Publication of the LGSCO's report as an appendix to this report ensures it remains in the public domain.
- 3.26. Where the LGSCO reports there has been maladministration resulting in injustice the report shall be laid before the authority and it shall be the duty of the authority to consider the report and within 3 months of receipt (or such longer periods as the LGSCO may agree in writing) notify the LGSCO of the action which the authority has taken or proposes to take, s31 of the Local Government Act 1974. This report to the Executive complies with the first part of this legal requirement. Sending a copy of the report and the Executive minutes to the LGSCO will comply with the second part of this legal requirement (provided Executive agrees the recommendations).
- 3.27. The council may incur expenditure as appears appropriate in making a payment to a person who has suffered injustice in consequence of maladministration (s31(3) Local Government Act 1974). In addition, the council has the power to pay compensation or assist a person who has suffered injustice as a result of maladministration (s92 Local Government Act 2000).

4. Implications

Finance Implications

- 4.1. Please see the body of the report, in particular Chief Finance Officer comments at paragraphs 3.13 -3.14.

Legal Implications

- 4.2. Please see the body of the report, in particular Monitoring Officer comments at paragraphs 3.19-3.27.

Environmental Implications

- 4.3. There are no environmental implications arising out of this report.

Resident Impact Assessment

- 4.4. A Resident Impact Assessment has not been carried out in relation to this LGSCO's decision.

5 Reasons for the recommendations / decision

- 5.1. The Council accepts the LGSCO's findings, and there is no reason not to follow the recommendations of the LGSCO.
- 5.2. The Corporate Director for Children and Employment Services has agreed the course of action and tried to implement the same.
- 5.3. Compliance with the above recommendations ensures that the statutory requirements of the Local Government Act 1974 and Local Government Housing Act 1989 are met.

Signed by:

**Monitoring Officer, Acting Director of Law
and Governance**

Date

Appendices

- Appendix one: the final Ombudsman's report dated 29 May 2018