



*Although a formal committee of Brighton & Hove City Council, the Health & Wellbeing Board has a remit which includes matters relating to the Clinical Commissioning Group (CCG), the Local Safeguarding Board for Children and Adults and Healthwatch.*

Title:	Local Government and Social Care Ombudsman Report
Date of Meeting:	26 <sup>th</sup> January 2021
Report of:	Executive Lead Officer - Strategy Governance & Law
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Wards Affected:	All

#### **FOR GENERAL RELEASE**

#### **Executive Summary**

This paper provides the board with a public report published by the Local Government and Social Care Ombudsman (LGSCO) on 26<sup>th</sup> November 2020. It relates to the way we assessed a resident's needs to remain in her care home when she became eligible for council funding.

The Ombudsman has made a finding of fault on the part of the Council causing injustice.

We are required to consider the report at either full Council, Cabinet or other appropriately delegated committee of elected members. (Local Government Act 1974, section 31(2), as amended)

This paper explains the complaint, details the findings of the LGSCO and the actions we need to take to remedy the faults in this case and drive continuous improvement in future practice.

We ask that the Board consider the report and formally respond to the LGSCO. We have prepared a statement to this effect, for approval.

## **Glossary of Terms**

HASC – Health and Adult Social Care

LGSCO - Local Government and Social Care Ombudsman

## **1. Decisions, recommendations and any options**

- 1.1 This paper provides the board with a public report published by the Local Government and Social Care Ombudsman (LGSCO) on 26<sup>th</sup> November 2020, in which the Ombudsman has made a finding of fault on the part of the Council causing injustice.
- 1.2 When a report of this type is issued, the local authority concerned is under a duty to consider it pursuant to the Local Government Act 1974 and to notify the LGSCO of decisions taken in relation to it.
- 1.3 This paper details the complaint and the findings and recommendations of the Ombudsman and in doing so meets the requirement indicated at para 1.2.

### **It is recommended that the Board:**

- 1.4 Formally consider the report
- 1.5 Note and agree the recommendations set out in section 2
- 1.6 Approve the following formal written response to the LGSCO:

We have heard and considered the public report issued against Brighton and Hove City Council, reference number:19 000 201. We welcome the findings of the report and accept all the actions and recommendations therein - some of which have already been implemented within the agreed timeframe. We thank you for bringing this to our attention.

## **2. Relevant information**

- 2.1 The council has been found at fault by the Local Government and Social Care Ombudsman (LGSCO) of causing injustice to a mother, Ms M, and her daughter, Ms C, as a result of the way we assessed the mother's needs to remain in a care home when she became eligible for council funding
- 2.2 Ms M has been living in a care home in Brighton & Hove since 2016 which she organised as a private arrangement on a self-funded basis with the support of her daughter, Ms C. The council became involved in 2017 following a request for an assessment in light of Ms M's depleting funds to assess her eligibility for Local Authority support towards the cost of her care.

The council has agreed set rates for residential and nursing home care in the city. The care home Ms M lives in charges a weekly rate in excess of the agreed Local Authority rate.

The council has a responsibility to provide good quality information and advice to ensure that residents who choose a care setting which is more expensive understand the full implications of this choice. This includes advising the person that a third-party top up may be required or that if the additional cost is not met they may be required to move to an alternative setting.

- 2.3 In September 2016, the Council was trying to be helpful in explaining to Ms C that her mother may have to move if she could not afford the fees for Care Home X, long-term. The Council did this to avoid the possibility of Ms M having to move in the future (when her own personal funds run out), after being settled in a more expensive Care Home (Care Home X). This was good practice and gave Ms C enough time to pursue an alternative and more affordable home, if she wished to do so. However, Ms C and her mother were entitled to choose to remain at Care Home X, while accepting the risk that Ms M may have to move to another cheaper home once her capital had reduced to £23,250 and the Council would become responsible for Ms M's care.
- 2.4 Ms M remained living in Care Home X, where she had been paying for her own care. When her capital reduced to £23,250 on 1 January 2018, she became eligible for Council funding.
- 2.5 Ms M complained that when her capital reduced to £23,250, it took a long time for the Council to agree a personal budget that would be enough to continue to meet her needs.
- 2.6 The Council told Ms M she should move to a cheaper care home, even though it had been told by Ms C that, in her view, the care homes offered by the Council were unsuitable and her GP said it would be detrimental for her mental and physical wellbeing to move to another home.
- 2.7 Ms M was subsequently re-assessed after an indication of a deterioration in her health, which resulted in an increase in her personal budget which enabled her to remain in the original care home.

**The report recommends that the council take the follow actions which we have done:**

- 2.8 Apologise to Ms M and her daughter, Ms C, for the faults identified and the distress these caused. Pay Ms C £200.
- 2.9 Pay the full fees for Ms M's care at Home X, from 1 January 2018 until 1 May 2018, minus Ms M's assessed weekly contribution.

- 2.10 Reimburse any solicitor fees incurred in the days running up to 24 April 2018, subject to evidence provided of such costs by Ms C.
- 2.11 Share the lessons learned with staff in its Adult Social Care and Finance Teams.
- 2.12 Place two public notice announcements in local newspaper or newspaper websites within two weeks of receiving the report.
- 2.13 Ensure that printed copies of the report are made available, free of charge.

**A final action is due to be complete by February 2021:**

- 2.14 The Council should put in place a mechanism and staff guidance to ensure that, when it needs to consider moving a vulnerable resident to a more affordable home, because the resident's capital is about to fall below the threshold:
  - a. We carry out an assessment of the risk to the person's wellbeing of such a move, with input from relevant stakeholders. Our assessment should decide what impact a move is likely to have on the resident, and therefore whether a move should go ahead. The Council's view should then be discussed with the resident (and their family).
  - b. We immediately look into any concerns raised by the client (or their family) that the home(s) offered are not suitable, or may not accept a client at the proposed rate, to decide if the concern(s) are valid and discuss this with the client (or their family).
  - c. Ensure that the client (or their family) have enough time to find a home and move to another home, before the resident's capital falls below £23,250, in cases where the client (or their family) have approached the Council in a timely manner.

### **3. Important considerations and implications**

Legal:

- 3.1 Where the Local Government and Social Care Ombudsman investigates a complaint and finds that there has been a failure in a service which it was the function of a local authority to provide, then it may make a report pursuant to Part III of the Local Government Act 1974. Where a finding of fault is made, such reports may find that the fault has caused injustice to affected persons and may make relevant recommendations.

- 3.2 The requirement in section 31(2) of the 1974 Act that any such report be laid before the authority with 3 months of the date they received it may be discharged by the Health and Wellbeing Board, which has delegated powers to consider the report of the LGSCO and to determine actions to be taken by the authority in view of any recommendations. It will be noted that the LGSCO's recommendations that payment in the sums specified be made to the complainant in recognition of the faults which occurred have already been followed. This action has been taken by the Council using the powers available to it pursuant to Section 92 of the Local Government Act 2000.

Lawyer consulted: Nicole Mouton

Date: 16/12/20

Finance:

- 3.3 The financial implications for this case equate to a one-off cost of approximately £22k for the elements detailed in paragraphs 2.7 to 2.9.
- 3.4 Implementing a new mechanism as detailed in paragraph 2.13 would reduce the financial risk for the Council when an individual's capital falls below £23,250 and will help ensure an affordable longer-term care placement can be sourced.

Finance Officer consulted: Sophie Warburton

Date: 18/12/2020

Equalities:

- 3.5 The Health and Adult Social Care service have considered the equalities implications throughout this case and have reflected on the points highlighted by the Ombudsman. We will embed learning from this process and the remediation requirements in our ongoing practice

Equalities Manager consulted: Anna Spragg

Date: 16/12/2020

Sustainability:

- 3.6 No sustainability impacts identified.

## Supporting documents and information

**Appendix 1:** Report by the Local Government and Social Care Ombudsman. Investigation into a complaint against Brighton & Hove City Council (reference number:19000201).

