

**Report for:** Cabinet – 8 March 2022

**Title:** Report from the Local Government and Social Care Ombudsman (19 020 651)

**Report authorised by:** Fiona Alderman, Head of Legal and Governance and Monitoring Officer

**Lead Officer:** Fiona Alderman, Head of Legal and Governance and Monitoring Officer

**Ward(s) affected:** N/A

**Report for Key/**  
**Non-Key Decision:** Non-Key Decision

## **1. Describe the issue under consideration**

- 1.1 Mr X complained to the Local Government and Social Care Ombudsman (LGSCO) in 2021 about the Council's failure to meet his disabled son's needs by taking too long to carry out adaptations to his property in N15 funded by the Disabled Facilities Grant (DFG). Mr X's complaint related to the length of the process and the impact of the delays on his son's wellbeing between the period of December 2016 to March 2019.
- 1.2 On 9 December 2021, the Ombudsman published a report finding fault with the council and making recommendations as to the steps to be taken by the council as a result.
- 1.3 Cabinet are requested to note the steps taken so far and decide what further steps should be taken

## **2. Cabinet Member Introduction**

- 2.1 The Ombudsman has made a report finding fault with the Council in relation to a complaint made by Mr & Mrs X and has asked the Council to take certain steps to remedy that fault.
- 2.2 This report summarises the Ombudsman's report and the steps that have been taken to date. It also proposes further steps to be taken by the Council in response to the report.
- 2.3 Cabinet must consider the Ombudsman's report (shown at Appendix 1) and the steps it is proposed to take in response.

## **3. Recommendations**

Cabinet is asked:

- 3.1 To accept the findings and recommendations of the Local Government and Social Care Ombudsman (LGSCO) in the report shown at Appendix 1.
- 3.2 To endorse the actions taken by the Council as set out in paragraphs 6.11 to 6.14 of the report.
- 3.3 To adopt the report as the council's formal response under s.31 Local Government Act 1974, to be communicated to the Ombudsman.
- 3.4 To adopt the report as the Cabinet's formal response as required by s5A Local Government and Housing Act, 1989, for distribution to all members and the Monitoring Officer.

#### **4. Reasons for Decision**

- 4.1 The LGSCO report published on 9 December 2021 issued a finding of: Upheld; maladministration and injustice. That Mr X suffered injustice because of fault, under Section 31(2) of the Local Government Act 1974.
- 4.2 The LGSCO identified several areas of fault:
  - Periods of delay between Oct 2016 and Feb 2019. (Notwithstanding that the family delayed responding to the Council by 1 year when the request was first made in 2015)
  - Failure to evidence that meaningful support was offered to the family or that they were meticulously kept informed of the status of their application
  - Further delay between Feb 2019 and Sept 2019
  - Failure to install two changing benches in Feb 2019 and poor record keeping about this
  - Failure to evidence proper consideration was given to the family's request for alternative adaptations.
- 4.3 The LGSCO has recommended the following action be taken:
  - The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended) 87.
- 4.4 In addition to this requirement, the Council should take the following action:
  - Apologise in writing to Mr and Mrs X.
  - Pay Mr and Mrs X £2,000. This is a symbolic payment to acknowledge the significant delay in this case. Mr and Mrs X intend to use it to fund a family holiday for the benefit of Child Y. In deciding on this amount, we considered our Guidance on Remedies.
  - Contact Mr and Mrs X to agree what works remain outstanding. The Council should confirm what has been agreed in writing. These agreed works should be completed within four weeks from the date COVID-19 restrictions have

been lifted to the extent that Mr X is comfortable with contractors coming into the family home. The Council has confirmed discussions are taking place with Mr and Mrs X to agree a suitable way forward; and

- Reflect on the issues raised in this decision statement. The appropriate Service Director should carry out a review and identify any areas of service improvement. The Council should prepare a short report setting out what it intends to do to ensure similar problems do not reoccur, particularly around delay and strip washing.

4.5 It should be noted that the Council has already reported back to the Ombudsman in response to a draft version of this report.

## **5. Alternative Options Considered**

5.1 The LGSCO cannot mandate the Council to follow its recommendations, but local authorities do follow them.

5.2 If the LGSCO is not satisfied with the Council's response, they will make a further report explaining this and making recommendations. The LGSCO can also require the Council to make a public statement about the matter.

5.3 Therefore, Cabinet could choose on rational grounds to reject any of the recommendations made by the Ombudsman.

5.4 However, this alternative is not recommended because the LGSCO recommendations represent an appropriate remedy for the reasons set out above.

## **6. Background Information**

6.1 The full background is set out in the Ombudsman's report, as shown at Appendix 1.

6.2 Child Y has severe disabilities, including quadriplegia, epilepsy, and cerebral palsy. He requires support in all areas of daily living. He resides at home with Mr and Mrs X and his older sister.

6.3 A timeline of events relating to Child Y, Mr and Mrs X is set out at Appendix 1.

6.4 Disabled Facilities Grants (DFGs) are provided under the terms of the Housing Grants, Construction and Regeneration Act 1996 (the Act). The Act says councils should approve or refuse a grant application as soon as reasonably practicable and no later than six months after the date of the application. The works should be completed within 12 months of the approval.

6.5 The LGO took into consideration the fact that Mr and Mrs X did not complete the necessary documentation between November 2015 and October 2016. No progress could be made until this had been done and did not hold the Council

responsible for this period of delay. Formal grant approval was given in March 2018, 16 months after the application and over two years after Mr and Mrs X first requested assistance.

- 6.6 Consideration was given to the fact that Mr and Mrs X accepted responsibility for 11 months of the delay, between April 2018 until February 2019.
- 6.7 The Council was **not** found to be at fault in respect of the failure to install the ceiling tracking in February 2019 as this was a professional assessment.
- 6.8 The Guidance advises Councils to be proactive in finding interim solutions where it is known that major works will take time to complete. Records provided by the Council do not show that this took place, and Mr and Mrs X were left not knowing what was going on for periods of time, particularly between when they completed the forms in November 2016 and the date of the grant approval in March 2018.
- 6.9 The Ombudsman's findings are accepted. The service is sorry for the mistakes made and is determined to learn from them. A written apology has been given to the family, and the Council is seeking to remedy the mistake for the family by following the Ombudsman's recommendations. A service improvement plan is also being developed with stakeholders which includes the learning from this case.
- 6.10 The Ombudsman's recommendations are appropriate because:
- The Council must ensure Mr and Mrs X's case is now being dealt with appropriately to comply with its obligations and responsibilities in respect of DFG application processes.
  - It is right to offer compensation to Mr and Mrs X given the Ombudsman's findings of injustice.
  - The Council must identify both the errors that led to these delays and ensure it is now complying with its duties towards other service users. This will help prevent any similar injustices occurring in the future.

#### Actions taken

- 6.11 Officers have sent a written apology to Mr and Mrs X.
- 6.12 A payment of £2000 has been forwarded to the account to Mr and Mrs X.
- 6.13 A review of Mr and Mrs X case has been undertaken and has resulted in improvement plan developed to address the areas identified that contributed to the finding. The Service Improvement Plan is presented at appendix 2 and identified communication is the key issue to improve residents experience when receiving a major adaptation. We have commenced co-production conversations with service users, set outcomes and progress indicators and committed to monitoring and providing regular updates to Members.
- 6.14 The Director of Adults and Health has consulted with the relevant corporate officers, including the Chief Executive Officer and they agree with the recommendations within this report.

## **7. Contribution to Strategic Outcomes**

- 7.1 There is a legal obligation to consider such reports from the LGSCO. Therefore, this report is necessary.
- 7.2 It is part of the good administration of the Council to learn from any mistakes.

## **8. Statutory Officer Comments**

### **8.1 Finance**

- 8.1.1 The Chief Finance Officer notes the contents of this report, which includes the recommendations from the LGSCO.
- 8.1.2 The compensatory payment to Mr and Mrs X of £2000 has been paid by Adult Social Care and is funded from their budget. Any agreed works that remain outstanding to the family home will be funded via the DFG.

### **8.2 Legal**

- 8.2.1 Under the Local Government Act 1974 (the Act), the LGSCO has the power to investigate the complaint and to issue a report where there has been maladministration causing injustice; a failure to provide a service that it was the Council's function to provide; and a total failure to provide such service. The LGSCO has the power to make recommendations to the Council on how to improve its services and to put things right for the complainant. However, these recommendations are not mandatory and the Council does not have to accept or follow them.
- 8.2.2 Within 2 weeks of receiving the LGSCO's report, the Council is required to give public notice by advertisements in newspapers stating that copies of the report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 of the Government Act 1974).
- 8.2.3 The Act provides that the report shall be laid before the "authority" for consideration. In the case of a local authority operating executive arrangements (as in Haringey), "the authority" means the executive, i.e. Cabinet (s.25 (4) and (4ZA) Local Government Act 1974).
- 8.2.4 The Council's Monitoring Officer is obliged to prepare a report for Cabinet following the LGSCO findings and to consult with the Head of Paid Service and Chief Finance Officer for this purpose. This report must be sent to each member of the Council and Cabinet must meet within 21 days thereafter. The implementation of the proposal or decision must be suspended until after the report has been considered by Cabinet (s.5A Local Government and Housing Act 1989). Cabinet is required to consider this Monitoring Officer report on the findings of and response to the LGSCO's report.

- 8.2.5 Where Cabinet considers a LGSCO's report and it is considered that a payment should be made or other benefit given to a person who has suffered injustice, such expenditure may be incurred as appears appropriate (s.31(3) Local Government Act 1974).
- 8.2.6 Within 3 months of receiving the LGSCO's report or such longer period as may be agreed in writing with the LGSCO, the Council must notify the LGSCO of the action which the Council have taken or propose to take (s.31(2) Local Government Act 1974). If the LGSCO is not satisfied with the action which the Council has taken or propose to take, the LGSCO shall make a further report. The LGSCO can also require the Council to make a public statement in any two editions of a newspaper circulating the area within a fortnight (s.31(2A) and (2D) Local Government Act 1974).
- 8.2.7 An Ombudsman's report should not normally name or identify any person (s.30 Local Government Act 1974). Therefore, the complainant is referred to as 'Mr X' and officers have not been identified.

### **8.3 Procurement**

- 8.3.1 Procurement notes the contents of this report and will support commissioning as appropriate.

### **8.4 Equality**

- 8.4.1 The council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
  - Advance equality of opportunity between people who share protected characteristics and people who do not
  - Foster good relations between people who share those characteristics and people who do not
- 8.4.2 The three parts of the duty apply to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 8.4.3 The report outlines the plan to adopt the Ombudsman's recommendations for Mr & Mrs X. This will impact their son, Child Y, who has severe disabilities. The objective of the proposal is to fulfil the recommendations made by the LGSCO that suggest the Council should provide his parents with a compensatory payment and agree and undertake any further adjustments needed in a timely way. This will lead to an improved quality of life for Child Y, and his family, by
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maximising the accessibility of the family home, and enabling them to take a holiday funded by the payment to be made by the Council. The will help to ensure that the Council meets any needs Child Y has as a result of his disabilities and is therefore a measure that will advance equality of opportunity for Child Y.

**9. Use of Appendices**

Appendix 1 – Report by the Local Government and Social Care Ombudsman, Investigation into a complaint against London Borough of Haringey (Reference Number: 19020651) 29 November 2021.

Appendix 2 – Service Improvement Plan

**10. Local Government (Access to Information) Act 1985**

N/A