

Local Members Interest
N/A

Audit and Standards Committee - Monday 14 October 2019

Local Government Social Care Ombudsman (LGSCO) Investigation resulting in a Formal Report

Recommendation

- a. Following the recommendations made within the Formal Report of the Local Government and Social Care Ombudsman dated August 2019, it was agreed that the report should not only be agreed by Cabinet (on 16 October 2019) but would also be considered by the Audit and Standards Committee.

Report of the Director of Health and Care

Reasons for Recommendations:

1. During 2019 the LGSCO launched several investigations in relation to the care and support provided to a citizen who has mental health and physical health problems.
2. This lady was the subject of previous recommendations from the LGSCO after delays in completing a Care Act assessment last autumn. Two recommendations, that were accepted, were that the Chief Executive would write to apologise for the distress caused and provide compensation of £500. The apology and payment were made through MPFT but unfortunately were delayed, which resulted in a further complaint and the current report.
3. The Council has been at odds with the Ombudsman over this case: whilst we acknowledge that there were some failings with the initial assessment and the delays in apology and compensation, the citizen has been very difficult to engage despite best efforts both directly and through MPFT.
4. The findings of the LGSCO investigation were published in September 2019. The report states:
5. The Council was at fault because:
 - a. For a second time it failed to send the apology or payment within the agreed timescale; and
 - b. It has failed to identify adequate service improvement to prevent the problems Ms X has experienced from being repeated.
6. The report acknowledges that comments were received by the Council and considered before the LGSCO completed the report. However, we are surprised and disappointed that this did not result in any change to the draft report previously received.

7. The Conclusions of the LGSCO are set out on Page 8 of their report (replicated below for ease of reference):

a. Apology and Payment

- i. Neither the apology nor the payment was made within the agreed timescale. The Chief Executive's letter was not written until 1 March, over four weeks late. That was a fault by the Council. This is the second time this has happened to Ms X. Given her mental health problems, this added unnecessarily to her distress and resulted in a further loss of confidence in the Council and its agent, the Trust.

b. Care and Support Plan

- i. We do not find fault with the Council. Its agent, the Trust, updated Ms X's assessment to reflect recent changes in her circumstances. It also completed a care and support plan and discussed it with her on 16 January. It was her choice to complete a self-assessment form before agreeing the care and support plan. The Council has confirmed it will implement the care and support plan and backdate payments to 16 January, if Ms X agrees to this.

c. Self-assessment Form

- i. Ms X believes the Trust has received her self-assessment forms and is not telling the truth when it says they have not arrived. However, there is not enough evidence for us to say the Council is at fault over this. While we cannot rule out the possibility that, having received one or more of her forms, it mislaid them, we also cannot rule out the possibility that they never arrived. Ms X has no proof of postage. It is therefore not possible to say what happened to her self-assessment forms.
- ii. Ms X still wants to submit a self-assessment form. The Council has sent her another one and has provided evidence that Ms X signed for it. When she has completed it, she will arrange a meeting with her ASWP and Advocate so she can deliver it.

d. Someone's else's Personal Data

- i. We do not find fault with the Council, as Ms X has not provided evidence that she received someone else's personal data. Similarly, the Trust cannot be expected to take more action unless Ms X returns the personal data. If she does this and it confirms what she has said, the Council needs to send a further apology and pay financial redress for the distress caused by receiving disturbing information about someone else and by the possibility that her personal data could have been shared with someone else.

e. Service Improvements

- i. The response to the service improvements is inadequate. It does not address the specific issues raised and does not take account of the fact responsibilities are shared between the Council and the Trust. Ms X's initial problems arose when the Council did not accept the Trust's proposals for a personal budget and care and support plan. Although the Trust had identified eligible care needs, Ms X was left without any support at all.
8. The LGSCO made a series of recommendations. These are set out on Page 9 of their report and are listed below with the Council's comments. They are that the Council:
 - a. Meets with the citizen and her Advocate if she completes another self-assessment form, so she can deliver it and discuss it with her Advanced Social Work Practitioner.
 - i. The Council will continue to make all best efforts to meet with the citizen and her Advocate both directly and through MPFT, although the citizen has been very difficult to engage. We are therefore content to accept this recommendation.
 - b. Within four weeks apologises to the citizen and pays her a further £500 for the distress it has caused and the trouble she has been put to.
 - i. The Council acknowledges the delay in making the apology and payment. We believe that payment of a further £500 is disproportionate and not a justifiable use of taxpayer's money. However, to formally challenge this recommendation would cost considerably more than £500 in time and legal fees and therefore we reluctantly accept this recommendation.
 - c. Apologies to Ms X and pay her £250 for the distress caused to her, if she returns the personal data about someone else and confirms what she has said.
 - i. There is no evidence that there has been any data breach. If evidence is provided, then this would be investigated under the information governance protocols and procedures of the Council and/or MPFT. These do not routinely include provision for payments to third parties. We do not therefore believe that this recommendation is appropriate. However, to formally challenge it recommendation would incur considerably costs in time and legal fees and therefore we reluctantly accept this recommendation.
 - d. Within eight weeks meet with MPFT to agree an Action Plan, including timescales for ensuring agree remedies are completed within the required timescales and assessments and care and support plans meet the requirements of the Care and Support Statutory Guidance, including: -
 - i. eliminating unnecessary delay over assessments, care and support planning and decisions on personal budgets;
 - ii. ensuring assessments adequately identify care needs;

- iii. providing estimated personal budgets as the basis for care and support planning;
- iv. providing people with copies of their assessments and care and support plans, and
- v. ensuring care and support plans include the final personal budget.

9. This work is already underway as part of service improvement plans and we are therefore content to accept this recommendation.

List of Background Documents/Appendices:

Appendix A - Local Government and Social Care Ombudsman Report dated 15 August 2019

Contact Details

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