

RESPONSE TO THE LOCAL GOVERNMENT OMBUDSMAN FINDING OF MALADMINISTRATION

To: **Adults Committee**

Meeting Date: **26 March 2015**

From: **Adrian Loades, Executive Director: Children, Families and Adults Services**

Electoral division(s): **All**

Forward Plan ref: **Not applicable** *Key decision:* **No**

Purpose: To outline the operational response to the Local Government Ombudsman's finding of maladministration with regard to a complaint concerning (Mr N) who was moved into a residential care home fourteen miles away from his from home and against his and his family's wishes

Recommendation: To consider and agree the proposals to address the issues identified by the Local Government Ombudsman (LGO).

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1.0 BACKGROUND

- 1.1 In September 2013, a formal complaint was received from Mrs N regarding the social care and support her husband had received from the Council. Following an investigation and review of the investigation, Mrs N remained dissatisfied with the Council's response and subsequently complained to the Local Government Ombudsman (LGO), who began their investigation in February 2014. The Council responded to this investigation within the designated timescales.
- 1.2 In April 2014, the LGO requested that the Council respond to some additional questions. The Council informed the LGO that some of the further information requested had not been formally dealt with using the Council's complaints procedure. However section 26D of the Local Government Act 1974 provides that the LGO may investigate a matter that comes to their attention during the course of an investigation. In this case the LGO did not give the Council further opportunity to investigate and on 30 April 2014 the Council provided a further response to LGO.
- 1.3 On 20 January 2015 the Council received the LGO's final view on the complaint. They concluded that the Council had failed in a number of areas and was guilty of maladministration. The LGO gave notice that it intended to publish its report, which can be found at Appendix A.

2.0 MAIN ISSUES

- 2.1 The LGO report found that the Council had failed in the following areas:
- To complete an adequate Mental Capacity Assessment (MCA).
 - The Care Home did not consult the Council's Deprivation of Liberty safeguards (DoLs) team (which as a commissioned service is considered by the LGO to be a failure of the Council).
 - To consider whether or not Mr N's placement amounted to a deprivation of liberty.
 - To provide information to the family about the Court of Protection and how to challenge the Council's decision.
 - To provide accurate information about third party top up payments.
- 2.2 The Council very much regrets that this incident took place and that despite the Council's attempts to act in Mr N's best interests, the actions taken were not appropriate and the subsequent investigation has exposed a number of issues. Actions that the Council intends to take to address the issues raised are set out below.
- 2.3 **Failure to complete an adequate Mental Capacity Assessment.** This will be addressed by:
- Amending the Mental Capacity Act (MCA) and DoLs training to address the issues raised the LGO report.
 - Making the training mandatory for all relevant Adult Social Care staff in the Children, Families and Adults (CFA) Directorate.
 - Ensuring that all staff in Older People's Services receive the updated



training by the end of May 2015.

- Cascading the Lessons Learnt report (Appendix B) to all staff in Older People's Services who will be asked to confirm that they have received and read the report.
- The Mental Capacity Act is applicable to people of age 16 years and the Lessons Learnt document will be sent to all CFA staff.
- Undertaking an in depth 'Learning the Lessons' review to minimise the risks of the same issue reoccurring. This will be overseen by the Safeguarding Manager and a report will be submitted to the Adults Safeguarding Board by June 2015.

2.4 Failure of the Care Home to consult the Deprivation of Liberty safeguards (DoLS) team. This will be addressed by:

- The Lessons Learnt report will be sent to all care home providers commissioned by the Council.
- These providers will be reminded of their responsibilities in relation to MCA and DoLS as specified under Clause E9 of their contract.
- The care providers will also be sent another copy of the Department of Health published information booklet for care homes and hospitals on DoLS, which contains a section in Pages 28 and 29 on the role of the Court of Protection.

2.5 Failure to consider whether or not Mr N's placement amounted to a deprivation of liberty. This will be addressed by:

- The amended MCA and DoLS training which will address deprivation of liberty and the role of the Court of Protection. It will also cover how to advise the public of their rights.
- In addition, there will be a change to Adult Safeguarding training; all staff will now be expected to complete Level 2 training with respect to Safeguarding of Vulnerable Adults, Deprivation of Liberty and Mental Capacity Act. This replaces the previous Level 1 eLearning and is a significant increase in expectation.
- The number of requests from service users and carers will be monitored and care managers' practice, in relation to deprivation of liberty, will be reviewed in supervision sessions.

2.6 Failure to provide information to the family about the Court of Protection and how to challenge the Council's decision will be addressed by :

Please refer to point 2.5

2.7 Failure to provide accurate information about top up payments

The implementation of the Care Act will change the advice and practice with regard to top up payments. These payments will only apply where more than one placement is offered and where the service user chooses a placement that is more than the Council would normally expect to pay to meet the assessed needs. Guidance will be issued to staff on this issue as part of the preparations for the Care Act.



- 2.8 The LGO made three formal recommendations to the Council as set out below.
- 2.9 **Recommendation:** Apologise to Mrs N for the failures outlined in the report

Council Response: A letter of apology was sent from Charlotte Black, Service Director for Older People's Services and Mental Health, dated 12 February 2015 and receipt has been acknowledged.

- 2.10 **Recommendation:** Set a timetable for refresher training for social care staff on mental capacity assessment, best interest decisions, deprivation of liberty and the role of the Court of Protection and how to advise the public on their rights. This may involve the Council reviewing the current status of residents who may be deprived of their liberty without proper authorisation.

Council Response:

Heads of the relevant services will mandate all their staff and managers' attendance on the refresher training.

Training Time Table for Adult Social Care Staff

Older People – 100 staff in Older People's Services will be released to participate in the training by 31 May 2015. Bespoke training sessions are being organised with the aim of completing the training by 31 May 2015.

Learning Disability – Four refresher training sessions will be offered to cover 76 staff including front line staff and their managers, to be completed by August 2015.

Physical Disability and Sensory – Three Refresher Training sessions will be offered to cover 54 staff including front line staff and their managers, to be completed by June 2015.

Mental Health – Two Refresher Training sessions will be offered to 37 staff (front line staff and their managers) to be completed by October 2015.

Following the Supreme Court's judgment on the Cheshire West and others in March 2014, Association of Directors for Adult Social Care (ADASS) Guidance has been sent to all care home providers. This guidance clarifies the statutory responsibilities of care homes under the DoLs legislation.

In addition, Care Quality Commission (CQC) has sent two briefings to all care home providers about the implications of the Supreme Court's judgment.

It should be noted that the Council in its role as Supervisory Body under the DoLs legislation has witnessed approaching a tenfold increase in applications to request Standard Authorisations for Deprivation of Liberty Safeguards since the Supreme Court Judgment.

- 2.11 **Recommendation:** Pay Mrs N £750 in recognition of the distress caused by the failings identified in the report.



2.12 Council Response: Payment of £750 has been made to Mrs N.

3.0 ALIGNMENT WITH CORPORATE PRIORITIES

3.1 Developing the local economy for the benefit of all

3.1.1 There are no significant implications for this priority.

3.2 Helping people live healthy and independent lives

3.2.1 The implementation of the amended MCA and DoLs training will ensure that staff are equipped to support the people they work with, in line with the requirements of the Mental Capacity Act, which aims to maintain a person's independence for as long as is possible.

3.3 Supporting and protecting vulnerable people

3.3.1 The Deprivation of Liberty Safeguards are a part of the Mental Capacity Act which focus on protecting some of the most vulnerable people in our society. In particular, those who for their own safety and in their own best interests need to be accommodated either in a hospital or care home under a care and treatment regime that may have the effect of depriving them of their liberty, but who lack the capacity to give valid consent to their placement.

As such, the deprivation of liberty is a very serious matter and should not happen unless it is absolutely necessary. This has to be justified to be in the best interests of the person concerned. The safeguards will ensure that any decision made to deprive someone of their liberty is made following defined processes and procedures. These safeguards are therefore an important way of protecting the rights of many vulnerable people and should be taken very seriously. Depriving someone of their liberty can be a necessary requirement in order to provide effective care or treatment.

4.0 SIGNIFICANT IMPLICATIONS

4.1 Resource Implications

4.1.1 The following bullet points set out details of significant implications identified by officers:

4.1.2 100 staff in Older People's Services will need to be released to participate in the training by 31 May 2015. Bespoke training sessions have been organised with the aim of meeting this target date.

4.1.3 The current resource for MCA/DoLs training is a training manager and one day a week provided by a safeguarding trainer. In order to ensure that all Adult Social Care Staff receive the refresher training, a dedicated trainer is required. This will be a fixed term post for 1 year costing approximately 30k.

4.2 Statutory, Risk and Legal Implications

4.2.1 The implementation of the actions outlined in this report will reduce the risk of



a similar situation reoccurring in the future.

4.3 Equality and Diversity Implications

- 4.3.1 The actions outlined in this report will ensure that the legal duties imposed on the Council by the Mental Capacity Act are implemented in a consistent manner across all areas of Children, Families and Adults.

4.4 Engagement and Consultation Implications

- 4.4.1 There are no significant implications within this category

4.5 Public Health Implications

- 4.5.1 There are no significant implications within this category

4.6 Localism and Local Member Involvement

- 4.6.2 There are no significant implications within this category

