

**Responsible Officer** Stephen Chandler

Email: [Stephen.chandler@shropshire.gov.uk](mailto:Stephen.chandler@shropshire.gov.uk) Tel: 01743 253066

## REPORT OF LOCAL GOVERNMENT OMBUDSMAN

### 1. Summary

Members will note the attached report of the Local Government Ombudsman. There is a requirement for this to be shared with full Council because of the finding by the Ombudsman of maladministration. The Council has also been directed to write to the Ombudsman with its response to the report and views on the contents of the response will be sought at the meeting.

Whilst much of the narrative of the report is accepted as accurate, officers do not agree with the conclusion of the Ombudsman as to the correct compensation payable to Mr Ryan.

This report does not contain personal details because of the need to keep the identity of the complainants confidential.

### 2. Recommendation

That Council resolve to support the general principles set out in the Conclusion below with authority to determine the final response to the Local Government Ombudsman delegated to the Director of Adult Services in consultation with the Portfolio Holder Adult Services Transformation and Safeguarding.

## REPORT

### 3. Risk Assessment and Opportunities Appraisal

- 3.1 The Council could have accepted the findings and recommendations of the Ombudsman when they were shared in a provisional form. If they had been, the matter would have been closed by the Ombudsman and recorded as a local settlement. There would have been no requirement to share the report with full Council and neither would there have been a direction to publicise the report in the local press.
- 3.2 In proposing that the Council oppose the compensation recommendation there is a risk that it will continued to be criticised by the Ombudsman. Previous experience suggests that the Ombudsman will press for the recommendations to be implemented in full, though as the legislation presently stands there is no legal obligation on the Council to do so.

#### **4. Financial Implications**

If the Council accepts the conclusions of the Ombudsman in full it will have to pay the complainants a total sum of £62,270. It is suggested to members that this is a wholly disproportionate sum and out of all relationship to the actual injustice identified.

#### **5. Background**

- 5.1 The report refers to the complainants as Mr and Mrs Ryan. This is obviously not their real surname but will also be used within this report.
- 5.2 The complaint is effectively made up of two parts which will be dealt with separately below. The main complaint concerns the assessment and funding for the care identified as needed by Mrs Ryan. The second and less significant aspect of the complaint concerns the manner in which the original complaint was dealt with.
- 5.3 It is accepted by officers that there were parts of both the assessment process and complaint handling that could have been dealt with more effectively and a local settlement was indeed agreed in January 2012. However, officers misunderstood the basis on which the Ombudsman was proposing that the compensation should be calculated and therefore refused to implement the recommendations. Officers had understood that what the Ombudsman was proposing was compensation equivalent to Mr Ryan's loss of earnings (less any direct payment) because he had to leave work rather than the full direct payment of 24 hour care backdated from April 2009 to February 2008.
- 5.4 The Ombudsman observes that

“from 2008 Mrs Ryan made regular concerted efforts to resolve the matter with the Council”.

Officers take issue with this statement as neither Mr nor Mrs Ryan has been prepared to compromise in any respect whatsoever on the care package she receives. Indeed, although not directly relevant to this report, Members should know there has been a resistance to the Council's recent proposal to re-assess Mrs Ryans needs. A re-assessment is an entirely normal practice where there indications are, as in this case, that there are improvements in Mrs Ryan's well-being and circumstances.

- 5.5 In addition, the Ombudsman has made reference to the possibility that Mrs Ryan may in fact have needs that are primarily health related (also known as “continuing healthcare”) in nature and if that is indeed the case then she would be the responsibility of the local Clinical Commissioning Group. Mrs Ryan is also reluctant to engage in an assessment as to whether she meets the criteria for continuing health care.

#### **6. Social Care Needs**

- 6.1 Members should be aware that Mrs Ryan has, as far as Shropshire Council is concerned, uniquely complex mental health needs. For reasons of confidentiality it would be inappropriate for the detail of those needs to be made public, but their complexity have been one of the key factors in the difficulties the Council has faced in dealing with her case.

- 6.2. Around the end of 2007, Mrs Ryan sought a specialist diagnosis from a national expert in her condition. This diagnosis included an assessment and suggested care plan in January 2008. The Team Manager of the CMHT immediately appreciated the exceptional complexities of this case and decided to take direct responsibility for its case management as well as continuing to take the lead on developing an appropriate care package.
- 6.3 It is at this point that the Ombudsman says the Council ought to have carried out a community care assessment. However, this did not occur for two key reasons. First a very experienced multi-disciplinary team had tried very hard over many years to work with Mrs Ryan but without success and second it was vital to re-establish a trusting relationship to have any chance of achieving any sort of effective and positive outcome. Given the assessment already commissioned which identified a need for significant health-related therapy, the Team Manager considered it was inappropriate and potentially counter-productive to undertake a standard community care assessment at this point. In his opinion and, as he understood it, that of Mrs Ryan herself, such an assessment would have probably further alienated her from the multi-agency team tasked with delivering the care package. It was not a case of simply identifying community care needs following a community care assessment, but rather of a care plan emerging from detailed discussions between a multi-disciplinary team of professionals in full consultation with Mrs and Mr Ryan. Somewhat reluctantly the Director now acknowledges that the statutory framework in which Adult Social Care operates within does require such a community care assessment and accordingly accepts the finding of the Ombudsman that there has been “maladministration” in this case. However, it was “maladministration” with the best of intentions.
- 6.4 Officers also believe that even if such an assessment had been commenced in 2007/8 it is highly unlikely that Mrs Ryan would have engaged with it or that it would necessarily have identified the need for 24/7 care. Further, even if it had done so, it is not certain that the Council would have concluded that the level of support could or should be provided by one person alone. In other words it is not accepted that, had an assessment been carried out as it should have been in February 2008, that Mr Ryan would have been identified as the appropriate person to provide that care or that it would be have been appropriate for him to continue to be the sole carer for a period in excess of five years. It is much more likely, given the expert guidance being given at the time, that such an assessment would have concluded that fifty hours a week support was indeed appropriate to meet Mrs Ryan’s needs.
- 6.5 It was clear at the time that it would take a number of weeks for the care package to be progressed and at this point it was envisaged that the care would be provided by Council commissioned carers rather than Mr Ryan. However, it was recognised that in the meantime he was providing significant amounts of care. As a result the Council agreed, as an interim measure for 12 weeks only, to make direct payments to Mr Ryan to recognise his role as a carer. A back-payment to 6<sup>th</sup> February was also agreed to acknowledge the care work Mr Ryan had performed. It was envisaged that the payments would cease once the full care package could be implemented.
- 6.6 Obviously the key outstanding issue within the complaint is how a figure of fifty hours per week was determined when Mrs Ryan now has presenting and

eligible needs of 24 hours a day seven days a week. Originally the care plan recommended by the external national expert involved Mr Ryan returning to work with carers commissioned to support Mrs Ryan therapeutically. The fifty hours represented time Mr Ryan would otherwise have been out of the house working and travelling to and from work and to that extent was not an arbitrary amount of time but one that had a rational basis. It was never intended for Mr Ryan to be paid as main carer as it was seen by the external national expert as being counter-productive to the purpose of therapy which was to assist Mrs Ryan towards being able to self-care as an adult. There were concerns at over-dependency and the risk of vital relationship roles being confused thereby undermining the care plan.

- 6.7 Considerable effort was made between March and September 2008 involving two care agencies to progress the care package but without success. It was extremely difficult to identify appropriate therapists and carers and once these were finally in place a risk assessment was undertaken which Mrs Ryan took exception to resulting in her opting out of the agreed care plan.
- 6.8 The Council acknowledges that Mr Ryan gave up his job to care for his wife. He told the Ombudsman that he had no choice but we do not agree that the only possible carer for Mrs Ryan was her husband and this seems to be confirmed by the fact that part of her care is provided by her daughter. It was also not the view of the clinicians involved in treating Mrs Ryan that Mr Ryan was the only person who could care for his wife.
- 6.9 Further, whilst it was subsequently accepted by the Director of Adult Services that Mrs Ryan did require 24 hour care it did not follow that Mr Ryan and their daughter should be entitled to payment for all of the period during which they have acted as carers. Though they are not obliged to do so it is not uncommon for families to provide a significant amount of unpaid care to a relative.
- 6.10 Notwithstanding these various comments the Council does accept that its failure to carry out a timely community care assessment did cause some injustice to Mr Ryan. We are of the view, however, that it had little effect on Mrs Ryan as she continued to receive full-time care from her husband throughout this period. The real issue of contention between ourselves and the Ombudsman is the correct manner in which any compensation should be calculated, given that Mr Ryan had to leave work in order to support Mrs Ryan. As stated above, officers consider that any remedy should be based on what Mr Ryan lost when he had to leave work, and that the Council should pay the difference between what he would have earned being in work and what he received by way of a direct payment. We think it is disproportionate to take into account such factors as lost pension contributions and career prospects in a case such as this, as such an approach is more akin to formal litigation rather than the statutory complaints process. Further, to simply back-date the full direct payment to February 2008 as recommended by the Ombudsman would, in our view, also be disproportionate and inappropriate given the Council's wider public responsibilities.
- 6.11 Mr Ryan says that he has lost his job, pension and career prospects as a result of the inaction of the Council but it is also argued that he is the only viable carer for his wife. In other words, as the Ombudsman points out, even if the Council had acted sooner he would still have had to give up his job etc if he wanted to fulfil the role of carer.

- 6.10 Even, if we are wrong in our analysis of the correct basis for calculating the compensation due, the Ombudsman points out that Mr Ryan himself did not request additional care until November 2008 and consequently it would not be unreasonable for the Council to assume that he was content to provide the care he did at least up until this point voluntarily. The Council cannot be expected to take on and then back-date in all similar situations where family carers decide that they no longer wish to provide the care that they have previously delivered voluntarily.
- 6.16 We note the points made by the Ombudsman regarding the Council's duties towards Mr Ryan as his wife's carer, but it did seek to identify alternative carers for Mrs Ryan. We continue to believe that it would have been possible to identify appropriate provision if Mr and Mrs Ryan had been more willing to engage in the process.
- 6.17 Further, the Council does understand its wider responsibilities towards carers and this is demonstrated by Mrs Ryan's present care package in which 24 hour a day care is supported through the making of a direct payment to her husband and daughter.

## **7. The complaints process**

- 7.1 The Council largely accepts the Ombudsman's conclusions in respect of the the complaints process. It is accepted that decisions took longer to reach than would ordinarily be the case and this was largely down to the complexity of the issues involved.
- 7.2 We accept that Mrs Ryan has incurred stress, time and trouble in pursuing her complaint and is prepared to:
- provide an apology to Mr and Mrs Ryan about the time it has taken to deal with the complaint;
  - review its procedures for complaint handling in light of the comments made in this report; and
  - pay Mrs Ryan £1000 for the time and trouble in making the complaint and the further delay in obtaining the remedy.

## **8. Conclusions**

- 8.1 In the light of the discussion above, Members are asked to endorse the following propositions as the basis of formulating a response to the Ombudsman's report:
- 8.2 In failing to assess Mrs Ryan when the Council should have done, it failed to put in place an appropriate package of care to meet Mrs Ryan's needs. Mr Ryan, therefore, was obliged to continue the care he was providing and in doing so gave up his paid employment. It is likely, however, that no arrangement other than Mr Ryan providing full-time care would have been acceptable to Mrs Ryan.
- 8.3 Consequently, in accordance with the Council's original (mis)understanding of the Ombudsman's recommendations, Mr Ryan should be entitled to his loss of earnings less any payments he has received in respect of the care he has given to Mrs Ryan.

- 8.4 That figure cannot be calculated at the moment because we do not know what Mr Ryan was earning prior to leaving work and we do not know what proportion of the direct payments paid to Mrs Ryan have been paid to Mr Ryan. Only when we have that information can we calculate the loss - if any.
- 8.5 The Council cannot agree to a payment as recommended by the Ombudsman as it would be wholly disproportionate to the needs of the case and fails to take into account the efforts the Council has made to accommodate the unusual circumstances including:
- not carrying out an assessment because Mrs Ryan was resistant to the idea
  - agreeing care to be provided by Mrs Ryan's partner 24/7
  - continuing to make payments even though no proper account has been given by Mrs Ryan of the monies she has received
  - The current challenges in engaging Mrs Ryan in a re-assessment
- 8.6 The Council is under an obligation to all its council tax payers to make efficient use of its increasingly limited resources and could properly be criticised for making such a large payment to a service user in circumstances where she has refused to comply with the council's reasonable requests.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

None

**Cabinet Member (Portfolio Holder)**

Tim Barker

**Local Member-** Not disclosed for reasons of confidentiality

**Appendix –** report of Local Government Ombudsman