



<u>Committee and Date</u>	<u>Item</u>
Council	17
27 February 2014	Public

SECOND REPORT OF LOCAL GOVERNMENT OMBUDSMAN

Responsible Officer Stephen Chandler

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1. Summary

Members will recall a report into a finding of maladministration by the Local Government Ombudsman, being presented to Council on 18th July 2013 and a further copy is attached to this report as Appendix 1. The recommendations of the July report, were unanimously supported by members at the time. A further report of the Local Government Ombudsman has now been published and this is attached as Appendix 2. Members are asked to read this further report, which must, by law, be considered at full Council, and consider the proposed response set out at section 6 below.

As previously, this report refers to the complainants as Mr and Mrs Ryan to keep their identities confidential.

2. Recommendation

That Council resolve that the general approach recommended by this Report is accepted and that the final response to the Local Government Ombudsman is 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 Following the Council meeting on 18th July, a letter was sent to Dr Jane Martin, the Local Government Ombudsman explaining that the Council would not be following her recommendations in full.
- 3.2 Members were told at the time that the Ombudsman was likely to issue a further report and press for the recommendations to be implemented in full. As members were also told, 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 it will have to pay the complainants a sum of £61,270. It has already paid Mrs Ryan £1000 in recognition of her time and trouble pursuing the complaint. It is suggested to members that a sum in excess of £60,000 at any time, but particularly given the Council's perilous budget position, is a wholly disproportionate amount of money and out of all relationship to the actual injustice identified. In the opinion of your Director of Adult Services that still remains the case and nothing stated within the latest Report of Dr Martin has altered that view.

5. Background

- 5.1 Your Director accepts that, subject to a re-assessment of her community care needs and an assessment of her need for continuing healthcare funding, Mrs Ryan requires care 24/7. To that extent the Council does not argue with a number of the points made by Dr Martin and the basic conclusion of her original report that the Council was guilty of maladministration its failure to carry out a timely community care assessment.
- 5.2. Where we do take issue with Dr Martin, however, is over the correct calculation of any remedy payable. Members are asked, once more, to refer to the July Report and to the reasons set out there for not accepting Dr Martin's recommendations. In the opinion of your Director of Adult Services these reasons remain legitimate.
- 5.3 As explained in more detail previously, the Council has suggested that a more proportionate and reasonable approach would be for it to pay the difference between what Mr Ryan would have earned being in work and what he received by way of a direct payment. We think it is disproportionate and inappropriate 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. Conclusions

- 6.1 In the light of the discussion above, Members are asked to authorise the Director of Adult Services to formulate a response to the Ombudsman's report, in consultation with the Portfolio Holder Adult Services Transformation and Safeguarding.
- 6.2 This response will simply explain that the Council sees not basis within Dr Martin's latest report to change the stance it took at the meeting on 18th July 2013.

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

Report to Council by Director of Adult Services (see Appendix 1)

Cabinet Member (Portfolio Holder)

Lee Chapman

Local Member- Not disclosed for reasons of confidentiality

Appendices

Appendix 1 – report of Director of Adult Services for meeting of Council on 18th July 2013

Appendix 2 – report of the Local Government Ombudsman, January 2014