

Report To: EXECUTIVE CABINET

Date: 25 July 2018

Executive Member/Reporting Officer: Councillor Brenda Warrington – Executive Leader
Sandra Stewart – Statutory Section 5 Monitoring Officer

Subject: **RESPONSE TO RECOMMENDATIONS MADE BY THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN (THE OMBUDSMAN)**

Report Summary: The report describes the action taken in response to the recommendations made by the Local Government and Social Care Ombudsman hereinafter referred to as 'the Ombudsman' following the death of a resident at a local residential home.

Recommendations: That Executive Cabinet :
(i) note the content of the report
(ii) note the actions that have been taken and the actions that are proposed to be taken.


Links to Community Strategy: Supportive Tameside/ Safe Tameside

Policy Implications: Safeguarding Policy is being reviewed at present and will be rolled out once agreed with partners.

Financial Implications: The recommendations within the Ombudsman report should be complied with. The payment of £ 1,500 as stated in section 3.2 of the report has been financed by the Adult Services revenue budget.
(Authorised by the Section 151 Officer)

Legal Implications: As set out in the report.
(Authorised by the Borough Solicitor)

Risk Management: The risks identified in the LGSCOs investigation have been acknowledged and addressed by the Council.

Access to Information: The background papers relating to this report can be inspected by contacting Sandra Stewart, Director of Governance & Pensions
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1. PURPOSE OF REPORT

- 1.1 To report to Members as the Council's Monitoring Officer and in accordance with section 5A of the Local Government and Housing Act 1989 (the 1989 Act) on a report by the Local Government and Social Care Ombudsman ('the Ombudsman') regarding an adult services matter
- 1.2 To advise Members of the actions already taken by the Council.
- 1.3 To advise Members of the actions still to be taken by the Council.

2. LEGAL POSITION

- 2.1 The Ombudsman has made a series of findings of fault on the part of the Council. Her report is attached at **Appendix 1**, the contents of which are self-explanatory. Members will note that the names used in the report are not the real names of the people and place concerned, the protection of which is a statutory legal requirement.
- 2.2 In essence, 2 Acts of Parliament govern the actions the Council must now take in response to the LGO's report. They are the Housing and Local Government Act 1989 (the 1989 Act), which sets out the Monitoring Officer's responsibility to report and the Executive Cabinet's corresponding duties, and the Local Government Act 1972 (the 1972 Act) which addresses the duty to advertise and other related matters.
- 2.3 A copy of the report must be sent to all Members of the Council as required by the 1989 Act.
- 2.4 The Ombudsman has also said he will publish a copy of its report on its website on or after 31 July 2018 and the Council will also issue a notice within 14 days of the publication of the Ombudsman's report, and will do so in the Tameside Advertiser and the Tameside Reporter, attached at **Appendix 2** in accordance with s 30 of the Local Government Act 1972.
- 2.5 As required by the 1989 Housing and Local Government Act, Executive Cabinet must now formally consider this report, and note that the recommendations have been agreed and are in the process of being complied with
- 2.6 The requirements set out in this report cover the statutory responsibilities of both Executive Cabinet and the Statutory Officers.
- 2.7 As Statutory Officers of the Council, the Chief Executive, Director of Finance and the Director of Adults Services have been consulted and agree with the views of the Director of Governance and Pensions in her capacity as the statutory Monitoring officer
- 2.8 As required by the 1989 Act, Cabinet must now formally consider this report, and as soon as practicable prepare a report which specifies:
 - a) what action (if any) it proposes to take in response to the LGO's report;
 - b) if it proposes to take any action in response to the LGO's report, when it proposes to take that action; and
 - c) the reasons for taking the action specified in the LGO's report, or, the reasons for taking no action.
- 2.9 As soon as practicable after Cabinet has prepared a report in accordance with the above, Cabinet shall arrange for a copy of it to be sent to each Member of the Council and to the statutory Monitoring Officer.

2.10 Should the LGO not be satisfied with Cabinet's response, he may serve a Notice on the Council, with reasons, requiring Cabinet to further respond, with reasons, which is also subject to statutory advertising requirements.

3. OMBUDSMAN FINDINGS AND RECOMMENDATIONS

3.1 The background is covered in the Ombudsman's report.

3.2 Officers have agreed with the findings of the LGO's report and have already complied with the following recommendations:

(a) Payment of £1,500 to Mrs J – A payment of £1,500 was made to Mrs J on 27 June 2018. A letter of apology, dated 18 June 2018, has also been sent to Mrs J to apologise for the additional upset caused by the Council's stage 1 response to the complaint raised.

(b) Review of Safeguarding Policy – Tameside Adult Safeguarding Partnership Board produce the safeguarding Policy that all partners accept and adhere to. The Policy is reviewed on regular basis and is currently being reviewed in accordance with that cycle. Any adjustments to the policy will be considered at the October Board later this year and then a refresh of training for staff will be rolled out across all organisations.

(c) Refresh Staff understanding of how to handle safeguarding concerns - Following on from the Ombudsman decision a memorandum has been sent out to all staff reminding them of their responsibilities under the Care Act and under the Safeguarding Policy. The memorandum points out the importance of recognising the need for a safeguarding investigation rather than or as well as a complaint investigation when the need arises.

(d) Signpost staff to the CQC guidance on seeking medical advice – a number of approaches have been taken to communicate this requirement to care homes:

- An email communication was sent to all care home providers on 19 June 2018 which instructed all homes to ensure that management and staff were aware of CQC guidance;
- The need to signpost managers and staff to the CQC guidance was discussed at the Care Home Provider Forum on Tuesday 5 June 2018;
- A clause has been included in the Pre-Placement agreement that directs providers to the CQC guidance. The clause states:

“Contract Specific Outcomes; 2 Service Users receive the support that they need to promote and manage their health; 3 The Provider will be aware of and act in accordance with the Regulator's Guidance to seek appropriate medical/health advice in a timely manner.”

Guidance is defined as “any applicable health or social care guidance, guidelines, direction or determination, framework, code of practice, standard or requirement to which the Commissioners and/or the Provider have a duty to have regard (and whether specifically mentioned in this Contract or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Co-ordinating Commissioner and/or any relevant Regulatory or Supervisory Body”.

(e) Requirement for care homes to agree with residents' families the level of notification they would like about changes in their condition, and record this in the resident's care plan – A clause in the Pre-Placement Agreement that requires care home providers to

agree the level of communication families requires regarding their relative's health and changes in their health has been updated. The clause states:

'The Provider routinely involves and informs relatives and friends in communications about the Service User (as agreed with the Service User). This will include when to contact the relatives and friends when the Service User's condition changes.'

Providers were also advised of this requirement at the Care Home Provider Forum on 5 June 2018.

(e) Training for adult social care staff on handling complaints – Training for adult social care managers was arranged by the statutory Monitoring Officer and facilitated by the Ombudsman on 11 April 2018. The training was well received and managers have reported that this has improved their understanding and confidence when responding to complaints.

(f) Share the Ombudsman report with staff at Oakwood Care Centre – The Ombudsman report was emailed to the owner of Oakwood care centre on 26 April 2018. The owner advised that the manager of the home would be sharing the report with the staff team at their team meeting at the end of May 2018. The manager of the home has confirmed that the report and its findings were shared with the staff team on 29 May 2018.

3.3 The Ombudsman's decision is that the Council is at fault for failing to act in accordance with the law and relevant government guidance, and that the Council should comply with all its recommendations.

4. VIEWS OF THE STATUTORY MONITORING OFFICER

4.1 The recommendations should be complied with.

5. RECOMMENDATIONS

5.1 As stated on the report cover