



Doncaster Council

Report

18th September 2018

To the Chair and Members of
CABINET

Maladministration Report from the Local Government Ombudsman

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Councillor Nuala Fennelly		Non-key

EXECUTIVE SUMMARY

1. The Local Government Ombudsman has published a Report dated 25th July 2018 finding maladministration causing injustice. The Ombudsman has found that the Council failed to meet the needs of the complainant's disabled son by taking too long to re-house the family from a property that could not be adapted and then by delaying carrying out adaptations to their current property.
2. The details of this are attached in the Report at Appendix 1 and in the summary of this report at paragraphs 4 to 13.
3. As a remedy to the Complaint, the Ombudsman has made a number of recommendations dealing with the failure. All reports of maladministration issued by the Local Government Ombudsman are considered by Cabinet, and are circulated to all councillors. The Monitoring Officer is legally obliged to prepare a report to the Executive where there has been a finding of maladministration by the Local Government Ombudsman.

EXEMPT REPORT

4. N/A

RECOMMENDATIONS

5. (1) that the contents of the report be noted

- (2) That the findings and remedies recommended by the Local Government Ombudsman be accepted and the officers' actions already taken and proposed to be taken as set out in this report are endorsed.
- (3) That this report be adopted as the Cabinet's formal response as required under s.5A of the Local Government and Housing Act 1989 and distributed to all members of the authority by the Monitoring Officer.
- (4) That this report be adopted as the Council's formal response under s.31 of the Local Government Act 1974 and the Ombudsman be notified of the action the Council taken by the Director of People

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

6. Following the Ombudsman's report and the proposed actions to be taken by the Council, Doncaster families should receive a better service when they are entitled to adaptations to their property due to the disability needs of a person living in the property.

BACKGROUND

The Complaint

7. The Local Government Ombudsman has published a report dated 25th July 2018 with a finding of maladministration causing injustice. This followed a complaint by Miss X that the Council had taken too long to provide accommodation that met the needs of her disabled son, Y. This was both before and since it moved her to her current address. Before the house move, Miss X says the Council gave her false and incorrect information about Disabled Facilities Grants (DFGS); and that an occupational therapist (OT) had told her the council no longer funded DFGS. Miss X also complained that she was only allowed to bid on parlour-style houses.
8. After the move, Miss X says an OT told her that she could not have a DFG to adapt her current property as it had already been adapted even though those adaptations did not meet Y's needs. She stated the Council delayed offering her a DFG; delayed carrying out the work; and at first offered her an extension that was smaller than the OT recommended.

Background to complaint

9. Miss X and her partner together have five children. One of them, Y, has severe disabilities and has frequent hospital admissions and appointments. He is doubly incontinent, requires tube feeding, cannot walk or move himself and must be lifted or hoisted for all transfers. His family provides for all his basic needs, personal care and toileting.
10. Miss X and her family lived in private rented housing that did not meet Y's assessed needs. There were problems with lifting and bathing him. It would have needed adaptations and an extension. Various assessments were made and the family placed on its accessible housing register in November 2014. However there was only one opportunity to bid for a house that would be

fit for the family's needs in 19 months. Since then, the family had not had the adaptations they need to care for Y properly. The records show a number of services involved with recommendations made but no solution arrived at. The Council confirmed it would not consider adapting the property via DFGs as the tenancy was not secure for five years and the property was in poor condition. The Ombudsman saw no evidence the Council carried out any adaptations to the property to meet the family's needs in caring for Y other than supplying a stair-climber device.

11. The family moved to a property rented from the Council in August 2017 after their landlord began eviction proceedings. The ground floor room in the new property where Y was to sleep was too small to store the specialist equipment needed to look after him. The property also needed work to improve the bathing facilities downstairs, which was important because of Y's incontinence. There is evidence of disagreement over the size of the extension that was required for Y. Eight months after the OT assessment work has not commenced. Miss X reported there was still no hoist in the downstairs bathroom and she still has to lift Y several times each day.

Ombudsman's Conclusions

12. The Ombudsman concluded that apart from one opportunity to bid on a property Miss X might have missed in December 2016, she had no other opportunity to obtain housing fit for the family's needs between 1 January 2015 and August 2017. Since then, the family has not had the adaptations they need to care for Y properly. The Ombudsman states it is a matter of one person's word against another's if anyone from the Council told Miss X the Council no longer funded DFGs and whether anyone told her she could not have a DFG because the new property had already been adapted for someone else. However Y's needs and those of his family in caring for him are beyond doubt. The Council had assessed them in March 2014 but took over three years to find a property that would meet the family's needs; failed to meet the family's needs in a temporary way while it was trying to find a permanent solution; considered tenure, which was irrelevant, in deciding it could not meet the needs it identified; and failed to explain in the panel's decision why it decided to go against the professional recommendations of the OT. The Ombudsman concludes that all this was fault amounting to an avoidable delay of over three years. It was clear from the outset in August 2017 that the new property would need adaptations. The Ombudsman also concludes that the fact that the adaptations recommended more than eight months ago were not likely to be completed for some time to come is also fault, that the current state of affairs is the result of fault by the Council. He also notes that the further delay is likely to be considerable as the main building work is still to be done.

Ombudsman Decision

13. The Ombudsman has decided that the Council's delay has meant Miss X and her family have lived in accommodation unsuitable for Y's needs for over three years and will do so until all the adaptations are ready. This loss of amenity has had negative effects on the family, which are injustice. The Ombudsman considers that repeatedly lifting Y can only have worsened Miss X's back pain. This was injustice in the form of risk of harm and some likely actual harm. He concludes that the Council's failure to act has also caused the family significant distress over more than three years commenting that Miss X, and to some extent other members of the family, have had to deal with a burden they should

not have had to deal with while also caring for Y. This significant distress over a long period was injustice.

14. The Ombudsman found that the Council was at fault leading to avoidable delay as it:
 - (1) took over three years to find a property that would meet the family's needs;
 - (2) failed to meet the family's needs in a temporary way while it was trying to find a permanent solution;
 - (3) considered tenure, which was irrelevant, in deciding it could not meet the needs it identified; and
 - (4) failed to explain in the panel's decision why it decided to go against the professional recommendations of the OT.

15. The complaint is in part historic, however the Ombudsman felt that the difficulties Miss X has experienced in caring for Y in unsuitable accommodation are such that it would have been more difficult than usual for her to complain and so the Ombudsman considered matters since 1 January 2015, approximately a year before she complained to the council.

Ombudsman's Recommendations

16. To remedy the injustice caused by fault, the Ombudsman recommends the Council, within three months of the date of the report:
 - (1). apologises to Miss X and her family for the injustice it has caused them by failing to meet Y's needs for more than three years;
 - (2) provides the family with a surfaced drive wide enough to accommodate their vehicle and to allow Y's wheelchair to pass to reach the house;
 - (3) funds a weekend break or short break for the family up to a value of £1500. This is because the previous recommendation meets a likely need the Council might ordinarily have to consider even had the injustice caused by fault not occurred;
 - (4) starts the building work immediately to achieve a situation where Y has full wheelchair access to the ground floor of the property and can be hoisted for all transfers into and out of bed and for bathing so that family members no longer have to lift him for these; and
 - (5) reviews its policies and procedures to ensure that it fully meets its duties to disabled children and their families under the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970 in arranging adaptations to housing. This should ensure that it bases decisions on need rather than tenure.

Council Response

17. The Council fully accept the Ombudsman's conclusions and recommendations. Officers have visited the family and offered a verbal apology and a formal letter has been issued to the family. Officers have also been on site with the architect, adaptations team and OT with the family to ensure they are happy with the plans for the extension and have shared timescales with them. The driveway has been measured and this will be included in the building works specification. The Adaptations manager has been keeping the family up to date on progress weekly and where any changes to the works have had to be made the family have been consulted. The tender for the work has now been awarded and the building will commence this month. Other adaptations not covered in the LGO report have also been carried out. Short breaks have been discussed with the family and they are looking into this and a further assessment has been carried out taking into account Miss X needs as a carer for Y.
18. In terms of the wider recommendations a rapid improvement plan has been put in place with clear milestones and oversight by senior management. A new Adaptations Policy has been produced which incorporates a new Adaptations Panel process. A review of the end to end housing adaptations process has been undertaken and some immediate improvements made. Screening of all new referrals is now undertaken and any housing adaptations prioritised. The decision making panel have also been mandated to ensure that adaptations are tracked and where there are blockages they take immediate action. Waiting lists have been scrutinised and any families awaiting adaptations have been contacted to ensure any risks minimised whilst awaiting for a suitable property or for adaptations.

OPTIONS CONSIDERED

19. As this is an Ombudsman's report finding maladministration with injustice, the process for reporting the decision must be followed. The Council does not legally have to follow the Ombudsman's recommendations, but it is considered it is appropriate to do so.

REASONS FOR RECOMMENDED OPTION

20. There is no reason not to follow the recommendations from the Ombudsman

IMPACT ON THE COUNCIL'S KEY OUTCOMES

21.

	Outcomes	Implications
	<p>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none">• Every child has life-changing learning experiences within and beyond school• Many more great teachers work in	<p>The actions to be taken as detailed in paragraph 13 will ensure that children are better protected in vulnerable circumstances.</p>

	<p>Doncaster Schools that are good or better</p> <ul style="list-style-type: none"> • Learning in Doncaster prepares young people for the world of work 	
	<p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust • Older people can live well and independently in their own homes 	<p>The actions as detailed in paragraph 13 will ensure that the most vulnerable families receive the help they are entitled to promptly.</p>

RISKS AND ASSUMPTIONS

22. The Ombudsman has identified maladministration with injustice and it is strongly recommended that Cabinet accept the recommendations as failure to do so, without a strong legal basis, would bring the Council into disrepute.

LEGAL IMPLICATIONS Officer Initials HP Date 20.08.18

23. Under s.5 of the Local Government and Housing Act 1989 the Monitoring Officer is under a duty to present a report to the Cabinet in the event of a finding of maladministration in respect of an executive function and the Cabinet is under a duty to consider that report. This report discharges that duty. Under s.5A the Cabinet is obliged to consider the report and prepare a report which specifies:- (a) what action (if any) the executive has taken in response to the report; (b) what action if (any) the executive proposes to take and when; (c) the reasons for taking the action or, as the case may be, for taking no action.
24. As soon as practicable after the preparation of such a report, it must be sent to each member of the authority by the Monitoring Officer. These duties are reflected in the recommendations. As required by the Act, the Head of Paid Service and the Section.151 officer have been consulted in the preparation of this report. In addition to the Section.5 requirements, S.31 of the Local Government Act 1974 provides that where the Ombudsman reports that there has been maladministration, the report shall be laid before the authority concerned and that it shall be the duty of that authority to consider the report and within 3 months of the date of receipt of the report to notify the Ombudsman of the action which the authority has taken or which it proposes to take. The Ombudsman has further powers available in the event that he is dissatisfied with the authority's response.

FINANCIAL IMPLICATIONS [Officer Initials EP Date 22/08/18]

25. The cost of any adaptations resulting from this report's recommendations will need to be contained within the existing £2.27m DFG capital budget for 2018/19.

The one-off payment of £1,500 to the family will be charged to the Occupation Therapists revenue budget.

HUMAN RESOURCES IMPLICATIONS

26. None associated with this report.

TECHNOLOGY IMPLICATIONS

27. None associated with this report.

HEALTH IMPLICATIONS

28. None associated with this report.

EQUALITY IMPLICATIONS HP Date 20.08.18

29. The adoption of the wider recommendations of the Local Government Ombudsman further enhance the provision of services delivered by Adult Health and Wellbeing Department.

CONSULTATION

30. The report has been shared with the Chief Executive, the Monitoring Officer, The Section 151 Officer and the Director of People.

BACKGROUND PAPERS

Report of the Local Government Ombudsman.

REPORT AUTHOR & CONTRIBUTORS

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