REPORT TO:	**GENERAL PURPOSES AND AUDIT COMMITTEE** **25 January 2022**
SUBJECT:	**Local Government & Social Care Ombudsman Report** **Finding of Fault with Maladministration and Injustice**
LEAD OFFICER:	**Annette McPartland, Corporate Director of Adult Services and Simon Robson, Director, Adults Services**
CABINET MEMBER:	**Councillor Campbell**
WARDS:	**All**
CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON: The recommendations and actions from the Local Government & Social Care Ombudsman (LGSCO) will be carried out by the responsible service manager in the Adults Social Care Team.	
FINANCIAL IMPACT: £2,000 by way of compensation;	

1. **RECOMMENDATIONS**

The Committee is asked to:

1.1 consider the public interest report dated 6 December 2021 and the recommendations made by the Local Government & Social Care Ombudsman (LGSCO) in relation to Croydon Council. The full list of recommendations can be found in section 6 of this report.

1.2 agree the recommendations set out in the public interest report; and

1.3 note the steps, progress and time line to implement the recommendations set out in section 7 of this report.

2. EXECUTIVE SUMMARY

2.1 On 4th November 2021 the LGSCO wrote to the Chief Executive Katherine Kerswell to confirm that after consideration of a complaint they had received, they decided to issue their findings as a public interest report.

2.2 The LGSCO consider six criteria when deciding whether to issue a public interest report, these are:

- Recurrent faults (for example, the organisation keeps making similar mistakes)
- Significant fault, injustice or remedy (by scale or the number of people affected)

- Non-compliance with an Ombudsman's recommendation (it has not agreed or has not carried out their recommendations)
- A high volume of complaints about on subject
- A significant topical issue
- Systemic problems and/or wider lessons (for example, problems with how the organisation does things that if not put right are likely to affect others, and this is an opportunity for others to learn).

2.3 In this case the reasons for issuing the report are:

- The significance of the fault / wider lessons

3. BACKGROUND

3.1 The complainant who we refer to as Ms C complained in her own right and on behalf of her son, who we refer to as Mr D.

Ms C complained the Council:

- failed to properly assess Mr D's needs. In particular: his needs associated with preventing a deterioration in his mental health;
- failed to liaise, and have a joint working approach with other departments such as the NHS as part of the assessment process;
- failed to recognise Mr D's physical health needs such as how he can access a GP and understand medical instructions;
- failed to properly consider Mr D's emotional needs;
- failed to consider a need for advocacy.
- failed to assess her needs as a carer;
- made errors in a housing application which resulted in the delayed allocation of housing;
- failed to provide a support plan that reflected Mr D's needs before and after his move to independent living;
- failed to provide support to prevent a deterioration in Mr D's mental health;
- did not make reasonable adjustments and acknowledge Ms C's medical condition;
- did not make reasonable adjustments and acknowledge Ms C's medical condition and its effects;
- did not listen and act on concerns about Mr D's social worker who Ms C found to be intimidatory and unprofessional;
- failed to safeguard Ms C and provide preventative services;

- breached confidentiality by telling Mr D where Ms C worked, which was against her express wishes; and
- failed to respond to her complaint impartially.

3.2 The LGSCO report confirmed that the following failings had been identified:

- The Council failed to follow the Care and Support Statutory Guidance in the assessment process. It failed to carry out a fresh assessment, or properly amend a pre-existing one. The Council also failed to produce a personal budget in line with Mr D's needs.
- The Council failed to implement adjustments needed to make so they could effectively communicate with Mr D on an ongoing basis.
- The lack of reasonable adjustments is not in line with the Equality Act 2010, nor is it in the spirit of the Autism Act 2009.
- The Council failed to consider Mr D's short-term needs and longer-term needs. Mr D needed support to obtain skills for independent living. The Council did not consider or review these needs when Mr D entered independent living.
- The Council failed to record preventive measures or a contingency plan of what would happen if Ms C could not cope and the situation in the home became untenable.
- The Council did not provide Mr D with a personal budget.
- The Council never provided Mr D with any options. It only offered one service provider. The Council did not provide Mr D with a support plan, nor was he involved in planning for his care.
- Mr D and Ms C did not have an opportunity to consider alternative forms of support and Council officers failed to listen and address their concerns.
- The Council was also at fault for failing to offer Mr D an advocate as required under the Care Act 2014.

4. CHRONOLOGY OF THE COMPLAINT

What follows is a brief case chronology. It does not contain all the information reviewed during the investigation.

4.1 Following a referral in March 2019, the Council assessed Mr D. It identified he had eligible needs for social support to enable him to access community-based activities and help him build positive relationships with others. The assessment also identified a need for Mr D to access alternative housing.

4.2 As a result of the assessment the social worker made several contacts. These included:

- a housing officer already involved with Mr D. The housing officer had told Mr D there were few properties under the Council's "Fast track" programme that would meet his current requirement of a property with a garden for his dog. The housing officer advised Mr D to bid for a property himself and during the interim offered Mr D a place in shared accommodation for people with mental health problems. This had 24 hour support available. Ms C rejected the offer of shared accommodation as Mr D would find communal areas difficult;
- an outreach support service, to pursue Mr D's need for independent living; and
- Mr D's psychologist, to find out how to support Mr D during meetings.

4.3 There is no written record of the assessment. In response to our enquiries the Council says it completed a comprehensive assessment in 2017 and to avoid distressing Mr D used this as a basis for the reassessment.

4.4 In June 2019 Ms C contacted the Council to say she was feeling increasingly threatened by Mr D and was finding it difficult to manage.

4.5 In October 2019, the Council met with Mr D and Ms C. The Council told Mr D that it had assessed him as needing three, two-hour sessions each week for "outreach support". There was no care and support plan setting out Mr D's needs, desired outcomes and the care and support the Council was arranging to meet his eligible needs.

4.6 The social worker discussed Mr D's need for housing and reiterated that it would take longer to find a property which met Mr D's preferences.

4.7 Ms C reiterated her concerns about the verbal threats that Mr D continued to make against her and her ability to manage.

4.8 In November 2019 Ms C could no longer cope. She contacted the Council which advised her that Mr D should present himself as homeless. In early December, the Council arranged a meeting to process a homelessness application. The Council provided Mr D with hostel accommodation which had support should Mr D need help. There was however no care plan or detail about what Mr D needed or what support the worker could offer.
The Council says this was a planned intervention as once in hostel accommodation the Council could fast track Mr D's application for suitable accommodation.

4.9 Mr D moved from the hostel into his own flat at the end of January 2020. There were no complaints from Ms C at the time, and the Council records her saying Mr D's interim stay in the hostel had gone well.

4.10 On the day of Mr D's move into his new flat he met with Ms C, the social worker, and the support workers. At this point the support had not started as Mr D still had worries about the support workers and would not fully engage. He

did however agree to go to the cinema with the support workers the following week.

4.11 The support workers visited a further three times. On 2 April, the social worker contacted Ms C for an update on Mr D. She did not contact Mr D directly because of his anxiety around using phones. Ms C said Mr D was fine, he was visiting home at least once a week to see his dog. At this point COVID-19 restrictions were in force. The social worker reassured Ms C she could contact her. Later, the same day, Ms C emailed the social worker raising concerns about the support agency. She said the service was not motivational or doing activities Mr D wanted. The social worker responded suggesting a meeting when the Government lifted COVID-19 restrictions.

4.12 A few days later the support stopped because of COVID-19. The social worker contacted Ms C to check she and Mr D had enough provision. Ms C again expressed her dissatisfaction over the support service. Ms C reiterated her concerns twice in May. She stated Mr D did not want the support service to resume. Ms C also explained Mr D was having difficulties in his new flat. This included anti-social behaviour from his neighbours, difficulty with his post and access to his GP.

4.13 The social worker arranged for the same support workers to visit Mr D for a "check call". Following the visit Ms C contacted the social worker saying that Mr D had threatened to hurt her if the support workers visited the property again.

4.14 The social worker contacted the support workers asking them to re-engage with Mr D. Mr D refused. On 5 June Ms C made a complaint to the Council. Her complaint included concerns about the social worker.

4.15 In early July, the social worker contacted Ms C to explain that she had cancelled the support worker service and had made a referral to another organisation which provides outreach support to people living independently. Ms C refused to engage with the social worker stating that she had written a letter of complaint. Later in July the social worker tried to contact Ms C again by phone but there was no response.

4.16 The Council responded to Ms C's complaint on 21 July 2020 and following comments from Ms C sent further letters in August and September. The social worker's team manager wrote the complaint responses. The Council agreed to assign a new social worker to support Mr D. It recognised that Ms C no longer wanted to be a carer and explained that because of this it would need to contact Mr D to assess his needs. It asked Ms C for advice on how best to engage with Mr D without increasing the risk to her.

4.17 The Council set out the next steps which included arranging a meeting with the new social worker and progressing a referral for Mental Health Services. The letter also recognised Ms C's needs and suggested a meeting.

4.18 The Council assigned Mr D a new social worker in September. The Community Learning Disability Team became involved and made a referral to the Mental Health Team. It also developed a health action plan. Mr D did not meet the criteria for mental health services and the Mental Health Team rejected the referral.

4.19 The social worker and her manager made an unannounced visit to Mr D. There was no answer, so they left a letter saying they would call back a few days later.

4.20 Over the next few months the Council tried to engage with Ms C and Mr D and arrange a meeting which would meet both Ms C's needs and those of Mr D.

5. CONCLUSIONS

What follows is a summary of the Ombudsman conclusions from the Final Decision report:

5.1 The Council failed to follow Care and Support Statutory Guidance in the assessment process. It failed to carry out a fresh assessment, or properly amend a pre-existing one. The Council also failed to produce a personal budget in line with Mr D's needs.

5.2 The Council did not extend to what adjustments workers needed to make so they could effectively communicate with Mr D on an ongoing basis.

5.3 The lack of reasonable adjustments is not in line with the Equality Act 2010, nor is it in the spirit of the Autism Act 2009.

5.4 The Council failed to consider Mr D's short-term needs and longer-term needs. The Council did not consider or review these needs when Mr D entered independent living.

5.5 The Council failed to record preventive measures or a contingency plan of what would happen if Ms C could not cope and the situation in the home became untenable.

5.6 The Council's fault caused Mr D and Ms C anxiety and anger.

5.7 The Guidance says councils should provide those with eligible needs a personal budget.

5.8 The Guidance says people should have a choice in how to meet their needs. The Council never provided Mr D with any options. It only offered one service provider. The Council did not provide Mr D with a support plan, nor was he involved in planning for his care. This is fault and not in line with the inclusive and collaborative nature of the Autism Act 2009 or the Care Act 2014.

5.9 Mr D and Ms C did not have an opportunity to consider alternative forms of support and Council officers failed to listen and address their concerns.

5.10 The Council was also at fault for failing to offer Mr D an advocate as required under the Care Act 2014.

5.11 Ms C says there was delay in housing provision for Mr D. The case records show the Council advised Mr D and Ms C about the lack of housing to meet their preferences. It is unclear whether the Council would have offered Mr D

housing earlier if he had not been restrictive in the accommodation he wanted at the time.

5.12 Under the Housing Act 1996 the Council has an obligation to consider housing someone when they are threatened with homelessness. The situation between Ms C and Mr D was deteriorating but it is difficult to say at what point Mr D was "threatened" with homelessness.

5.13 Ms C did not complain to the Council about the delay in housing at the time, neither did she amend Mr D's requirements for housing until they reached crisis point. For these reasons we cannot say the Council was at fault for failing to allocate housing earlier.

5.14 Ms C was Mr D's main carer and under the Care Act 2014 was entitled to a carer's assessment. The Council failed to update Ms C's carer's assessment.

5.15. There is no evidence the Council had knowledge of Ms C's physical health problems until her complaint. Had the Council completed a carer's assessment it is more likely than not that it would have identified her health problems and the impact it has on her caring role.

5.16 The Council's failure to consider Ms C as a carer had a profound effect.

5.17 Since Ms C's complaint the Council has been pro-active in trying to engage with Ms C and offer reasonable adjustments to meet her needs. These steps are welcome, however due to historical events we appreciate that it is difficult for Ms C to trust the Council.

5.18 We understand the social worker involved wanted to ensure Mr D was safe during the COVID-19 lock down period. But it is unclear why she did not obtain information from Ms C about Mr D's wellbeing, and why she repeatedly engaged support workers to initiate contact when she knew this was causing anxiety. As a result of this both Ms C and Mr D lost confidence in the services the Council provided, and disengaged.

5.19 While Mr D was living with Ms C the Council failed to properly assess Mr D's needs and in doing so failed to have regard for his Article 8 rights. In particular how his behaviour was affecting his relationship with Ms C and it potentially being a contributory factor in him leaving home as he did.

5.20 Ms C says the Council breached confidentiality in telling Mr D where she worked. There is no record of this. Without further information we are unable to make a balance of probability finding about whether the Council was at fault. We understand however that any breach would have upset Ms C and potentially put her in a difficult situation.

5.21 The Council's first response to Ms C was timely. The 2009 regulations referred to above, are silent on whether investigating officers from the Council should have no knowledge of the complaint. Indeed in some circumstances someone who knows about the case can have a broader understanding of what has happened. For fairness it is also usual to obtain the view and perspective of the person who is complained about. We therefore find no fault in this aspect of the complaint.

5.22 It did however take Ms C two further letters for the Council to suggest a way forward and carry out changes. We consider the Council had the information initially to make these recommendations but did not do so.

6. RECOMMENDATIONS

To remedy the injustice caused, the Ombudsman recommend the Councils take the following actions.

6.1 apologise to Mr D and Ms C for the failures we have identified in this report;

6.2 pay Mr D £1,000 for the anxiety and frustration the Council's actions have caused him;

6.3 pay Ms C £1,000 for the stress, anxiety and break down in family life that the Council's actions caused her;

6.4 arrange a re-assessment of Mr D by someone who is trained and experienced in assessing and supporting people with autism and mental health problems;

6.5 review how services are provided to people with autism. In particular:

- that staff have adequate training in autism so that they have the appropriate skills and knowledge to support people with autism;
- agree a process of liaison with specialist community teams and mental health services, or specialist autism professionals, when and if necessary;

6.6 review the overall Council strategy to providing services to people with autism. In particular, whether there is due regard for services such as care and housing available to those who have needs related to autism;

6.7 to remind staff about:

- the importance of person-centered practice and keeping people using services central to the process;
- assessing to prevent a potential deterioration in needs especially in situations such as these where it is known there is going to be a substantial change in a person's circumstances;
- the duty to complete carers' assessments;
- the Equality Act 2010 and the duty to make reasonable adjustments where applicable.

7. ACTIONS TAKEN BY CROYDON COUNCIL

7.1 The Local Authority has apologised to Ms C and Mr D for the failings identified in this report

7.2 The Local Authority have made the compensatory payments recommended by the Ombudsman to Ms C and Mr D

7.3 A re-assessment has been offered and is being arranged for Mr D by someone who is trained and experienced in assessing and supporting people with autism and mental health problems; the service has an appropriately trained Advanced Practitioner but the family are considering whether they would prefer a specialist who dual qualified in both Learning Disability and Mental Health.

8. LESSONS LEARNT, IMPROVEMENT AND PREVENTION

8.1 The Head of Service has met with Learning and Development Department and a bespoke training offer is being developed to be rolled out across Adult Social Care Directorate and Housing which will ensure that all staff have adequate training in autism so that they have the appropriate skills and knowledge to support people with autism.

8.2 The Council recently launched its Autism Strategy, overseen by the multi-agency Autism Partnership Board, supported by the Autism Inclusion Lead, to support the implementation of the strategy and action plans;

8.3 The introduction of Specialist Autism panel is being explored between health and social care clinicians and practitioners to improve liaison with *specialist* community teams and mental health services and specialist autism professionals.

8.4 Supervision, evaluated through audits, will ensure staff are reminded and understand the importance of person-centred practice, keeping people using services central to the process and ensuring appropriate and timely support to carers.

8.5 The current carers' strategy is being refreshed to improve the offer to carers;

8.6 The anonymised case is being used as a 'live' example to share with the Directorates Senior Management Team, to share lessons learnt.

9. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

9.1 The financial recommendations made by the LGSCO were:

£2,000 in respect of compensation.

In addition to the financial costs, the LGSCO's recommendations, have a reputational impact on the Council's Adult's Services.

9.2 Section 8 - Lessons Learnt, Improvement and Prevention will help mitigate future financial risks of this type.

Approved by: Mirella Peters, Head of Finance, Adults on behalf of the Director of Finance, Investment and Risk and Section 151 Officer

10. LEGAL CONSIDERATIONS

10.1 The Head of Litigation and Corporate Law comments on behalf of the interim Director of Law and Governance that the the Local Government Ombudsman was established under the Local Government Act 1974 Part 3 (LGA 74). Changes to the Act were included in the Local Government and Public Involvement in Health Act 2007 and the Health Act 2009. The LGA 74 sets out the Ombudsman's powers. Case law has further clarified how the LGA 74 should be interpreted.The Local Government Ombudsman changed their name to The Local Government and Social Care Ombudsman (LGSCO) in June 2017.

10.2 The main statutory functions of the LGSCO are:

- to investigate complaints against councils and some other authorities;
- to investigate complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009); and
- to provide advice and guidance on good administrative practice.

10.3 Under sections 26(1) and 26A(1) of the LGA 1974, as amended, the LGSCO investigates complaints about 'maladministration' and 'service failure' referred to as 'fault'. They consider whether any fault has had an adverse impact on the person making the complaint referred to as 'injustice'. If there has been fault which has caused injustice they will suggest a remedy.

10.4 The LGA Act 1974, as amended, also specifies how the LGSCO issues decisions which is either by:

- a statement of reasons for their decision (sections 30(1B) and (1C)); or,
- a report (section 30(1)).

10.5 There are six criteria applied by the LGSCO when deciding whether to issue a public interest report which are set out in paragraph 2.2 of this report. The issue of a public interest report under section 30(1) ensures the council remains accountable to people who use its services and help to improve services for others.

10.6 Section 31(2) provides that the Council has a period of three months from the date of the LGSCO's report for Members to formally consider the report and its recommendations following which a formal written response must be sent to the LGSCO explaining what steps the council has taken and will take to comply with the recommendations in the report. The report should be considered at a full Council, Cabinet or other appropriately delegated committee of elected members.

10.7 In addition, the legislation and regulation relevant to this specific complaint can be found in:

- The Care Act 2014 and the associated Care and Support Statutory Guidance which sets out the Council's duties in supporting people in need.

- The Adult Autism Strategy which provides guidance on the implementation of the Autism Act 2009 and the Council's obligation to ensure that any

person carrying out a needs assessment has the skills, knowledge, and competence to carry out the assessment in question.

- In relation to housing matters the Housing Act 1996 provides that the Council as local housing authority must publish an allocations scheme that sets out how it prioritises applicants, and its procedures for allocating housing. All allocations must be made in strict accordance with that published scheme.

- The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. This includes Article 8, *"respect for private and family life"*. This right is emphasised within the Autism Act 2009. The Act requires the Council to respect and protect individuals' rights. The right to private and family life is a qualified one, and so can be interfered with in certain circumstances.

- Separately, the Equality Act 2010 protects the rights of individuals and supports equality of opportunity for all. It offers protection, in employment, education, the provision of goods and services, housing, transport and the carrying out of public functions. The Equality Act makes it unlawful for the Council when carrying out public functions to discriminate on any of the nine listed protected characteristics which include disability and race. The reasonable adjustment duty set out in the Equality Act also applies to the Council when carrying out a public function. As far as reasonably possible, people who have disabilities should have the same standard of service as non-disabled people.

- The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 provide that Councils should have clear procedures for dealing with social care complaints.

10.9 Where a finding of 'maladministration' is made the Council's Monitoring Officer has a duty to report that finding to its Members under section 5 of the Local Government and Housing Act 1989.

Approved by: Sandra Herbert Head of Litigation and Corporate Law on behalf of the interim Director of Law and Governance and Deputy Monitoring Officer.

11. HUMAN RESOURCES IMPACT

11.1 The recommendations in this report do not have any human resources implications. Following the completion of recommendations, the learning from the case will be fed back to practitioners and managers through existing learning and development activities within the department.

Approved by: Debbie Calliste, Head of HR; Health, Wellbeing and Adults on behalf of the Director of Human Resources

12. EQUALITIES IMPACT

12.1 The Equality Act 2010, sets out the standard of service that each characteristic is entitled to receive by law and identifies that no individuals are to be treated

less favourably in respect of their characteristic. With regard to disability organisations should provide reasonable adjustments where possible and practical to support disabled employees. In this case reasonable adjustments were possible and practical and were not provided to the service user contrary to the requirements of the Act. It would be useful to remind staff of the use of reasonable adjustments giving practical examples across a range of conditions where necessary.

12.2 Autism can be described as a neurological condition which means that an individual's brain responds differently to the population who are non neuro diverse. Differences in brain functioning mean that it may be necessary to communicate with individuals differently in respect of how messages are received and communicated to others. Though the department were aware that the service user had autism, they did not provide an appropriate service to meet the needs of the service user. Additional staff training should address this issue and ensure that service users with similar conditions receive an appropriate service.

12.3 Ms C associated with the service user who had a condition defined as a disability under the Equality Act 2010. The Equality Act states that an individual should not be treated less favourably because of their association with someone with a protected characteristic.

Approved by: Denise McCausland Equality Programme Manager

13. ENVIRONMENTAL IMPACT

13.1 There are no environmental impacts arising from this report

Approved by: Simon Robson, Director, Adults Social Care

14. CRIME AND DISORDER REDUCTION IMPACT

14.1 I can confirm there are no community safety / crime and disorder comments needed for this report.

Approved by: Kristian Aspinall, Director of Culture and Community Safety

15. DATA PROTECTION IMPLICATIONS

15.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

15.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

NO

To comply with data protection requirements all personal details have been removed from the published report.

Approved by: Simon Robson, Director, Adults Social Care

CONTACT OFFICER:	Simon Robson, Interim Director of Adult's Social Care
APPENDICES TO THIS REPORT:	Appendix 1 – Full LGSCO Report
BACKGROUND DOCUMENTS:	None