

# Local Government OMBUDSMAN

## **Adverse Findings Notice of the Local Government Ombudsman About Cherry Acre Residential Home**

The Local Government Ombudsman investigates complaints from members of the public who consider that they have been caused injustice by the actions of a local authority or adult social care provider. The Ombudsman seeks redress for the complainant where fault and injustice has occurred. The Ombudsman's recommendations are usually implemented by providers.

### Failure to act on the Ombudsman's recommendation

Cherry Acre Residential Home ('the Provider') is an adult social care provider. It has failed to comply with recommendations made following an Ombudsman's investigation of a complaint about services it provided. The Ombudsman has required the Provider to publish this notice under Section 34I of the Local Government Act 1974.

### Charging for care already funded by the Council

The complainant contacted the Ombudsman after the Provider charged her father extra for a period of care which the local council had already funded.

The complainant's father (the resident) had entered the care home as a self-funding client. He owned a property. His available money ran out and the local council agreed to fund his care on a deferred loan basis until he had sold his home. The council agreed a rate with the Provider. When the resident sold his home and was able to fund his own care again, the Provider charged him an extra amount which the Provider said was the difference between the rate the council had paid and the rate the resident would have paid if he had continued to fund his own care. The Provider also refused to refund to the resident some fees he paid in advance for a period of care which was then funded by the NHS.

The Ombudsman found that was fault on the part of the Provider which had caused injustice to the resident. The Provider had agreed a contract rate with the council and should not have tried to claw back the private rate from the resident. The Provider was also wrong not to refund the fees which the NHS had also paid.

### Ombudsman's recommendation to remedy the injustice caused

The Ombudsman issued a decision statement on 12 March with recommendations that the Provider should repay the resident the £6500 which he incorrectly charged for the period of care the Council funded, refund the fees paid in advance for the care which was then funded by the NHS, and pay the resident's family an amount of £500 for their distress and anxiety.

The care provider has failed to comply with the Ombudsman's recommendations. He says the council's delay in resolving the resident's funding status after he sold his home meant he was paid at a lower rate than the self-funded rate for several months. He does not accept he cannot charge the resident for a period for which the council funded the care.

Further, there does not appear to have been any process of reflection on the Ombudsman's findings and thus no evidence of having an appreciation of the injustice caused by the fault found through her investigation.

It is for these reasons that the Ombudsman is requiring the publication of this Adverse Findings Notice. The Ombudsman will share this notice with the Care Quality Commission who are the regulators for health and social care in England.

A copy of this notice will be published on the LGO website where a statement of the Ombudsman's decision can also be viewed at [www.lgo.org.uk](http://www.lgo.org.uk) (in Complaint outcomes, Social care section).