

The Ombudsman's provisional view:

It is my provisional view that I should not investigate this matter further.

The complaint

1. Miss A complains that London Borough of Merton has failed to carry out its duties under section 221 of the Local Government and Public Involvement in Health Act 2007. She also complains the Council has failed to monitor the LINK contract adequately and to ensure the host organisation provided LINK with the required support services.

The Ombudsman's role and powers

2. The Ombudsman's role is to consider complaints of service failure and maladministration causing injustice. The Ombudsman must consider whether the Council has acted reasonably in accordance with the law, its own policies and generally accepted standards of local administration. We look at the administrative actions of the Council but we do not challenge decisions that have been made properly even though people may disagree with them. Nor can we challenge the professional judgement of the Council's officers.
3. Where a council has acted with maladministration, the Ombudsman considers whether injustice has arisen, and any appropriate remedy for that injustice. If we are satisfied that the action taken by the Council or compensation offered is reasonable and we could achieve nothing more, then we will not investigate the complaint.

How I considered this complaint

4. As part of the investigation, I have:
 - considered the complaint and the documents provided by Miss A;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - discussed the issues with Miss A.

What I found

Relevant law

5. The Local Government and Public Involvement in Health Act 2007 enabled Local Involvement Networks (LINKs) to be established. The legislation sets out the role and function of LINKs.
6. Section 221 of the Act requires local authorities to procure support services for the LINK in the form of a host organisation. This is to ensure there are the means to carry out the following activities:

- promoting, and supporting, the involvement of people in the commissioning, provision and scrutiny of local care services;
 - enabling people to monitor and review the commissioning and provision of local care services;
 - obtaining the views of people about their needs for, and their experiences of, local care services; and
 - making reports and recommendations about how local care services could or ought to be improved.
7. Section 222 confirms the host organisation cannot be the local authority or an NHS organisation, and the LINK cannot be the local authority, an NHS organisation or the host.

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8. The Act does not set out how the LINK should be governed.

Key facts

9. LINK Merton first met in April 2008, but as a host had yet to be appointed, attendees agreed not to establish a governance structure. Following a tendering process, the Council appointed Company X as host in May 2008. Company X then appointed a LINK Network manager in July 2008 to support the LINK.
10. The tender documentation and LINK contract sets out how the contract will be monitored. This includes liaising with a nominated Council officer, quarterly reports on activities and finances, annual report, and regular monitoring meetings. The documentation also sets out the performance indicators, which are broken down into four areas:
- Public engagement;
 - Annual work plan;
 - Project delivery; and
 - Annual evaluation.
11. In addition the documentation refers to the LINK governance arrangements. It states:
 "Arrangements will be put in place to provide leadership for the LINK and a framework that sets out its responsibilities and accountabilities so that it can operate effectively."
12. The documentation confirms the form of the governance structure is to be decided by the LINK members.
13. At a public meeting in October 2008, the attendees agreed to elect a LINK steering group. The Terms of Reference state the steering group's role was to set the strategic direction for the LINK and develop and oversee the implementation of the work plan.
14. A number of individuals joined and left the steering group between 2008 and March 2011 when Company X disbanded the steering group. Miss A has raised this complaint on behalf of herself and four other members of the steering group.
15. Miss A states that from an early stage there were differences of opinion between the steering group and Company X in terms of the LINK's role and independence. Miss A states Company X refused to accept the LINK was an independent body and has highlighted the following as examples of Company X acting incorrectly/ beyond its authority:

- The first LINK network manager was appointed by Company X without any reference to the steering group;
- At the steering group's request, Company X produced a leaflet to promote LINK. Both LINK and Company X's logo appeared on the leaflet. Miss A is concerned this could have given the impression the LINK was one of Company X's projects rather than an independent body;
- Company X was reluctant to allow the steering group to be involved in the selection of a replacement LINK network manager;
- x [• Company X disbanded the steering group and all associated working groups without any consultation with the steering group.

16. Miss A considers Company X has failed to provide the support services LINK Merton needed to function effectively. She states there was
- a lack of publicity;
 - only one public meeting in three years;
 - a lack of working groups; and
 - a lack of enter and view visits.

17. In March 2011 Miss A made a formal complaint to the Council. She complained Company X had failed to provide support services and the Council had failed to adequately monitor the LINK contract.

18. The Council agreed to carry out a review into LINK Merton, and Miss A set out eight specific issues she would like the Council to consider. The Council produced a draft report of its findings in August 2011, which was sent to Miss A for her to comments. The Council considered it had met its legal duties under the Local Government and Public Involvement in Health Act by appointing Company X to act as the LINK host. However the Council upheld the following elements of Miss A's complaint:

- The Council and Company X delayed in providing the steering group with a copy of LINK host contract;
- There was limited use of LINK Merton's branding over the last year and no specific newsletters were published;
- There was limited engagement with members of the general public in LINK Merton activity.

19. The Council also partially upheld the following elements of Miss A's complaint:

- *The Council failed to ensure, by performance management, that Company X provided the services LINK needed.* The Council undertook performance monitoring against the key performance measures and was broadly satisfied with Company X's performance. However it acknowledged the performance monitoring failed to involve the steering group or other stakeholders. The Council has confirmed LINK Merton's new governance structure will be involved in future evaluations of Company X's performance
- *Company X consistently failed to provide support services.* The Council noted Company X had delivered a number of good outcomes but acknowledged the LINK Network Manager post has been vacant since July 2010. The Council suggests this was due to uncertainty regarding the future of LINKs, which are due to be replaced by Healthwatch.

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20. The Council also commented on Miss A's concern that members of the steering group had been unlawfully dismissed. The Council did not uphold this complaint as it felt Company X could disband the steering group on the basis neither the legislation nor the contract required a steering group. However the Council did note that having disbanded the steering group, no other governance arrangements were put in place. The Council states this meant Company X was not meeting the terms of the contract. The Council acknowledges it did not do enough to ensure governance arrangements were put in place.

21. Miss A was unhappy with the report. She did not consider the Council's investigation went far enough and was concerned the report contained a number of inaccuracies. Miss A is also concerned about the way the Chair of LINK Merton was appointed and is unhappy that the Chair appears to be the only person undertaking any work for LINK Merton.

22. The report has now been finalised a copy has published on the Council and LINK Merton's website.

23. The Council has provided details of how it assessed Company X's performance against the key performance indicators. Many indicators refer to the annual reports and work plans as evidence of their achievements.

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24. Company X produced annual reports in May 2009 and 2010 which were agreed by the steering group and submitted to the Council and Department of Health. These annual reports included a work plan for the following year. Company X also published an annual report in June 2011, after the steering group had been disbanded. In August 2011 the Council states it instructed Company X to involve the stakeholders in creating a new governance structure.

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25. Council officers met with representatives from Company X in September 2011 to discuss LINK Merton's governance arrangements. A further meeting was then held in October 2011 with Council officers, representatives from Company X, Miss A and the Chair of the National Association of LINK Members, to discuss LINK governance. In November 2011 Company X advertised for the post of Chair of LINK Merton and the successful candidate was appointed in December 2011.

26. Miss A states the Council and Company X's failings have meant the London Borough of Merton has not had an effective LINK. She considers members of the steering group have been unlawfully dismissed and treated discourteously by Company X, but as volunteers, have no means of redress. Miss A would like the Council to remove Company X as the host. She would like there to be open and transparent meetings and elections for representatives to take LINKs work forward into Health watch. She would like a public apology and the Council to reimburse the members of the steering group's expenses.

Justice?

Provisional view

27. It is my provisional view that I should not consider this matter further as I am unable to achieve a worthwhile outcome.

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28. The Council's role in LINK Merton is limited to procuring a host, and then monitoring the host's performance in accordance with its contract. The Council contracted with Company X to act as host for LINK Merton. The contract was initially for three years, but has been extended for a further year. Although Miss A is unhappy with the Council's choice of Company X as the host, its appointment appears to satisfy the requirements of section 221 of the Local Government and Public Involvement in Health Act 2007.

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29. The contract was awarded under tender and Miss A has not raised any complaints about the tender process.

30. Having appointed Company X the Council was then required to monitor its performance to ensure it provided LINK Merton with the require support services. Based on the information I have received, I consider the Council should have done more to actively monitor this contract. Monitoring appears to have been largely based on the annual reports prepared by Company X. I have not received evidence of any other measures referred to in the tendering or contract documentation, such as quarterly activity reports or regular monitoring meetings. I also consider the Council should have acted sooner to ensure LINK Merton has a clear governance structure following the disbanding of the steering group. The Council accepts there were failings in the way it monitored this contract and acknowledges the steering group should have been involved in the process.

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31. Although the Council has failed to monitor the LINK contract adequately, I do not consider I can achieve a worthwhile outcome by further investigation of this matter.

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32. A new Chair of LINK has been appointed and the Council states LINK's new governance structure will be involved in evaluating Company X's performance in the future.

Non sense

Parts of the complaint that I did not investigate

33. I am unable to consider the actions of Company X as Merton LINK's host, including disbanding the steering group or appointing a new Chair. The Ombudsman's jurisdiction is limited to investigating maladministration on the part of a local authority. This can extend to other organisations carrying out administrative functions on behalf of the local authority, but this was not Company X's function. The Local Government and Public Involvement in Health Act 2007 states local authorities cannot be the LINK host. The local authority's role appears to be limited to procurement of the host and monitoring its performance under the contract.