

Ombudsman's Report - Ex LINK Merton Steering Group Members vs. Merton Council

Notes from meeting with Malcolm Alexander (NALM) Friday 11th May 2012 re Provisional View of Ombudsman.

Present: LR, BH, NP Apologies: LJ

Note: the numbers given in the left hand margin, refer to the associated section in the Ombudsman's report, as commented upon during the discussions.

The meeting started with a resume by LR so that MA was aware of the key pertinent events since we last met with him in April, including the appointment of a new steering group and the fact that the Council had included many inaccuracies in their response to the LGO. LR suggested that we not comment on the Ombudsman's response to our complaint so that there could be an independent view from MA within the time available.

The complaint had been aimed at the Council's failure of diligence and care in executing its role with regard to the implementation of LINK in Merton and the subsequent unlawful dismissal of us by the Host organisation MVSC, which the Council had appointed and apparently encouraged in its attitude towards us.

- 8 The Ombudsman appears to give the Council and the Host's position some legitimacy when it says: "The Act does not say how the LINK should be governed." However, the regulations do specifically say (in para 5.2.8 ?) there must be adequate governance arrangements/processes and these must be agreed by LINK and published before any decisions are made. A sub-committee had met to draft Governance processes and procedures soon after the formation of the LINK in 2008, which were subsequently ratified by the full Steering Group. There was later a second Governance Sub Group 2010 which reviewed the Terms of Reference - again subsequently ratified by the full Steering Group - which had proved to be very difficult with MVSC. **ACTION:** LR to send copies to MA.

The Council, whilst right in not imposing governance structures on the LINK, but allowing for LINK members to draw up their own governance document, had not demonstrated that a governance structure had indeed been established and published, so that ALL LINK members would be aware of it and have an opportunity to influence it. It should have ensured that this was the case when monitoring the HOST. The fact that the Council, by their own admission, had not been diligent in monitoring the HOST, and had failed to involve the Steering Group in that process, meant that the HOST had been allowed to continue in its role without adhering to the direction and intent of the Act by which LINKs had come into being. It demonstrates clearly how the Council had failed in its lawful duties.

The HOST had always insisted and were obstructive re the fact that we were a virtual LINK with no formal local membership (in comparison to Sutton and Kingston who have thriving

memberships!). There had to be an identifiable and exclusive Membership of the LINK for the LINK to exist. The Steering Group were LINK members and the only ones who could confirm governance arrangements. There is no evidence that the virtual membership was ever consulted.

10-11 The Steering Group had come into being as per relevant paragraphs in our response to the Ombudsman.

12 Re "Documentation confirms (that) the form of governance structure is to be decided by the LINK members", we should emphasise to the Ombudsman that, as the HOST had resisted our attempts to have a substantial membership LINK established, (which we need to be able to show through minutes of meetings, recorded E-Mails or other documentation), the HOST had denied us the opportunity to have the Governance arrangements ratified by the membership. Again, this should have been identified by the Council during its monitoring of the LINK's HOST. The Council failed.

13 Outlined the Steering Group coming into being, the leaving of some members and introduction of others during the three years following its establishment in September 2008.

NN Concerns re 'Enter and View' - should be by appointed persons through a distinct activity identified in the legislation (Regulation 915 2008) which all LINKs were required to do. Specially trained Link members should have been regularly visiting residential and day care establishments to view the quality of the services being provided, from the service users' perspectives. These people did not have to be Steering Group members, and almost certainly could not be all SG members if there was to be sufficient cover of the LA, HA and third-sector establishments in a LINK's area. The LA had a duty (s221 the Local Government and Public Involvement in Health Act) to ensure that the HOST facilitated LINK being sufficiently resourced to enable this to happen efficiently and effectively, including the publication of reports of visits and any necessary follow-up, including liaison with Overview and Scrutiny Committees. The fact that no Enter and View events had taken place in the Borough during the 3 years of the LINK's being before the SG was dismissed, was another serious failing in the way the HOST supported the LINK, and again the Council should have identified this and motivated the HOST to work with members to see that it happened. We had pressed for this to happen and a number of us had undergone Enter & View training, which demonstrated our willingness for this to happen. The HOST had simply ignored our requests to arrange Enter and View visits (which could not be arranged within a virtual network).

14 Re "Company X (viz the HOST) disbanded the Steering Group" - the HOST had no authority to disband the Steering Group. The Steering Group might disband itself if it felt that was required, or the membership of the LINK (but not a virtual one) might vote to disband a steering group and appoint another, in the usual democratic way. Any change in Terms of

Reference must be published and with no focus to do, so is unlawful. It is clear here that the HOST is ignoring all reasonable processes, the Terms of Reference and assuming for itself powers it does not have. The fact that the Council reported this to the Ombudsman without critique implies that the Council supported the HOST in this unlawful activity, thus making itself complicit.

Throughout its relationship with the Steering Group, the HOST had been obstructive and had refused to acknowledge the authority of the Steering Group, even though this is clearly identified in s221 the Local Government and Public Involvement in Health Act.

In law a LINK is a 'legal person' who carries on the activities of the LINK in the area of the local authority. The duty of the Local Authority is to make arrangements with the Host to ensure that a LINK is able to carry out the activities in s221 of the Act. This is a facilitative role and the Local Authority has no powers of direction in relation to the LINK. The Host and local authority are not and cannot be a LINK and they cannot direct the LINK.

15 Advised not to press the first three bullet points of these:

- * First LINK manager appointed by HOST with no SG input;
- * Production of LINK leaflet with MVSC logo in prominence;
- * Reluctance of HOST to allow SG to be involved in apt of 2nd Manager;

as there might be legitimacy in the HOST's position regarding these points, or at least, some doubt about our claims.

Instead we should vigorously contend the point that it was unlawful for the HOST to disband the Steering Group, and the Council should have used its authority to prevent the HOST proceeding with this. The Council was, at best, negligent in this context.

16-18 In addition to the above we must emphasise the paucity of contact with the general public concerning the LINK's activities and in comparison to the contact and publicity achieved by neighbouring LINKs. This would have informed the HOST that LINK Merton was underperforming, had the HOST been bothered. It was frequently pointed out to the HOST that neighbouring LINKs were doing much more and frequently informing their public, whereas LINK Merton was not. The Council was also told this when we eventually met with Council Officers, who responded by extending the HOST's contract!

No Enter and View visits; virtually no working groups; need to be specific as to work plan status and outcomes:

The LINK Merton work programme content was discussed at an Away Day years 2 and 3 (there was little in the work program in year 1 in view of LINK establishing itself and producing governance procedures). The host was included in the conversation and decisions, and fully made their views known as to the content to be included. There were updates on

the agenda at each Steering Group meeting. However the programme was rigidly controlled by the host who wished to do all the work themselves. They had to be present at the working group meetings and indeed would cancel them if the date was not convenient to them, which happened on a number of occasions. Sometimes there were joint projects with Sutton LINK who undertook the majority of work, though LINK Merton host have been heard to take the credit. At the BME working group they changed decisions and took the lead in discussions (evidence emails February 2011), even asking a Steering Group member to take notes, rather than themselves, at one meeting. Steering Group members became frustrated at their lack of input to the work programme and working groups established, and the fact that their varied skills and expertise could not be utilised to the full. The independence of LINK Merton Steering Group was severely compromised in this regard. LINK Merton work programme was publicly commended by the host but should be compared with the work programs of neighbouring LINKs as to the actual standard achieved and the potential lost for representing the residents of Merton.

Evidence: LINK Merton work programs; Sutton, Kingston, Wandsworth and Richmond LINK work programs; St Helier Hospital Discharge report with Sutton LINK; Vision project with Merton Vision year1. Please note that MVSC claimed credit for a Reablement project but this did not involve the Steering Group only MVSC and Council staff... The Steering Group questioned the credibility/substance of some of the projects/research as with the Personalisation one as only 9/small numbers of people were involved.

Council duties are not just to appoint a host, also to make contractual arrangements – with no management of services Council failed to carry out its duties. If host fails = Council fails. Stress points that Ombudsman upheld and that Miss A is + others.

19.1 We should emphasise that the Steering Group was excluded from playing any part in the evaluation process and so was kept away from contact with Council Officers who may have influenced the HOST to act more positively toward the Steering Group.

19.1 The information given by the Council that it has ensured that the new governance structure will feature in future evaluation by the Council of the HOST merely underlines that the Council recognises that it did not perform its monitoring function adequately during the period which relates to our complaint

19.2 The Council says the HOST delivered a number of good outcomes – but fails to show by whose measure these were judged, and for whom the outputs were favourable. As such it is a meaningless statement.

19.2 By its own admission the Council failed to provide sufficient assurance of the importance to the LINK of the administrative resources it required to function adequately. The Council 's claim that it could not authorize the appointment of another manager at the time the

second manager left, does not release the Council from its lawful obligation (s221 the Local Government and Public Involvement in Health Act) to ensure that the LINK was adequately resourced at all times.

