

**Report by the Local Government and
Social Care Ombudsman**

**Investigation into a complaint against
London Borough of Lewisham
(reference number: 16 003 985)**

8 August 2017

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

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Contents

| | |
|---|---|
| Report summary..... | 1 |
| Introduction | 2 |
| Legal and administrative background | 2 |
| How we considered this complaint..... | 3 |
| Investigation | 3 |
| Conclusions..... | 5 |
| Decision | 7 |
| Recommendations | 7 |

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

| | |
|-----------|------------------|
| Mrs B | The complainant |
| C | Her eldest son |
| D | Her youngest son |
| Officer 1 | Social worker |
| Officer 2 | Social worker |

Report summary

Education and Children Services

Mrs B complains the Council failed to complete the assessment it started to carry out in January 2016 of her two sons. She also complains the Council failed to provide her with copies of the assessment, her sons' care plans, and wrongly decided to reduce their care package.

Mrs B also complains the Council failed to deal with her complaint promptly.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council:

- apologise to Mrs B for the time taken to deal with her complaint and for the fault found with the way it dealt with the assessment.
- pays Mrs B £400 for the avoidable distress caused by its failures and £150 for the effort she was put to pursuing this complaint, which the Council failed to deal with properly.

The Council should also ensure greater transparency in the Care Package Panel decision making process by sharing assessments with all parties before the panel meets. The Care Package Panel needs to give written reasons for its decisions.

The Council should approach the respite provider to clarify if D would have been offered a place had his name remained on the waiting list. It should then arrange for him to receive two overnight stays for each month missed over the next 12 months.

The Council should also start a review of the operation of its procedures for identifying and dealing with complaints involving children and young people to ensure it meets its statutory duties.

Introduction

1. Mrs B complains the Council started an assessment of her sons' needs in January 2016 but failed to complete it as the social worker cut short her visit while doing it. Mrs B complains the social worker failed to keep her updated about progress with the assessment and failed to tell her its outcome for two months. When the social worker eventually told her of the decision, Mrs B did not receive a copy of the assessment or care plans. Nor was she told when changes to the care package would start. Mrs B is unhappy with the changes to her sons' care plans and the way the Council dealt with her complaint.

Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (**Local Government Act 1974, sections 26(1) and 26A(1), as amended**)
3. The Children Act 1989 requires councils to safeguard and promote the welfare of children who are in need and so far as possible to promote their upbringing within the family unit by providing a range of services suitable for those children's needs. The Council is required under the Act to undertake an assessment of the child's needs followed by a decision on whether services are called for to meet them and, if so, how they will be provided.

Complaint procedure

4. The law sets out a 3 stage procedure for councils to follow when looking at complaints about children's social care services (**The Children Act 1989 Representations Procedure (England) Regulations 2006**).
5. Stage 1 complaints need concluding within 10 working days of receiving them.
6. At stage 2, the complaint needs concluding within 25 working days of a complainant's request to escalate the complaint, although this can be extended to a maximum of 65 days where investigations are complex. At this stage, a council appoints an Independent Investigator and an Independent Person. The Independent Person is responsible for the investigation. If a complainant is unhappy with the outcome of the stage 2 investigation, they can ask for a stage 3 review
7. A complainant can ask us at any time during the procedure to consider their complaint. We will consider a complainant's individual circumstances when deciding whether to accept a complaint before the review panel stage is completed. We may, for example, accept a complaint earlier where there was a breakdown of trust between the complainant and the council.

How we considered this complaint

8. We have produced this report following written enquiries of the Council and telephone contact with both Mrs B and Council officers.
9. We gave Mrs B and the Council a confidential draft of this report and invited them to comment. We took the comments received into account before the report was finalised.

Investigation

10. Mrs B has two sons, C aged 11 years and D aged 10 years. Both are autistic. C has significant difficulties with speech, language, social interaction, and play skills. He also has Attention Deficit Hyperactivity Disorder. D has learning difficulties and problems with social interaction and social communication. Both have had Child In Need plans since 2012.
11. In early 2015, the Council wrote to Mrs B to confirm the agreed care package for D. This was the same C received which was:
 - 7 hours a week short break direct payments; and
 - 24 nights a year respite accommodation when a place became available for D.
12. In August, Officer 1 from the Children with Complex Needs Service team wrote to Mrs B explaining that while the assessment recommended a respite place for D, the respite accommodation provider could not say when he would get it because of its waiting list.
13. In January 2016, Officer 2, also from the Children with Complex Needs Service team, began the review of C and D's care packages. Mrs B claims Officer 2 stayed no more than five minutes during her visit to do an assessment because of C's reaction to her.
14. At the end of the month, Officer 2 verbally presented the assessment to a Care Package Panel. The panel is made up of managers from the Children with Complex Needs Service and aims to ensure fairness and consistency for children accessing the service. This decided D did not need respite accommodation. His name was removed from the waiting list. It also decided to reduce D's care package. Direct payments were reduced from seven hours a week to four hours. The Council also decided to reduce C's stays at the respite accommodation from 24 a year to 12.
15. When Officer 2 told Mrs B about the panel's decision, she was unhappy that she was given no explanation or reasons for the decision to reduce D's care package, why he no longer needed respite accommodation, and why C's respite stays were reduced.
16. In February, Mrs B complained to the Council.
17. In April, the Council sent her its stage 1 response. This was under its corporate complaints procedure, not the statutory children's complaints procedure. The Council told Mrs B it would not make any changes to C and D's care packages while her complaint

went through its complaints process. Mrs B confirmed no changes were made although D was taken off the waiting list for respite accommodation.

18. Officer 2 completed the assessment of C and D the same month. The assessment said the case needed reviewing in six months. This was not done.
19. Mrs B was unhappy with the response to her complaint. She complained Officer 2 failed to tell her the outcome of the review for several months and failed to give her a copy of the assessment. When eventually told the outcome, Officer 2 failed to explain the reasons for the changes or when the new care package would start. Mrs B queried the decision to reduce the care package as she now had less support from her family than she did when C and D first got a care package.
20. Later that month, Mrs B refused an offer to meet Officer 2 to consider the assessment. She refused because Officer 2 had presented the assessment to the panel three months earlier before it was completed, and without giving her the chance to comment on it.
21. In May, Mrs B asked for her complaint to go to the next stage.
22. In early June, the Council sent her its stage 2 response, again under its corporate complaints procedure. Towards the end of the month, Mrs B complained to us about the Council. We asked the Council why it considered her complaint under the corporate complaints procedure and not the statutory children's procedure. The Council said Mrs B asked it to add this complaint to her corporate complaint. We asked the Council to complete the process for Mrs B's complaint.
23. A Council complaints officer contacted Mrs B in August. The officer told her the Council should have dealt with her complaint under the statutory children's procedure. The officer explained the Council would appoint an Independent Investigator and Independent Person to investigate her complaint under the correct procedure. The officer would write and tell her the names of both. The investigation team would contact her to arrange an interview.
24. In September, we asked the Council for an update. The Council replied it was working to put an internal complaints investigation team together which had no previous involvement of the complaint or the service, but was finding it difficult to find an available Independent Person.
25. We again asked the Council for an update towards the end of October. The Council replied the Independent Investigator and the Independent Person were meeting Mrs B on 3 November. Mrs B had no knowledge of any meeting. She had heard nothing from the Council since August. When contacted about this, the Council eventually confirmed it had arranged a meeting with Mrs B for the following week. The Council also confirmed it would send out the Independent Investigator and the Independent Person's reports and its own decision letter within 25 days of the meeting. This would be 16 December.
26. When we received nothing on 16 December, we again contacted the Council. We warned the Council if we heard nothing within four days, we would consider looking at Mrs B's

complaint. The day after the deadline, the Council asked for a day's extension. When that too passed, we confirmed we would look at her complaint.

27. In January 2017, we allocated her complaint for investigation and made formal enquiries of the Council. The Council was asked to provide its response by 27 February. Ten days before the deadline, the Council asked for a short extension. When the new deadline passed without a response, we again chased the Council. We also chased the Council for its response five days later. The Council confirmed an officer would call about the case. No officer called.
28. On 20 March, we contacted the Council about its lack of response. A Council officer explained the officer who was to call had left. A key complaints officer had also left. A second Council officer called and explained they could not yet reply to our enquiries. This was because the Council was now waiting for the reports from the Independent Investigator and the Independent Person. The Council expected to receive these at the end of March. It would provide its own response to them by the second week of April.
29. After receiving nothing by 10 April, we contacted the Council again. The Council said the reports were delayed to 20 April. When copies of the reports were eventually provided, Mrs B refused to ask the Council to take her complaint to the review panel stage. Instead, she asked us to consider her complaint as she had by now lost confidence in the Council. We agreed.
30. At stage 2, the Independent Investigator found:
 - the Council failed to involve Mrs B in the assessment process, communicate properly with her about it, and give her the chance to comment. There were delays with the assessment itself, a failure to give her a copy of it, and a failure to give reasons for the changes to the care packages;
 - poor communication about the Care Package Panel's decision making; and
 - significant delay in dealing with Mrs B's complaint.
31. In July 2017, Mrs B confirmed a new social worker completed her assessment of C and D which the Care Package Panel will consider.

Conclusions

32. The Council failed to show it considered other options for D when adding his name to the waiting list for respite accommodation. It failed to show it considered out of borough placements or foster carers for respite, for example. This is fault. The Council confirms it changed its practice so there are no waiting lists for short break provisions.
33. Officer 2 failed to provide Mrs B with a copy of the assessment for her to check. This, and the lack of her involvement in the assessment, is fault.

34. The assessment began in January but was not completed until April. A reasonable period to complete an assessment is about six weeks. It took about six weeks longer than it should have done. This is fault.
35. The Council failed to send Mrs B a copy of the assessment despite a recommendation made under stage 2 of its complaints procedure in June 2016. This is fault.
36. While making changes to C and D's care package, the assessment failed to give reasons for them. This is fault. This also means it is not possible to know what weight was given to disputed family support when making the changes.
37. Officer 2 verbally presented the assessment to the Care Package Panel towards the end of January. No evidence of what Officer 2 presented was provided. Officer 2's representations did not have the benefit of any views or comments Mrs B might have had on the assessment. This is fault.
38. The Care Package Panel failed to give reasons for its decision to reduce C and D's care package. Nor was there a proper record of what information the panel took into account when reaching its decision. This is fault.
39. The Council was at fault for failing to review the assessment after six months.
40. It was fault, as the Council accepted, for it to put Mrs B's complaint through the corporate complaints procedure, not the statutory children's complaints procedure.
41. When we challenged this, the Council was slow to arrange for the complaint to go through the correct complaints procedure. This is fault.
42. The Council failed to keep Mrs B updated about what was happening with her complaint. This is also fault.
43. It was fault for the Council to miss the statutory timescale for dealing with her complaint at stage 2. It took the Council eight months from accepting in August 2016 that it had used the wrong complaints procedure to complete stage 2. In our ['Focus Report: Are we getting the best from children's social care complaints?'](#) (March 2015), we said the, '*statutory timescales are designed to ensure complaints are handled effectively, fairly and swiftly throughout the process*'. It also said a complaint, '*should be progressed in as seamless a way as possible*'.
44. When we made enquiries about her complaint, the Council failed to say what was happening with its investigation of her complaint. This is fault.

Injustice

45. The failure to let Mrs B have a copy of the assessment, and the delay completing it, caused her avoidable injustice. This is because she lost the opportunity to comment on it before it went to the panel. The continuing failure to send her a copy of the assessment also caused her further understandable frustration and contributed to her loss of confidence in the Council.

46. The failure to give reasons meant she had no understanding of why the Council wanted to change her sons' care package. This again caused frustration and a loss of confidence in the Council.
47. Mrs B feels anxious, frustrated, ignored, and angry with the way the Council dealt with her complaint. The delays meant she waited longer than necessary to know whether her remaining complaints were upheld or not.
48. Although the Council agreed to make no changes to C and D's care from the panel decision in January 2016 until the outcome of the complaints procedure was known, the Council did not pursue a place for D at the respite accommodation.

Decision

49. Fault found causing injustice and recommendations made.

Recommendations

50. We recommend the Council apologise to Mrs B for the time taken to deal with her complaint and for the fault found with the way it dealt with the assessment.
51. We also recommend the Council pay Mrs B £400 for the avoidable distress which caused the anxiety, frustration, and anger she experienced by its failures. In addition, the Council should pay her £150 for the time and trouble she spent pursuing this complaint which it failed to deal with properly.
52. The Council should ensure greater transparency with the Care Package Panel decision making process. Assessments need sharing with all parties before the panel meets. The panel needs to give written reasons for its decisions. The Council should confirm, and provide written evidence within three months, that it made the required changes to its procedures to achieve these objectives.
53. The Council should approach the respite provider to clarify if D would have been offered a place had his name remained on the waiting list. It should then arrange for him to receive two overnight stays for each month missed over the next 12 months.
54. The Council should conduct a review of the operation of its procedures for identifying and dealing with complaints involving children and young people to ensure it will in future meet its statutory duties. The Council confirmed the appointment of a new Complaints Manager will help. The Council should inform us of the outcome of that review within three months of the date of this report.
55. The Council should carry out these recommendations as soon as possible and no later than three months of the date of this report.