

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

**Investigation into a complaint against
London Borough of Lewisham
(reference number: 19 014 855)**

28 April 2021

The Ombudsman's role

For more than 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.

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

Miss X The complainant

Report summary

Education and Children's Services

Miss X complained the Council failed to protect her from harm when she suffered significant and repeated incidents of abuse while in its care.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council:

- apologises in writing to Miss X for the impact of the faults identified in the statutory stage two complaint investigation and its handling of her complaints;
- pays £7,500 to Miss X for:
 - avoidable distress caused by the Council's faults identified in the stage two complaint investigation;
 - avoidable harm Miss X suffered as a vulnerable young person in the Council's care;
 - avoidable delay in completing the stage two complaint investigation;
 - time and trouble in bringing complaints to us to get the outcome of Local Authority Designated Officer (LADO) investigations; and
 - outrage given the significant and serious nature of the faults and their impact on Miss X.
- provides Miss X with the outcome of the LADO investigation into her former foster carers, together with details of any other action taken following Miss X's allegations relating to the foster carers' continued approval and child protection enquiries (where these issues relate directly to Miss X);
- reviews its approach to information sharing in the statutory complaints procedure and within our investigations; and
- provides us with an action plan detailing how and when it intends to complete the recommendations made in the Investigating Officer's stage two complaint report, set out in paragraph 44 b to h below. The Council should then provide us with evidence when it has completed the actions within its plan.

The complaint

1. The complainant, who we have called Miss X, complained the Council:
 - failed to protect her from harm when she suffered significant and repeated incidents of abuse while in care;
 - did not provide adequate care leaver support;
 - impeded an investigation into her complaints;
 - significantly delayed completion of her stage two complaint; and
 - offered complaint remedies that do not reflect the injustice caused.
2. Miss X says the Council's actions have caused her significant distress in addition to the trauma she had already suffered. She feels the Council has not taken her complaints seriously.

Legal and administrative background

The Ombudsman's role

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, 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*)
4. The law says we cannot normally investigate a complaint unless we are satisfied the council knows about the complaint and has had an opportunity to investigate and reply. However, we may decide to investigate if we consider it would be unreasonable to notify the council of the complaint and give it an opportunity to investigate and reply. (*Local Government Act 1974, section 26(5)*)

Council duties to looked after children

5. A Looked after Child is any child who is subject to a care order or accommodated away from their family by a council. The accommodation can be voluntary or by care order. The child becomes looked after when the council has accommodated them for a continuous period of longer than 24 hours. (*Children Act 1989, section 20*)
6. Councils have a general duty when looking after a child to safeguard and promote the welfare of the child. This duty underpins all activity by the council in relation to looked after children. This duty has become known as 'corporate parenting'. In simple terms, 'corporate parenting' means the collective responsibility of the council, elected members, employees, and partner agencies, for providing the best possible care and safeguarding for the children who are looked after by the council. (*Children Act 1989, section 22 and Applying corporate parenting principles to looked after children and care leavers Statutory Guidance 2018*)

Safeguarding children

7. If a council receives a report of concern about a child, it must decide what response is required. This includes determining whether:

-
- the child requires immediate protection under section 47 of the Children Act 1989; or
 - the child is in need and should be assessed under section 17 of the Children Act 1989; or
 - there is reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm.

Allegations against someone who works with children

8. The LADO is a person responsible for managing investigations into allegations that somebody who works with children has behaved in a way that may pose a risk. The LADO must convene at least one safeguarding strategy meeting and must ensure that actions are agreed to manage risk and protect children. It is not the LADO's role to decide whether someone has harmed a child or committed an offence.
9. The Council's procedures for LADO investigations set out the following possible outcomes.
 - **Founded:** There is sufficient identifiable evidence to prove the allegation.
 - **Malicious:** There is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false.
 - **Unfounded:** There is sufficient evidence to disprove the allegation or there is no evidence or proper basis which supports the allegation being made.
 - **Unsubstantiated:** This is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation; the term therefore does not imply guilt or innocence.

Foster carers – Standards of Care

10. The National Fostering Minimum Standards say investigations into allegations against carers should be carried out quickly and should provide protection to the child but also support to the person who is being investigated.
11. A council should not allow the placement of a child with a particular person to continue if it appears the placement is no longer the most suitable way of performing their duty. Where it appears the continuation of a placement would be harmful to the welfare of the child concerned, the council should remove the child immediately.
12. The fostering minimum standards state "Allegations against people that work with children or members of the fostering household are reported by the fostering service to the LADO. This includes allegations that on the face of it may appear relatively insignificant or that have also been reported directly to the police or Children and Family Services." (*Standard 22.6, National Fostering Minimum Standards 2011*)
13. One of the standards for fostering services is to "ensure that a clear distinction is made between investigation into allegations of harm and discussions over standards of care. Investigations which find no evidence of harm should not become procedures looking into poor standards of care - these should be treated separately."
14. As soon as possible after an investigation into a foster carer is concluded, their approval as suitable to foster should be reviewed. There should be a clear policy framework which outlines the circumstances in which a foster carer should be removed as an approved foster carer.

Children’s Social Care Complaints

15. The law sets out a three-stage procedure for councils to follow when looking at complaints about children’s social care services.
16. Stage one of this procedure is local resolution where staff at the point of service delivery try to resolve the complaint. Stage one complaint responses should be completed in 10 working days, with a further 10 days for more complex complaints.
17. At stage two, the Council appoints an Investigating Officer (IO) and an Independent Person (IP). The IP is responsible for overseeing the investigation. If a complainant is unhappy with the outcome of the stage two investigation, they can ask for a stage three review. If a council has investigated something under this procedure, we would not normally re-investigate it unless we considered that investigation was flawed. However, we may look at whether a council properly considered the findings and recommendations of the independent investigation.
18. The IO should have access to all relevant records and staff. These should be released within the bounds of normal confidentiality and with regard to relevant legislation in the Freedom of Information Act 2000 and Data Protection Act 2018.
19. The Adjudicating Officer (AO) should be a senior council officer and should write to the complainant at the end of the stage two complaint investigation with details of the adjudication which confirms:
 - the council’s response to the IO and IP’s reports;
 - its decision on each point of complaint; and,
 - any action to be taken (with timescales for implementation).
20. Stage two complaints should be responded to within 25 working days with a maximum extension to 65 working days. Councils should keep complainants updated on progress if there is any delay in sending the stage two response. *(Getting the Best from Complaints – Social Care Complaints and Representations for Children, Young People and Others)*

Leaving care

21. The law and government guidance sets out councils’ legal duties to provide ongoing support for children leaving care.
22. Councils have a responsibility to plan continuing support for all care leavers. This duty continues until they reach age 21. If the council is helping them with education and training, the duty continues until age 25 or to the end of the agreed training (which can take them beyond their 25th birthday). The plan should include details of the practical and financial support the council will provide.
23. Councils should appoint each care leaver with a Personal Advisor (PA), and each care leaver should have a pathway plan. The PA will act as a focal point to ensure the care leaver is provided with the right kind of support. The pathway plan should be based on a thorough assessment of the person’s needs. Plans should include specific actions and deadlines detailing who will take what action and when. They should be reviewed at least every six months by a social worker. *(Children Leaving Care Act 2000)*

Human Rights

24. The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to including:

-
- freedom from torture and inhuman or degrading treatment or punishment;
 - respect for private and family life; and
 - freedom of expression.
25. The Act requires all local authorities and other bodies carrying out public functions to respect and protect individuals' rights.
26. Not all rights operate in the same way. Instead, they break down into three separate categories.
- Absolute rights: those which cannot be taken away under any circumstances.
 - Limited rights: those that can be taken away in certain circumstances.
 - Qualified rights: those rights where interference may be justified to protect the rights of others or wider public interest. Any interference with a qualified right must be in accordance with the law; in pursuit of a legitimate aim; no more than necessary to achieve the intended objective; and must not be arbitrary or unfair.
27. Our remit does not extend to making decisions on whether a body in jurisdiction has breached the Human Rights Act – this can only be done by the courts. But we can decide whether or not a body in jurisdiction has had due regard to an individual's human rights in their treatment of them, as part of our consideration of a complaint.
28. In practical terms, councils will often be able to show they have complied with the Human Rights Act if they can show:
- they have considered the impact their decisions will have on the individuals affected; and
 - there is a process for decisions to be challenged by a review or appeal.

How we considered this complaint

29. We produced this report after examining relevant documents from the Council and speaking to the complainant.
30. Miss X and the Council have had the opportunity to comment on our draft report. We have considered their comments before finalising this report.
31. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share the final report with Ofsted.

What we found

What happened

Background

32. This chronology provides details of key events leading up to Miss X's stage two complaint to the Council, it does not cover everything that happened.
33. Miss X was the subject of a child in need plan while living with her mother. In 2010, Miss X (aged 12) was placed in the care of the Council.

-
34. In September 2010, Miss X was in a children's home when she reported to the Council that she had been raped (by the cousin of another resident) and physically assaulted by another resident. Miss X was placed with foster carers two days after reporting the two incidents to the Council. The incident was investigated by the police.
 35. In 2013, the foster carers reported the placement with Miss X was breaking down. The Council noted disputes between Miss X and her foster carer. In July 2013, Miss X went missing from her foster placement for a few days but returned. In September 2013, Miss X reported to the Council the foster carers had been emotionally abusive to her for several years. Miss X also reported incidents she had witnessed of the foster carers physically abusing their birth children. Miss X stayed with her aunt for a short time following the end of this placement.
 36. While living in a residential unit in August 2015, Miss X told the Council about a safeguarding incident involving a male staff member. Miss X moved out of this placement shortly afterwards. This incident was investigated by the police.
 37. In November 2015, Miss X had her first meeting with her Personal Adviser (PA) to discuss her pathway plan. In 2018, Miss X asked for help from her PA when she moved into housing in a neighbouring council area. The property needed significant repairs; it did not have a working toilet when Miss X moved in. In March 2018, Miss X told her PA she had received a letter from the neighbouring council about Council Tax arrears. In July 2018, Miss X attended court with her PA where it was confirmed she was not liable for this.

Miss X's stage one and two complaints

38. At the end of August 2018, Miss X made a stage one complaint to the Council. It responded on 14 September 2018. Miss X remained dissatisfied and asked for her complaint to be escalated to stage two at the end of December 2018. The Council responded and offered to meet with Miss X to discuss her concerns further. Miss X declined and reiterated her request to go to stage two in early February 2019.
39. The Council appointed an Investigating Officer (IO) and Independent Person (IP) to conduct the stage two complaint investigation. The IO and IP could not meet with Miss X until 5 April 2019 to record her statement of complaint.
40. Miss X's statement of complaint contained 12 individual concerns about the incidents that occurred in 2010, 2013, 2015 and since leaving care. The IO summarised that since being placed in the Council's care at the age of 12, Miss X had a number of placements with foster carers or in children's homes where she was abused physically, sexually and mentally, and about Miss X not receiving proper support from the Council since leaving care.
41. The IO and IP recorded Miss X's desired outcome was for the Council to provide financial redress for her being placed in unsafe placements, left homeless and having received ineffective social care and then care leaver support over the previous eight years.
42. The IO and IP completed their investigation reports into Miss X's complaints on 6 and 7 August 2019, respectively. The IO upheld 10 of the 12 concerns in Miss X's statement of complaint. They partially upheld one complaint about the support Miss X received from her PA and did not uphold another complaint about a lack of support when Miss X attended court for Council Tax arrears.

-
43. The IO found the Council:
- failed to ensure Miss X was effectively safeguarded and supported while in its care;
 - failed to ensure key evidence was secured through a child protection medical and forensic examination of Miss X following her rape allegation in 2010;
 - had been slow to act in ensuring Miss X did not remain in the children's home in 2010 where she suffered significant harm and was at risk of continued harm;
 - should not have waited until October 2013 to move Miss X from her foster placement when she had reported significant and serious safeguarding incidents to it in July 2013;
 - had not told Miss X the outcome of its LADO investigations into her foster carers in 2013 and the residential unit employee in 2015; and
 - records about Miss X's homelessness in 2013 (when she went missing from her foster placement) were contradictory.
44. The IO recommended the Council should:
- a) take account of our [Guidance on Remedies](#) when considering the financial redress it offered to Miss X;
 - b) ensure that details about where children in their care are living are accurate within the casework system;
 - c) ensure children are subject to Child Protection medical examination within 24 hours of any concern or allegation being made;
 - d) ensure that section 47 (child protection) investigations are undertaken when there is a possibility that a child is suffering, or likely to suffer, significant harm;
 - e) ensure children are moved from placements swiftly when they make allegations of assault by other residents;
 - f) hold a Placement Disruptions Meeting in the event of a placement breakdown;
 - g) ensure children making allegations about staff are informed of the outcome of investigations undertaken; and
 - h) ensure staff absent for extended periods have their caseloads reallocated.
45. The IP made another recommendation, which is expanded on below.

The stage two complaint investigation and the Council's adjudication response

46. The IO and IP reports both commented on the way the Council provided access to records during their stage two investigation and how this caused delay. The IO and IP asked for access to LADO records on three occasions during June and July 2019. These records were held on a different system to the Children's Social Care records. The IO and IP needed these records to investigate complaints about the handling of Miss X's allegations about her foster carers and the residential unit employee.
47. The IO's stage two report details how the Council at first refused access to LADO records. The Council told the IO and IP these records were confidential. The IO and IP pressed the Council to gain access to these records. The Council gave the IO and IP access to some redacted information, which they were not allowed to keep copies of. The IP commented on how they were watched by a Council

-
- Officer while they read the redacted records. The Council offered for the current LADO to talk through the records they had seen in an interview conducted by the IO. The IO and IP were not however given unfettered access to the LADO casework system. The Council stated its decision was based on legal advice.
48. The IO said this limited access meant they could not confirm they had had full access to all relevant documentation. The IP's additional recommendation was for the Council to ask for our view on whether access to LADO files should be given to those conducting statutory stage two children complaint investigations.
49. The Council sent its adjudication response to the stage two investigation to Miss X on 16 January 2020. The Adjudicating Officer (AO) apologised for the delay in sending their response to the IO and IP's reports completed in early August 2019.
50. The AO said they felt the investigation could have been more balanced to help understand why the IO reached the findings they did. The AO said they were not going to use their response to dispute the findings, given the length of time since the report had been completed. The AO acknowledged Miss X had had '*some bad experiences and suffered trauma because of those*'. The AO offered Miss X:
- a payment of £1,000 as financial remedy for the upheld complaints and the delay in completing the stage two complaint process; and,
 - £1,500 to fund therapeutic support to help Miss X overcome the trauma she experienced.
51. The AO offered to discuss any aspects of the Council's response with Miss X and gave details of how she could ask for a stage three review if she remained dissatisfied.
52. Miss X complained to us instead of asking for a stage three review.

Analysis

53. We do not intend to revisit large parts of the stage two complaint investigation or comment on the findings reached about the child protection aspects of Miss X's concerns. The IO and IP have undertaken a thorough and detailed investigation into these matters and we are satisfied the findings they reached were sound and the recommendations made appropriate.

LADO referrals

54. The Council's approach to the requests for full access to the LADO records significantly hindered the stage two investigation. The Council failed to provide us with a convincing argument for withholding the information from the IO and IP. The approach the Council adopted was not in the spirit of the statutory guidance for children's social care complaints. It did not give Miss X the reassurance she was seeking that her concerns were being taken seriously. This was fault, which continues to cause Miss X significant injustice. She still does not know the outcome of the concerns she reported about her foster carers and the residential unit employee.
55. In response to our enquiries, the Council has failed to provide clear and full information about the LADO referrals. We received limited and redacted information about what the Council did with the concerns Miss X reported. It is concerning and disappointing to see the Council has continued its obstructive approach with us.

-
56. We have seen information about the 2015 LADO investigation, which shows the allegation was found to be unsubstantiated. We cannot see any reason why the Council could not have told Miss X this outcome at the end of its investigation, while maintaining confidentiality to other parties. This was fault and the injustice to Miss X was further compounded by the Council's failure to provide proper access to this information to the IO and IP at stage two. Miss X has been put to unnecessary time and trouble in bringing her complaint to us just to find out the outcome of this matter.
57. The Council provided limited information to us about the LADO referral following Miss X's allegations about her foster carers in 2013, despite being asked for this. This was fault. Without evidence to show what conclusions, if any, were reached, we do not have confidence the Council completed this investigation properly. There was fault as there is also no evidence the Council completed other statutory actions for allegations against the foster carers. There is no evidence:
- the Council undertook a Standards of Care review of the foster carers' suitability as approved foster carers; and
 - to show a child protection investigation was undertaken about the abuse Miss X alleged she had experienced and witnessed the foster carers inflicting on their own children.

A lack of evidence the Council took any action means it did not address or seek to mitigate any continued risk of significant harm the foster carers might be causing to their own children and any foster children placed with them.

The Council's handling of stage two and its offers of redress

58. The Council says it based its offer of £1,000 to Miss X on our Guidance on Remedies. It confirmed £800 of this payment was for the faults identified at stage two and the remaining £200 was for the delay in completing the stage two complaint process.
59. The Council's offer of £1,000 does not address the injustice Miss X has experienced. The amount offered to Miss X is not an appropriate remedy for the significant injustice she experienced because of the Council's faults. The Council failed in its role as Miss X's corporate parent to protect her from harm and to provide her with, as a minimum, 'good enough' parenting. 'Good enough' parenting is the standard councils assess parents against and if the Council had removed Miss X from a situation where she was not receiving 'good enough' parenting, this is the minimum it should have offered her while in care. The Council failed to keep her safe or immediately remove her from placements where it was clear she had been exposed to significant harm. Miss X was a vulnerable child who had already experienced significant trauma. When she was removed from her mother and placed in the Council's care she should not have been exposed to further trauma.
60. The Council explained the AO considered an offer to fund therapeutic support to help Miss X was appropriate given her trauma. Miss X had not asked for this nor did the IO recommend this action in their stage two report. The Council's approach to decide what remedy was suitable supports the impression Miss X was not empowered or entitled to say what outcome she wanted. While the Council was not at fault for making the offer, it appears ill-judged and inappropriate given the serious nature of the faults identified in this case. Especially as Miss X feels she should be able to choose how she spends any financial redress provided.

-
61. The Council told Miss X it did not think the stage two reports gave a balanced view. When we asked the Council about this, it felt the IO's investigation report focused too heavily on the difficulties they faced in accessing information, rather than the complaints Miss X had made. We disagree. The IO and IP were right to report on any problems they experienced during their investigation. This had a significant impact on the extent to which they could investigate some of Miss X's complaints and their eventual conclusions. Despite this, the reports by the IO and IP were thorough, and where possible, gave a clear account of the evidence they had considered in reaching their conclusions. We do not criticise the approach the IO took and Miss X told us that she felt vindicated when she read the IO's findings.
 62. The Council's adjudication letter does not comply with statutory guidance. While the Council says it accepted all the IO and IP's findings, it should have stated what action it intended to take to complete the recommendations made and the timescales for completion. This was fault.
 63. The Council's completion of the stage two complaint was significantly delayed. It took the Council more than five months to issue its adjudication letter to Miss X. Miss X first asked to escalate her complaint to stage two on 20 December 2018 and it took more than a year for her to receive the eventual outcome.
 64. The statutory guidance states the maximum time it should take to complete stage two complaints is 65 working days. From the point when Miss X's statement of complaint was confirmed, (on 5 April 2019) to the Council's adjudication response (on 16 January 2020) was 197 working days. This is significantly beyond the maximum timescale and was fault.
 65. The Council also did not tell Miss X about the delay nor did it give an indication of when she could expect the adjudication outcome in line with statutory guidance. Miss X became so frustrated by the delay and lack of contact that she decided to complain to us rather than asking for a stage three review. The Council's explanation that there was a change in personnel does not excuse or justify the significant delay in completing the stage two complaint process.

Human Rights

66. Article 3, an absolute right to freedom from torture and inhuman or degrading treatment was engaged when the Council failed to follow child protection procedures following the incidents in 2010, 2013 and 2015.
67. Article 8, a qualified right to respect for private and family life, home and correspondence was engaged by the Council's failure to protect Miss X from physical and emotional abuse while in care and the failure to support her when she left care.
68. Article 10, a qualified right to freedom of expression, was engaged in the way the Council has dealt with Miss X's complaints about her care.
69. Decisions and actions should be taken in such a way which do not conflict with the principles of human rights and equalities. The IO's findings and our investigation highlight the Council's failure to have due regard for Miss X's human rights in this case. This was further fault.

Conclusions

70. The Council was at fault because:
- it did not tell Miss X the outcomes of LADO referrals following incidents she reported in 2013 and 2015;
 - it failed to provide us with information about the outcome of the LADO investigation about Miss X's foster carers;
 - it failed to complete a standards of care review and child protection enquiries following allegations made about Miss X's foster carers;
 - it failed in its role as Miss X's corporate parent to keep her safe, provide her the minimum of 'good enough' parenting and prevent her being exposed to further significant harm while placed in care;
 - it impeded the investigation into Miss X's stage two statutory complaints;
 - it failed to act on the recommendations made by the stage two IO and IP;
 - it has not offered an appropriate remedy for the significant injustice caused for the faults identified by the stage two complaint investigation and the significant delay in the completion of the stage two process; and
 - it failed to have sufficient regard for Miss X's human rights.

Recommendations

71. The faults identified in the Council's handling at stage two and during our investigation are significant, occurred over a protracted period during which Miss X was not listened to, taken seriously or protected. To remedy the injustice caused, within three months of the date of this report, the Council should:
- apologise in writing to Miss X for the impact of the faults identified in the stage two complaint investigation and its handling of her complaints;
 - pay Miss X £7,500 for:
 - avoidable distress caused by the Council's faults identified in the stage two complaint investigation;
 - avoidable harm Miss X suffered as a vulnerable young person in the Council's care;
 - avoidable delay in completing the stage two complaint investigation;
 - time and trouble in bringing complaints to us to get the outcome of LADO investigations; and
 - outrage given the significant and serious nature of the faults and their impact on Miss X.
 - provide Miss X with the outcome of the LADO investigation into her former foster carers, together with details of any other action taken following Miss X's allegations relating to the foster carers' continued approval and child protection enquiries (where these issues relate directly to Miss X);
 - review its approach to information sharing in the statutory complaints procedure and within our investigations;

-
- provide us with an action plan detailing how and when it intends to complete the recommendations made in the IO's stage two complaint report, set out in paragraph 44 b to h above. The Council should then provide us with evidence when it has completed the actions within its plan.
72. The Council has accepted all our findings and recommendations, which we welcome.
73. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

74. We have completed our investigation into this complaint. There was fault by the Council which caused significant injustice to Miss X. The Council should take the action set out above to remedy that injustice.