

Report by the Local Government Ombudsman

Investigation into a complaint against

Essex County Council

(reference number: 15 016 298)

22 February 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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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

Mr and Mrs X – The complainants

Y – The complainants' niece

Report summary

Children's services

Mr and Mrs X's complaint relates to the Council's decision to remove their niece (Y) from their care in 2011. Mr and Mrs X complain the Council has refused to consider their complaint at stage 3 of the statutory children's social care complaints process. Mr and Mrs X say the stage 2 investigation was flawed and failed to consider all the available evidence. Mr and Mrs X also complain on behalf of Y.

Y's maternal grandparents, who Y stays with on a regular basis, have helped Mr and Mrs X through the complaints process.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice the Council should take the following action within two months:

- write to Y to apologise for removing her from the care of her family without following the correct process;
- write to Mr and Mrs X and Y's maternal grandparents separately to apologise for removing Y from their care without carrying out a review;
- pay Y £550 for the distress caused to her as a result of being removed from her family's care and the unnecessary time and trouble pursuing her complaint;
- pay Mr and Mrs X £850 for the distress caused to them as a result of Y being removed from their care and the unnecessary time and trouble of pursuing their complaint;
- pay Y's maternal grandparents £400 for the distress caused to them as a result of not being informed of the decision to remove Y from the family's care and the unnecessary time and trouble of pursuing their complaint.

The events complained about happened some time ago. Nevertheless the Council should undertake a review of decisions it has made within the past 12 months regarding the termination of foster care placements to ensure the correct procedures are now being followed. The Council should report its findings to us within three months.

The Council has confirmed it will comply with our recommendations to remedy the injustice.

Introduction

1. Mr and Mrs X complain that the Council removed their niece, Y, from their care in 2011 without following the correct process. Mr and Mrs X say they were not given advance warning that Y was going to be removed from their care. Y knew nothing about the Council's plans until a social worker attended her school to take her to a new placement.
2. Y's maternal grandparents who are involved in her care, helped Mr and Mrs X to bring their complaint. They also complain they were not informed of the Council's plans to remove Y from Mr and Mrs X's care even though the Council was aware they provided respite accommodation at weekends.
3. Mr and Mrs X also complain it has taken over four years for the Council to deal with their complaints about what happened. They also complain that the investigation was flawed as the Independent Investigator did not consider all the available evidence.

Legal and administrative background

4. We investigate complaints of injustice caused by maladministration and service failure. We have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
5. 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)*)

Children's complaints process

6. The law sets out a three stage procedure for councils to follow when looking at complaints about children's social care services. At stage 2 of this procedure, the Council appoints an Independent Investigator and an Independent Person (who is responsible for overseeing the investigation). If a complainant is unhappy with the outcome of the stage 2 investigation, they can ask for a stage 3 review. (*The Children Act 1989 Representations Procedure (England) Regulations 2006*)
7. A complaint can be made to us before stage 3 if both the Council and the complainant agree to an early referral. A referral cannot be made to us at this stage unless both parties agree. The Ombudsman must also agree to the referral.
8. If a council has investigated something under this procedure, we would not normally re-investigate it unless we consider the investigation was flawed. However, we may look at whether a council properly considered the findings and recommendations of the independent investigation.

Children in care

9. Every local authority must provide accommodation to children within their area who need it if the person who has been caring for them is prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care. The child would be classed as a 'looked after child'.
10. The principle in law is that all children, including 'looked after children', should wherever possible be cared for by their families and friends. Therefore a local authority may fulfil its legal duty to accommodate a child by placing it with relatives. That relative would be considered to be a family and friends foster carer. The local authority would have to undertake certain checks and approvals of their suitability to care for the child, and monitor the child's welfare.

Ending a foster placement

11. Regulations and guidance set out the circumstances in which a council can end a child's foster placement and the procedure it must follow.
12. Before making any decision about a looked after child, the council must, so far as reasonably practicable, ascertain the wishes and feelings of the child. The council must discuss, record and give due consideration to the child's wishes and feelings before making a decision about the child's placement. (***Children Act 1989 Guidance: volume 2, paragraphs 1.9 and 1.12***)
13. When the council proposes to end a placement it must review the case and ensure the views of all concerned have been heard. It does not need to do this if there is an immediate risk of significant harm to the child. (***Children Act 1989 Guidance: volume 2, paragraph 3.61***)
14. If the child's social worker has concerns about whether the placement is adequately promoting the child's welfare, the council must review the case. (***Children Act 1989 Guidance: volume 2, paragraph 3.171***) This will include reviewing the child's care and placement plan, and identifying remedial action or considering alternative placements.
15. Government guidance says when a council intends to terminate a placement it must "*carry out a review of the child's case and ensure the views of all the people concerned have been heard, including the child (sufficient to his/her age and understanding) as well as parents (where appropriate), the child's carer and other people who were notified when the placement was made... The review will provide the opportunity to consider what, if any, support and services could be provided which would avoid the need to terminate the placement...*". (***Children Act 1989 Guidance and Regulations Volume 2 Care Planning, Placement and Case Review, March 2010***)

16. The guidance also says that where a council *“considers that there is an immediate risk of significant harm to the child or to protect others from serious injury, the child must be removed from the placement and the requirements set out [in the Regulations] do not need to be met. Alternative accommodation must be found as soon as possible and the [Independent Reviewing Officer] informed as soon as is practicable”*.
17. An officer known as the Independent Reviewing Officer (IRO) must, so far as is reasonably practicable, attend any meeting held as part of a review of the council’s care of a looked after child and chair the meeting. The IRO must speak to the foster child in private about the matters to be considered at the review unless s/he considers it inappropriate having regard to the child’s age and understanding.

How we considered this complaint

18. This report has been produced following the examination of relevant files and documents and interviews with the complainants.
19. The complainants and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Investigation

20. Mr and Mrs X were family and friends foster carers for Mrs X’s niece (Y) since she was placed with them by the Council in 2006. The Council shared parental responsibility for Y with Y’s mother who was not able to care for her. Y also spent every other weekend having overnight contact with her maternal grandparents. This was agreed with the Council.
21. At the time of the events complained of Y was a teenager and had been assessed as being very vulnerable with moderate learning difficulties and an understanding level of an 8 or 9 year old. Y was described as having a lack of a sense of danger and a tendency to be over familiar and to go along with strangers without any hesitation.
22. In 2011 Y moved to a new school. School staff said this had a potentially destabilizing effect on Y. Around this time Y told social workers that she was not happy living with her foster carers. In a telephone call to a social worker on 14 June 2011 she said she had locked herself in the bathroom because Mr X was shouting at her. In another phone call Y told a social worker that she no longer wanted to live with Mr and Mrs X.
23. Mr X refused to allow Y’s social worker to meet Y in the house. Social care records show this was because Mr X was concerned about the influence of the social worker on his other children. Mr X allowed the social worker to talk to Y on the door step or in the garden. Mr X allowed other social workers and professionals to enter the house.

24. The Council says Mr and Mrs X had issues with social workers since Y was placed with them in 2006. However Mr X says this is not the case and it was established in the stage 2 investigation of the complaint that there is no evidence of this on the Council's files.
25. On 23 June 2011 the Council had a meeting with other professionals involved with Y's care. There was confusion amongst those who attended the meeting about its purpose. Some of those attending the meeting believed it was a professionals meeting to share information about Y's current situation. Others believed it was a strategy meeting to decide what action to take in relation to Y's current situation. Mr and Mrs X and Y were not invited to attend the meeting.
26. At the end of the meeting it was decided to refer Y to the Council's Access to Resource Panel to consider a move to an alternative placement.
27. On 25 June 2011 the Council spoke to Mr X after Y had attempted to harm herself. Mr X said Y had gone into town without permission and he did not feel she was ready for this. Mr X had brought her home and Y had later self harmed.
28. Y spoke to a social worker on 28 June 2011 to discuss what had happened. The social worker recorded that Y wanted to move but wanted to stay at the same school.
29. On 29 June the Council spoke to Mr X and a social worker gave advice about the *"management of typical adolescent behaviour"*.
30. On the same day the Council's Access to Resource Panel gave permission for Y to be moved and the Council began to look at alternative placements. Mr and Mrs X and Y were not informed of the Council's intention to move Y to an alternative placement.
31. On 14 July 2011 a social worker met Y at the school and took her to an alternative placement. The Council later acknowledged in a letter to Y that she *"had very little preparation for this move and that you were not made aware of the fact that the social worker would be coming to your school that day in order to take you"*.
32. Mr and Mrs X and Y's grandparents were not informed of Y's whereabouts. They say they were left extremely distressed when Y was removed without notice.
33. A further meeting was held by the Council on 5 August 2011. This was a management planning meeting to discuss Y's situation and discuss allegations made against Mr and Mrs X in terms of their ability to care for Y. The Local Authority Designated Officer took minutes of the meeting. The minutes say:

"Looking at the threshold for s47 enquiries [enquiries about safeguarding concerns] I agree with the child care team that in this case the threshold was not met... The information provided at the meeting on the 23/06/2011 evidenced that [Mr X] was not working in partnership with the local Authority which convenes fostering regulations in relation to minimum standards. More importantly [Y] was reporting to be anxious and unsupported in her placement."

“The evidence presented at this meeting clearly evidenced that [Y] was at risk of failing to thrive and develop to her full potential. The harm evidenced was not imminent and immediate... The risks however did become greater on the 27/06/2011 when social care were informed that [Y had attempted to self harm]... [The Council] reported that the child care team had tried to work with the family. It was her view that [Mrs X] could not have been consulted prior to [Y’s] removal given the lack of partnership working from both [Mrs X] (non attendance at any meetings) and [Mr X] aggressive and non cooperative...”

34. Mr and Mrs X say there is evidence Mrs X did attend meetings. Mr X denies being aggressive and non-cooperative.
35. Y was placed with another foster carer whom she was not related to. During her placement Y absconded from care and made allegations against the foster carer and the foster carer’s family. Specifically that:
 - the foster carer assaulted her;
 - the foster carer’s family verbally abused her;
 - she was left hungry and resorted to eating cat biscuits.
36. When Y absconded from care she had been left unsupervised in a local park. The foster carer had checked with a social worker if this was appropriate and had been advised that this would be okay despite information on Y’s file about risk taking behaviour. Y hitched a lift from an unknown male driver and made her way back to Mr and Mrs X’s house.
37. Y moved back with Mr and Mrs X on 30 September 2011. After this a new social worker was allocated. Y’s grandparents were also formally recognised as providing respite care for Y. Y continues to reside with the family even after she turned 18.
38. Mr and Mrs X, Y and Y’s grandparents complained to the Council in late 2011 about what had happened. This resulted in the complaint being considered by an Independent Panel at stage 3 of the complaints process in August 2012. The family provided further evidence and the Panel considered this on 22 January 2013.
39. The Panel found that the stage 2 investigation was flawed. The Panel said parts of the complaint should be re-investigated at stage 2. The Council says it commissioned an Independent Investigator and Independent Person to carry out the new stage 2 investigation in March 2013.
40. The Council says Mr and Mrs X would not agree a statement of complaint. The Council says it escalated the complaint to us because of this but we did not reach a decision on the complaint until February 2014.
41. Our decision in February 2014 found the process had “stalled” due to a “query about the scope of the investigation”. However we found evidence that the Council had already told Mr and Mrs X that it would investigate the new issues they had raised. We said the Council should continue with the new stage 2 investigation. The Council appointed a new Independent Investigator in October 2014.

42. In the intervening period the Council said that Y's grandparents could not complain under the children's complaints process. We upheld this decision in September 2013. The Council apologised for the delay in informing the grandparents that they could not complain using the statutory complaints process.
43. On 20 August 2015 the Independent Investigator issued a new stage 2 investigation report. The Independent Investigator said the investigation took longer than expected as some officers no longer worked for the Council, they had to be located and permission had to be sought to share paperwork with them.
44. Mr and Mrs X, Y and Y's grandparents raised 20 points of complaint. However the overall complaint was about the Council's decision to remove Y from Mr and Mrs X's care and failure to investigate what happened to her when she was placed elsewhere. The Independent Investigator only upheld one aspect of the complaint and partially upheld five. The Investigator said Y had expressed a wish to leave Mr and Mrs X's care and so they could not criticise the Council's decision to end the placement. However the Investigator said the Council had given the foster carer wrong advice when Y was left alone in a park which led to her absconding.
45. The Independent Investigator recommended the Council pay the family financial compensation because it had taken over four years for their complaints to be investigated. The Independent Investigator said it was *"no fault of the family that they have endured such a protracted complaints process"*.
46. The Council wrote to Mr and Mrs X on 5 October 2015 to say it agreed with the findings of the Independent Investigator. The Council said it would pay Y £200 to acknowledge the impact of the delays in the complaints process.
47. Mr and Mrs X asked for the complaint to be considered again by an Independent Panel at stage 3. The Council wrote to Mr X on 4 January 2016 to say it would not escalate the complaint to stage 3 again and he should complain to us.
48. The Council said this was because:
- the investigation at stage 2 was "comprehensive"; and
 - it was unlikely a Panel would change the outcome due to the passage of time as officers had left the Council since events occurred and were no longer available.
49. We wrote to the Council with a draft decision saying it should carry out a stage 3 review of Mr and Mrs X's complaint. This was because the reasons for refusing a stage 3 investigation were not in line with the statutory guidance on the complaints process. The Council declined to do so but offered to pay Mr and Mrs X £150 for their time and trouble pursuing the complaint to date.

Conclusions

Complaint handling

50. The Council is at fault for refusing to escalate the complaint to stage 3 of the statutory children's services complaints process. The stage 2 report only upheld one aspect of Mr and Mrs X's complaint and they did not consent to the complaint being passed to us.
51. There have also been significant delays in the complaints process and the stage 2 investigation said this was not due to fault by the family.
52. The Council says part of the delay was caused by our investigation into Mr and Mrs X's complaint in 2013. The Council says Mr and Mrs X would not agree the scope of the investigation with the Council. However we found evidence the Council had agreed to investigate new complaints Mr and Mrs X had raised. The Council also said we had agreed to investigate the complaint but neither we nor the Council had any record of such a conversation taking place. We issued our decision in February 2014 saying the complaint should be considered at stage 2, however the Council did not appoint an Independent Investigator until October 2014.
53. There is also fault in the way the second stage 2 investigation was conducted. Whilst the Investigating Officer requested records from the Council's fostering team these were not made available. We would have expected these records to have been made available to the Investigator. In the event they were not shared, the Investigator should have insisted on this. The Investigator also failed to look at the process the Council should have followed when it decided to remove Y from Mr and Mrs X's care.
54. The Independent Investigator recommended a financial remedy however the Council has only paid £200 to Y and did not initially provide any remedy to the rest of the family (i.e. Mr and Mrs X and the maternal grandparents) who have pursued the complaint. This is fault. The second stage 2 investigation recognized the role Y's grandparents played in bringing the complaint to us and reached firm conclusions about the impact the Council's actions had on them.
55. Furthermore the amount the Council has offered to pay Y and Mr and Mrs X is too low in our view and does not reflect the significant length of time it took to investigate their complaint. Having to spend so long pursuing the complaint will have compounded the distress the family has already suffered.

Decision to remove Y from Mr and Mrs X's care

56. Because there are faults in the way the stage 2 investigation was carried out we have decided to investigate the Council's decision to remove Y from Mr and Mrs X's care.

57. It is clear there was confusion about the purpose of the meeting on 23 June 2011 when the Council decided to remove Y from Mr and Mrs X's care. This is fault. It should have been clear to all parties attending what the purpose of the meeting was and under what powers it was acting.
58. Government guidance makes it clear that a review should take place before a placement is terminated and this should involve *"the child (sufficient to his/her age and understanding) as well as parents (where appropriate), the child's carer and other people who were notified when the placement was made"*. This did not happen. This was fault.
59. The Council says it decided not to inform Mr and Mrs X or Y about its plan to remove her from their care. It says this was because it had a difficult relationship with Mr X and Mrs X was reluctant to involve herself in matters relating to Y's care. It also says it did not want to add to Y's worries at the time.
60. Whilst it is clear that Mr and Mrs X's relationship with Y was difficult at that time there is no evidence of any immediate risk of significant harm to Y. The decision to remove Y from Mr and Mrs X's care appears to be based on concerns about Mr X's refusal to allow Y's social worker to come into the house. However Mr X did allow other professionals, including his supervising social worker, to attend the property. The Council says that Y asked to move to another placement however the consequences of this were not discussed with her. From the evidence recorded on file, we can see no reason why Mr and Mrs X, Y and her maternal grandparents could not have been party to a review about her placement.
61. A review would have given all parties an opportunity to consider what support and services could be provided to avoid the need to terminate the placement. There is no evidence the Council approached Y's maternal grandparents about the prospect of caring for Y or providing respite despite the Council being aware that she stayed with them every other weekend. Y has not raised any complaint or concern about the care her maternal grandparents provided to her at weekends. Although Y's maternal grandparents had said they could not accommodate Y on a long term basis there is no reason why the Council could not have explored a short term placement whilst any areas of concern were resolved. The Council should look to place children with family members in the first instance and this did not happen in this case.
62. Had a properly considered review been undertaken, following the correct procedures, seeking Y's views and consulting with Y's maternal grandparents, it seems likely there would have been no need for the Council to terminate the placement. This is because once Y returned to live with Mr and Mrs X the Council was able to put measures in place to address the concerns of all parties and Y remains living with them to this day.
63. Overall the Council's decision to remove Y from Mr and Mrs X's care caused the family, including Y's grandparents considerable distress. Mr and Mrs X and Y's grandparents were not informed of Y's whereabouts and Y was taken to a foster carer she did not know without any notice. It seems likely this was avoidable had the proper process been followed.

64. The stage 2 investigation has already upheld the family's complaint about the way the Council dealt with Y's allegations about the foster carer she was placed with in July 2011. The investigation found that issues raised by Y were not properly recorded or investigated. The investigation was also concerned about advice given by a supervising social worker during this period that led to Y absconding and getting in a vehicle with an unknown male. The stage 2 investigation found there was no investigation into this incident.
65. The failure to properly investigate Y's allegations and her absconding from the foster carer placement will have added to the family's distress.

Decision

66. There was fault by the Council causing injustice to Y, Mr and Mrs X and Y's maternal grandparents.

Recommendations

67. To remedy the injustice the Council should take the following action within two months:
- write to Y to apologise for removing her from the care of her family without following the correct process;
 - write to Mr and Mrs X and Y's maternal grandparents separately to apologise for removing Y from their care without carrying out a review;
 - pay Y £550 for the distress caused to her as a result of being removed from her family's care and the unnecessary time and trouble pursuing her complaint;
 - pay Mr and Mrs X £850 for the distress caused to them as a result of Y being removed from their care and the unnecessary time and trouble of pursuing their complaint;
 - pay Y's maternal grandparents £400 for the distress caused to them as a result of not being informed of the decision to remove Y from the family's care and the unnecessary time and trouble of pursuing the complaint.
68. The events complained of happened some time ago. Nevertheless the Council should undertake a review of decisions it has made within the past 12 months regarding the termination of foster care placements to ensure the correct procedures are now being followed. The Council should report its findings to us within three months.
69. The Council has confirmed it will comply with our recommendations to remedy the injustice.