

# Report by the Local Government Ombudsman

**Investigation into a complaint against  
Somerset County Council  
(reference number: 14 006 354)**

**<13 March 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.

# Investigation into complaint number 14 006 354 against Somerset County Council

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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 X	The complainant
Mrs X	The complainant's wife
Officer 1	Receptionist
Officer 2	Social Worker
Officer 3	Team Leader

## **Report summary**

### **Child Protection**

Mr X complains about the Council's involvement in his wife leaving the country with their children without his knowledge or consent. He also complains the Council has made false allegations against him and has failed to properly investigate or inform him of allegations of domestic abuse against him.

In addition Mr X complains the Council delayed in dealing with his complaint.

### **Finding**

Fault found causing injustice and recommendations made.

### **Recommendations**

We recommend the Council pays Mr X £4,000 in respect of expenses incurred in ensuring his children were returned to the UK.

We also recommend the Council pays Mr X £1,000 in respect of the distress, anxiety, anger and frustration he experienced and the unnecessary time and trouble he has been put to.

## Introduction

1. Mr X complains he approached the Council for assistance but rather than support his family, the Council encouraged and assisted his wife to take their children to Australia without his knowledge or consent. Mr X considers the Council has failed to deal with him in a fair and open manner. He states the Council has wrongly accused him of being threatening and abusive towards Council officers; and failed to properly investigate or inform him of allegations of domestic abuse against him. In addition Mr X complains the Council has delayed in dealing with his complaint.

## Legal and administrative background

2. The Ombudsman investigates 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))
3. The Ombudsman cannot investigate a complaint about the start of court action or what happened in court. (Local Government Act 1974, section 26(8) and Schedule 5, paragraph 1)
4. In addition the Ombudsman cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to the Ombudsman about something a council has done. (Local Government Act 1974, sections 26B and 34D) We have exercised discretion to consider this complaint outside our normal timeframe as we are satisfied Mr X has good reason for the delay in contacting the Ombudsman.

### ***Child Abduction***

5. It is a criminal offence under the Child Abduction Act 1984 for a person connected to a child (such as parents, guardians, or anyone with parental responsibility for a child) to take or send the child out of the UK without either consent from everyone who has parental responsibility for the child or permission from the court. Anyone found guilty of child abduction can be sent to prison or fined or both.
6. Where there are concerns a child will be taken out of the UK without the consent of all of those with parental responsibility it may be possible to obtain a court order prohibiting the removal of the child from the UK without giving notice to others with parental responsibility. A court can also order a 'port alert' to prevent the child from leaving the country. This involves the police flagging the child's name at all UK airports and points of departure.
7. In emergency cases the police can issue a port alert without a court order where there is evidence the child is likely to be removed without the consent of everyone with parental responsibility within the next 24 to 48 hours.

## How we considered this complaint

8. This report has been produced following the examination of relevant files and documents.
9. The complainant 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

10. Mr X is a British Citizen, his wife Mrs X is an Australian citizen, and they have two children, both born in the UK. The family were not known to social services until September 2012 when Mr X approached the Council for help with Mrs X's immigration status. As Mr X was not able to work, the family relied on Mrs X's earnings. Mrs X had recently been suspended from work as she had not renewed her visa so was not entitled to work in the UK. She had also recently been refused British citizenship.
11. Mr X states he had read the Home Office UK Border Agency code of practice for keeping children safe from harm and thought children's social services would be able to help. He states the person he spoke to, Officer 1, was not helpful and not willing to listen. She suggested he go to the job centre and tried to give him a leaflet which Mr X refused as it would not help. Mr X states he repeatedly asked to speak to someone and was told he would need to make an appointment.
12. Mr X had attended the Council's offices with his youngest child. He states he sat the child on the desk and suggested the receptionist look after her. Mr X states he did this for effect as he felt the officer was not willing to help, and had no intention of leaving the child there. Mr X acknowledges he was assertive during this conversation, but did not shout, swear or behave aggressively. He states he did not move more than a couple of steps away from his child and she did not at any time seem upset.
13. Officer 1's account of this conversation is different. Officer 1 states Mr X told her he had concerns that some children were at risk. As the children were not known to Officer 1 she told him he would need to contact Somerset Direct and tried to give him a pamphlet. The records state:

*"At this point he became agitated and stated "no", he wasn't going to call anyone ... he picked up the pamphlet, put it towards my face and told me to call them in an aggressive manner. Again I tried to explain the protocol to him but he didn't want to listen so he then picked up the little girl, sat her on the reception counter and walked away.*

*I called after him saying he couldn't leave the child with me – I was told it was up to us to sort it out and he walked away. Again I called after him that he couldn't leave the child, he still didn't want to listen at which point I stated that if he abandoned her and left I would call the police."*

14. At this point another officer, Officer 2, intervened. Mr X explained the situation to Officer 2, and another officer, Officer 3. The Council's records note the officers advised Mr X they would need to speak to Mrs X. They made it clear his actions with regard to his child were not acceptable but they wanted to try and support him and Mrs X.
15. The officers spoke to Mrs X later that day. During the meeting Mrs X told the officers Mr X swore at her and the children and called her names in front of them. She felt the children were being emotionally affected by Mr X's behaviour. The records note Mrs X also told the officers Mr X had hit her on one occasion and often threatened to kill her.
16. The Council's records state:

*"[Mrs X] told us she does miss home and that her parents would get her a one way ticket back to Australia for her and the girls, she doesn't know if she would want [Mr X] to go back with her."*
17. The officers advised Mrs X it was for her to decide what to do regarding her relationship with Mr X, but it was also her duty to ensure the children were safe. The Council would need to be involved to ensure they were safe.
18. The Council carried out an initial assessment, and then a core assessment in relation to the children. The core assessment notes the Council was not able to complete an assessment of the children in the normal way as it had concerns about Mr X's possible reaction.
19. Following the assessments Mrs X met with officers on her own on a number of occasions. According to the Council's case notes Mrs X told officers Mr X was emotionally abusive and very controlling of her. She also told officers that Mr X had said if she returned to Australia she could not take the children and he would hand them over to children's services.
20. During these meetings the Council offered to find Mrs X a place at a refuge, but she refused. The records of a meeting on 30 October 2012 note a discussion about what would happen if Mrs X returned to Australia and Mr X placed the children in the Council's care. The notes also confirm Mrs X intended to apply for passports for her children. An officer suggested she ask for the passports to be delivered to the Council's offices so that Mr X would not be aware of them. Another officer repeated this advice in a meeting on 6 November 2012.
21. At a meeting on 13 November 2012 Mrs X advised the Council she had changed her mind about fleeing to Australia, but intended to suggest the whole family go on holiday there. Mrs X had applied for the passports to be delivered to her home address.
22. The Council was concerned about Mrs X frequently changing her mind and not acting protectively towards the children. At a meeting on 5 December 2012 the Council advised Mrs X that the Council would intervene if she did not act to protect her children.

23. On 12 December 2012 Mrs X advised the Council she had booked flights to Australia for herself and the children. Mrs X subsequently told the Council she was leaving Mr X after Christmas. An officer advised Mrs X to seek legal advice on her options. The Council's records state:

*“the level of abuse and impact on [Mrs X] and the children is such that if for any reason [Mrs X] does not leave her husband with the children then CSC [Children’s Social Care] will convene an ICPC [Initial Child Protection Conference].”*

24. Mrs X asked the Council to write a letter confirming its involvement in the matter. She collected the letter on 31 December 2012 and advised the Council she was leaving Mr X and going to Australia in two days' time.
25. Mrs X did not tell Mr X she was going to Australia. She had left luggage with a friend and arranged for another friend to drive herself and the children to the airport.
26. On learning Mrs X had taken the children to Australia Mr X contacted the police. Mr X then began court proceedings in Australia to have the children returned to the UK.
27. In the summer of 2013 an Australian Court ordered Mrs X to return to the UK with the children. When Mrs X returned she was arrested at the airport for child abduction.
28. During her interview Mrs X admitted to the police she had left the UK without the consent or authority of the children's father. Mrs X confirmed her family in Australia had helped her plan and fund the trip. The Crown Prosecution Service (CPS) began prosecution proceedings against Mrs X.
29. Mrs X's legal representatives successfully argued the proceedings amounted to an abuse of process and the case did not proceed. Mrs X's legal representatives asserted Mrs X was faced with deportation and the loss of her children and having no means to support herself if she left Mr X, she was driven to leave the country. The legal representatives also confirmed that the Council not only knew of Mrs X's possible actions, but encouraged her to take the children to Australia and offered to assist.
30. In separate family court proceedings the court decided Mrs X could not take the children to live permanently in Australia, and that the children would spend equal time with Mr and Mrs X.
31. Mr X has complained to the Council about its actions in assisting Mrs X to leave the country and its allegations that he was threatening and abusive. The Council initially considered Mr X's complaint in 2013. It did not uphold Mr X's complaints. Mr X was not happy with the response, but the Council did not initially consider it appropriate to review it as there were ongoing court proceedings.
32. When Mr X complained again in February 2015 the Council agreed to consider his complaint at stage two of the complaints process. An investigating officer met with Mr X in August 2015 to discuss the complaint and prepared a report dated December 2015. The investigating officer found the Council had assisted Mrs X in making arrangements to



leave the country without Mr X's knowledge. The officer considered the Council had not acted appropriately in allowing Mrs X to use the Council's address when she applied for passports so that Mr X would not be aware of them.

33. The investigating officer felt the Council should have reasonably suspected Mrs X could leave the country with the children and should have made contact with the Border Agency and police. The Council did not have a formal procedure for situations such as this, but the officer considered the Council should have sought legal advice in order to provide appropriate support.
34. In terms of Mr X's behaviour the investigating officer accepted officers' accounts that Mr X was aggressive, angry, unreasonable and inappropriate during his visit to the Council's offices. The investigating officer also concluded it was appropriate for the Council to take his threat to abandon his child seriously.
35. In addition the investigating officer concluded it was not appropriate for the Council to make Mr X aware of the allegations of domestic violence against him while Mrs X was still living with him. This is on the basis they could have been placing Mrs X at greater risk. The officer accepted it was appropriate for the Council to advise Mrs X that if she did not take action to protect the children it would intervene. As the Council had offered to place Mrs X and the children in a refuge, the officer did not consider the warning of such intervention was the reason Mrs X left the country.
36. Mr X was not happy with the Council's response to his complaint and with the length of time taken to complete the complaints process, and asked us to investigate. Mr X states the Council's actions in assisting Mrs X have had a significant impact on his health and caused distress to his children. He maintains the allegations of domestic violence against him are unfounded and is distressed that the Council perpetuates this view of him despite there being no evidence to substantiate the claims. He has also been put to enormous financial expense and time and inconvenience in returning his children to the UK.

## Conclusions

37. Mr X disagrees with the officers' account of events when he attended the Council's offices in September 2012. Our investigations are evidence based and we cannot accept one person's word against another's. The Council's records show officers were sufficiently concerned by Mr X's behaviour to begin an initial assessment. We would not criticise the Council for seeking to ensure the wellbeing of the children.
38. As part of this assessment officers met with Mrs X who said Mr X was abusive towards her and this had an impact on the children. Mr X disputes Mrs X's allegations of abuse, and is unhappy he was not given the opportunity to defend himself against these allegations. The Council's position that it would not have contacted Mr X about these allegations until Mrs X and the children were in a place of safety is sound, particularly given officers' accounts of their discussions with Mr X.

39. We recognise that these allegations have not subsequently been proven and the court has awarded shared custody of the children to Mr and Mrs X. But that does not mean the Council should not have accepted the information Mrs X provided at the time.
40. Having made this disclosure we would expect the Council to offer Mrs X advice and support. It would also be appropriate for the Council to make Mrs X aware it would initiate an initial child protection conference if officers were not satisfied she could ensure the children's safety. However we would not expect the Council to suggest Mrs X arrange for the children's passports to be delivered to the Council's offices so that Mr X was not aware of her plans to leave. This was inappropriate and amounts to fault. We do not however consider it was key to Mrs X's decision to leave the country.
41. Based on the documentation we have seen we consider it more likely than not that Mrs X would have tried to take the children to Australia irrespective of the Council's involvement. Mrs X arranged for the passports to be delivered to her home, rather than the Council's offices. Her family paid for her flights and friends assisted in storing her luggage and taking her to the airport. Mr X is concerned the friend who took Mrs X and the children to the airport works for the Council. But there is no evidence they were acting in their capacity as a council officer at this time or that it was arranged by the Council. The friend did not work within the children's services department and her statement to the police suggests Mrs X asked her to help in her personal capacity, as a friend.
42. However we consider the Council's failure to seek legal advice or take action to notify the police or Border Agency of Mrs X's intentions amounts to fault causing Mr X an injustice.
43. The Council disagrees. It states Mrs X had made numerous statements that she was leaving Mr X but did not follow these through. Officers therefore assumed, due to the family's financial situation that Mrs X's would not act on her statement in December 2012. This assumption is not supported by the documentation.
44. The Council's records clearly show that Mrs X repeatedly told officers her parents would support her financially and had offered to pay for their flights to Australia. The records also show Mrs X told officers in December 2012 that she intended to leave Mr X and had booked flights to Australia for herself and the children. Mrs X subsequently confirmed she had the tickets and was leaving for Australia on 2 January 2013. Irrespective of whether or not there were any formal protocols in place, we would have expected the Council to seek advice and notify the police and Border Agency of Mrs X's intentions and travel arrangements. Had officers notified the relevant authorities we consider it more likely than not that Mrs X would have been prevented from leaving the country without Mr X's knowledge or consent.
45. The Council agreed to consider Mr X's complaint at stage two of its complaints process in March 2015. The investigating officer completed their investigation in December 2015 and forwarded a copy of the report to Mr X in early February 2016. We consider this to be an excessive period of time.
46. It is clear from the Council's records that the Council was not solely responsible for the length of time taken to investigate Mr X's complaint. But there were periods of

delay/inactivity on the part of the Council. The Council's corporate complaints procedure states the stage two investigation should be completed in 20 working days. Mr X and the Council agreed the terms of his complaint in early July 2015. The investigating officer then arranged to meet with Mr X in August 2015 to discuss the issues. The Council's records show the investigating officer was then away for approximately a month and began investigating the complaint in September 2015. Notwithstanding any earlier periods of delay, allowing 20 working days from this point would mean the investigation should have been completed by mid October 2015. It was not completed until mid December 2015 and it was then a further seven weeks before the Council sent its report to Mr X. The delay in dealing with Mr X's complaint amounts to fault.

### ***Injustice***

47. Mr X had to instruct solicitors to assist him in preparing affidavits for the court in Australia and travelled to Australia to give evidence at the court hearing. Given the passage of time, Mr X is not able to provide full receipts for his expenses, but based on the documentation available we calculate it is likely to have cost him in the region of £4,000. This includes legal fees; the cost of obtaining copy documentation; flights and travel costs; and accommodation and expenses in Australia.
48. Mr X also experienced significant distress and anxiety at learning Mrs X had taken their young children out of the country and was not willing to return them. This was compounded by his anger and frustration at discovering the Council was aware of Mrs X's intentions but had not taken any action to prevent her leaving or to notify other agencies. Mr X had limited contact with the children for seven months before they were returned to the UK.
49. The Council's failure to deal with Mr X's complaint promptly will also have added to his anger and frustration with the Council.

### **Decision**

50. Fault found causing injustice and recommendations made.

### **Recommendations**

51. We recommend the Council pays Mr X £4,000 in respect of expenses incurred in ensuring his children were returned to the UK.
52. We also recommend the Council pays Mr X £1,000 in respect of the distress, anxiety, anger and frustration he experienced and the unnecessary time and trouble he has been put to.