

The Ombudsman's final decision

Summary: Mrs P was the victim of psychological abuse and neglect at Copper Beeches. It also asked her to leave on the false pretext that her needs had changed. Copper Beeches needs to apologise and pay financial redress.

The complaint

1. The complainant, whom I shall refer to as Mrs M, complains about the care her mother, Mrs P, received at Copper Beeches.

The Ombudsman's role and powers

2. We investigate complaints about adult social care providers. We decide whether their actions have had an adverse impact on the person making the complaint. In this statement I refer to this as injustice. If an adult social care provider's actions have caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 34B, 34C and 34H(4), as amended*)

How I considered this complaint

3. I have:
 - considered the complaint and the documents provided by Mrs M;
 - discussed the complaint with Mrs M;
 - considered Nottinghamshire County Council's (the Council) records of its safeguarding investigations;
 - shared a draft of this statement with Mrs M, the Council and Copper Beeches, and taken account of the comments received.

What I found

Key facts

4. Mrs P lived at Copper Beeches for over 10 years.
5. A Social Worker who visited Mrs P in March 2017 raised safeguarding concerns about the lack of pressure relieving care. Copper Beeches told the Social Worker a pressure relieving mattress was enough to prevent skin breakdown, along with repositioning if Mrs P was uncomfortable during personal care. The Social Worker said two hourly turns, recording and regular body mapping were required. Nevertheless, Mrs P's skin was intact.
6. The Social Worker returned in April and found records of Copper Beeches turning Mrs P every two hours. The Council substantiated the allegation of neglect.

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7. When the Care Quality Commission (CQC) inspected Copper Beeches in June 2017 it found it was “*inadequate*” overall. This was because it was inadequate in terms of being “*safe*” and “*well-led*”. It also required improvement in terms of being “*effective*”, “*caring*” and “*responsive*”.
 8. On 1 July Copper Beeches gave Mrs P notice to leave. This was on the basis that her needs had changed and she now needed nursing care which Copper Beeches could not provide.
 9. Mrs M reported her concerns about psychological abuse to the Council. She said a member of staff had shouted at her mother, accusing her of reporting allegations to CQC, leaving her frightened.
 10. Mrs P moved to another care home on 27 July.
 11. On 27 July Mrs M wrote to Copper Beeches to complain. She said:
 - staff had abused and threatened her mother on the assumption that she had made derogatory comments about Copper Beeches to the CQC Inspector;
 - the sheets on her mother’s bed had holes in them;
 - there had been no hot water in her mother’s ensuite after 09.00 for months and the toilet was leaking;
 - her mother did not need to move to a nursing home;
 - the meals were unappetising, boring and tasteless;
 - she had to repair a broken wardrobe herself.
 12. The Council visited Mrs P at her new care home and she disclosed further concerns about staff at Copper Beeches. After investigating Mrs P’s concerns the Council “*fully substantiated*” the allegation of psychological abuse. Its records note that Mrs P’s concerns mirrored those raised by other residents. The Council closed its investigation into Mrs P’s concerns as she was now living elsewhere and was therefore no longer at risk from staff at Copper Beeches.
 13. When Copper Beeches replied to Mrs M’s complaint on 28 August, it told her it had asked her to find another care home because it could no longer meet her mother’s needs.
 14. The Council’s assessment of Mrs P found there had been no significant change in her needs. She has not been found to be eligible for Funded Nursing Care and therefore continues to receive residential care.

Did the care provider’s actions cause injustice?

15. In March 2017 Mrs P was found to have been neglected by Copper Beeches as it had not been addressing all her needs relating to skin integrity. This did not cause her a significant injustice, as her skin remained intact. Copper Beeches also followed the Council’s advice on addressing all Mrs P’s needs relating to skin integrity.
16. However, following the CQC inspection staff at Copper Beeches subjected Mrs P to psychological abuse. Copper Beeches also gave Mrs P notice on the basis that her needs had changed when that was not the case. This caused injustice to Mrs P as it left her distressed and frightened in the environment which was meant to be caring for her.

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17. The member of staff who abused Mrs P no longer works at Copper Beeches and has been reported to the Disclosure and Barring Service. CQC is taking action to get Copper Beeches to meet the required standards.
 18. Copper Beeches failed to respond properly to Mrs M's complaint, as it did not address the specific issue she had raised.

Recommended action

19. I recommend Copper Beeches within four weeks:
 - writes to Mrs P apologising for the distress caused to her; and
 - pays Mrs P £500; and
 - writes to apologise to Mrs M for failing to respond properly to her complaint.
20. Under the terms of our Memorandum of Understanding and Information Sharing Agreement with CQC, I will send it a copy of my final decision.

Final decision

21. I have completed my investigation on the basis that Copper Beeches will take the action I have recommended to remedy the injustice it has caused.

Investigator's decision on behalf of the Ombudsman

12 February 2018

Complaint reference:
17 015 508

Complaint against:
Nottinghamshire County Council

Local Government & Social Care **OMBUDSMAN**

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint that a social worker ignored the complainant's concerns about her mother returning to live with her father after she suffered a wrist injury in 2012. This is because the Ombudsman cannot investigate matters the complainant has been aware of for more than 12 months, unless we decide there are good reasons.

The complaint

1. The complainant, whom I refer to as Mrs B, says a social worker ignored her concerns about her mother returning to live with her father after she suffered a wrist injury. Mrs B says her father was then able to take her mother abroad, where she passed away, and he did not arrange for her to be brought home to be buried.

The Ombudsman's role and powers

2. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

How I considered this complaint

3. I have considered Mrs B's complaint to the Ombudsman. I also gave Mrs B the opportunity to comment on a draft version of this statement.

What I found

4. In my view, the restriction detailed in paragraph 2 above applies to Mrs B's complaint. This is because I understand the events occurred in 2012, and I am unaware of any reasons why Mrs B was prevented from complaining to us sooner. I therefore do not consider the Ombudsman should investigate Mrs B's complaint.

Final decision

5. The Ombudsman will not investigate this complaint. This is because the events occurred more than 12 months ago, and I have seen no grounds to exercise discretion to consider this late complaint now.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman has discontinued investigation as Ms C does not have consent to act for Mr D.

The complaint

1. The complainant, who I will call Ms C, says the Council has placed her friend (Mr D) in a care home against his will. Ms C says the care home is dirty and the staff are unprofessional. Ms C says items of Mr D's have gone missing.

The Ombudsman's role and powers

2. We may investigate complaints made on behalf of someone else if they have given their consent. (*Local Government Act 1974, section 26A(1), as amended*)
3. We can decide whether to start or discontinue an investigation into a complaint within our jurisdiction. (*Local Government Act 1974, sections 24A(6) and 34B(8), as amended*)

How I considered this complaint

4. I wrote to Ms C asking for Mr D's consent for her to complain on his behalf.

What I found

5. Ms C has not provided Mr D's consent for her to make a complaint on his behalf.

Final decision

6. I have discontinued investigation on the basis Ms C does not have consent to act for Mr D.

Investigator's decision on behalf of the Ombudsman

5 February 2018

Complaint reference:
17 015 390

Complaint against:
Nottinghamshire County Council

Local Government & Social Care **OMBUDSMAN**

The Ombudsman's final decision

Summary: We cannot investigate Mr F's complaint about the accuracy of information given to a Court in previous and current child care arrangement proceedings. The Health and Care Professions Council is considering his complaint about officer conduct.

The complaint

1. The complainant, whom I shall call Mr F, says the Council's social worker is biased against him, registered his child's birth without including him and has concerns about the safety of the child's carers.

The Ombudsman's role and powers

2. We cannot investigate a complaint about the start of court action or what happened in court. (*Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended*)
3. We have the power to start or discontinue an investigation into a complaint within our jurisdiction. We may decide not to start or continue with an investigation if we think the issues could reasonably be, or have been, raised within a court of law. (*Local Government Act 1974, sections 24A(6) and 34B(8), as amended*)
4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we could add to any previous investigation by the Council, or
 - there is another body better placed to consider this complaint. (*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

5. I considered the information Mr F provided with his complaint and the Council's replies which it provided. Mr F commented on a draft version of this decision.

What I found

Background information

6. Mr F is the father to a child, X, who is now cared for by their maternal grandparent. The Court ordered in September 2017 that the maternal

grandmother should be a special guardian (SGO) for X. This means her and her partner care for X and X lives with them.

7. Mr F was party to those Court proceedings. He consented to the Order and got supervised contact as part of it. In December 2017, he issued more Court proceedings for more contact and for it to be unsupervised.
8. Mr F complained to the Council that the Council's social worker's assessment before the SGO hearing was biased against him and inaccurate. He has since complained to the social worker's governing body the Health and Care Professions Council (HCPC) about the officer's conduct.
9. The Council replied to Mr F's complaint in detail in December 2017. It explained the birth certificate registration had been the mother's choice.

Analysis

10. We cannot investigate the accuracy of an assessment given to a Court which the Court then uses to makes its decision.
11. It is reasonable to expect Mr F to tell the Court in his current proceedings if the Council's views are wrong and if this is why he does not have the contact with X he wishes for.
12. The Court approved the current carers. Mr F had the opportunity to tell the Court his concerns during the SGO proceedings and within the current proceedings.
13. The HCPC is considering a complaint about the officer's conduct and it is not appropriate for us to investigate the same issues.
14. It is unlikely our investigation into the birth registration would add significantly to the Council's reply to Mr F's complaint about this. As Mr F has a parental responsibility order, he can apply for the certificate to be reregistered.

Final decision

15. We will not and cannot investigate this complaint. This is because the Court approved the carers, it is reasonable for Mr F to have told the Court of his concerns and it is unlikely we would add significantly to the Council's reply.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: It is not possible to decide if a Council officer told Mr X the time of his school admission appeal when they spoke on the day of the appeal.

The complaint

1. The complainant, whom I shall call Mr X, complains there was fault in the way a panel conducted a school admission appeal.
2. He says he did lose the opportunity to attend the appeal because the Council failed to tell him the time of his appeal when he telephoned on the day, having mislaid the letter during a house move three days earlier.

The Ombudsman's role and powers

3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I 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), as amended*)

How I considered this complaint

5. I read Mr X's complaint and spoke to him on the telephone. I made written enquiries of the Council and considered the papers it sent me. I considered emails Mr X sent me. I considered the School Admission Appeals Code 2012. I shared a draft of this decision with both parties and invited their comments. I considered those I received.

What I found

What happened?

6. Mr X was due to move to a new house. He applied for a place in Reception at a primary school for his daughter, Y. The Council, which is the admission authority for the school, turned down the application as it was full. Mr X appealed against the refusal.
7. The appeal was due on a Monday. The Council wrote to Mr X with the date. He moved on the Friday before the appeal. He mislaid the letter. He told me he could

not remember the date and time of the appeal, but knew it was close. Mr X telephoned the Council on the Monday to ask the time and date. Mr X says the call was at 11.30am. The Council does not dispute this. This was three hours before the time set for the appeal, at 2.30pm. Mr X's new home and workplace were close to the appeal venue.

8. The two parties disagree about what was said during the call. It was not recorded and there is no corroborating evidence either way.
9. The Council says the officer to whom Mr X spoke told him the appeal was the same day and gave him the time.
10. Mr X says the officer told him he did not know the date and time, but would send him an email. He says he did not receive an email, but discovered the time and date the next day when he found the original letter during unpacking.
11. The School Admission Appeals Code 2012 does not say what panels should do if a parent fails to attend an appeal. The clerk's notes of the appeal show the panel waited 45 minutes beyond the time arranged, then heard the appeal in Mr X's absence. The Council confirmed in response to my enquiries that it is not usual practice to call a parent who does not attend an appeal, but instead to wait ten minutes in case a parent is late. The clerk's notes show the panel left a list of questions it would have asked Mr X had he been present. These included if he had completed his house move.
12. Mr X says, had he attended the appeal, he would have made more points he did not include in his written case.
13. The School Admission Appeals Code 2012 states that Councils can accept a fresh application if they feel there is a significant change of circumstances that justifies it. The Council confirmed it would not regard Mr X's change of address as new information justifying a fresh application.

Was there fault?

14. The two accounts of Mr X's call to the Council officer are completely different. The officer says he told Mr X the time. Mr X says the officer did not, but instead agreed to find out and email him the time. They cannot both be right. I do not need to be certain about a matter to reach a view. But there is no corroborating evidence either way that would allow me to reach a view that one version of what was said on the telephone is more probable than the other. Without corroborating evidence, I cannot say which party is right. For that reason alone, I cannot find fault.
15. As the School Admission Appeals Code 2012 is silent on the matter of what to do if a parent does not attend an appeal, I cannot say the Council's usual practice is fault.
16. The same Code leaves it to an admission authority's discretion whether a matter is a significant change of circumstances justifying considering a fresh application. The Council can therefore decide Mr X's change of address does not justify considering a fresh application.

Final decision

17. I have not upheld the complaint as it is not possible to decide on the balance of probabilities what was said during a telephone call.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr P's complaint that the Council's Schools Admissions Appeal Panel failed to provide his child with a place at School X. It is unlikely the Ombudsman would find fault which caused him to lose out on a school place.

The complaint

1. The complainant, whom I shall call Mr P, says the Council's Schools Admissions Appeal Panel did not properly consider his appeal for a place for his child, D, at School X.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We cannot question whether a school admissions appeals panel's decision is right or wrong simply because the complainant disagrees with it. We must consider if there was fault in the way the decision was reached. If we find fault, which calls into question the panel's decision, we may ask for a new appeal hearing. (*Local Government Act 1974, section 34(3), as amended*)
3. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - the fault has not caused injustice to the person who complained. (*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

4. I considered the information Mr P provided with his complaint. The Council provided me with the notes from the Appeal Panel hearing, the documents the Appeal Panel had and its decision letter. Mr P commented on a draft version of this decision.

What I found

Background information

5. Mr P applied on time for a place for his child, D, to start in September 2016 in Reception at School Y. He was unsuccessful and was allocated a place at School

X. He turned this down. He said he wanted D to go to School Y which D's siblings attended. And it was too difficult to get D to School X. D went to an independent school from September 2016.

6. Mr P appealed for a place at School Y then to the school's adjudicator and following their decision he made a further appeal for School Y. The process has been lengthy and unsuccessful.
7. Mr P says the school fees are a huge strain on the family finances and affect the lifestyle they are able to provide the whole family. He decided to seek a place at School X in October 2017. School X is now full for Year One. There are 30 pupils in the year and three teachers for the three infant years.
8. Mr P appealed the decision not to award a place at School X for D, to an Independent Appeal Panel who heard the case in November 2017. Mr P says he was not given enough time at the appeal to present his case. He felt the Appeal Panel rushed him.
9. The Appeal Panel refused Mr P's appeal and he complained to us.

The appeals panel's and Ombudsman's role

10. Independent appeal panels must follow the law when considering an appeal. The law says the size of an infant class must not be more than 30 pupils per teacher. There are only limited circumstances in which more than 30 children can be admitted. These are called excepted pupils.
11. There are special rules governing appeals for Reception and Years 1 and 2. Appeals under these rules are known as "infant class size appeals". The rules say the panel must consider whether:
 - admitting another child would breach the class size limit;
 - the admission arrangements comply with the law;
 - the admission arrangements were properly applied to the case;
 - the decision to refuse a place was one which a reasonable authority would have made in the circumstances.
12. What is 'reasonable' is a high test. The panel needs to be sure that to refuse a place was "perverse" or "outrageous". For that reason panels rarely find an admission authority's decision to be unreasonable in light of the admission arrangements.
13. We cannot question the decision if it has been properly taken. If the Appeal Panel has been properly informed, and used the correct procedure, then it is entitled to come to its own judgment about the evidence it hears.

The appeal in this complaint

14. The Council clearly told Mr P before the appeal the place had been refused because of the Infant Class Size rules. It also clearly explained what this meant.
15. The notes of the appeal hearing provide evidence the Appeal Panel followed the correct procedure. The Appeal lasted over an hour and a half. This is considerably longer than the average appeal. At the end of the appeal the notes show a copy of Mr P's additional written case was given to each Appeal Panel member to consider. His additional document is 18 pages long. Mr P says he was not given enough time after the first 20 minutes to explain what had happened with his appeal for a place at School Y and his views on why the Council's

processing of his application for School Y was flawed. This appeal in this complaint is about his application to School X not School Y.

16. The Appeal Panel decided that admitting another child to School X would breach the infant class limit for the school year 2016/17. There will be 30 pupils per teacher. A school can only admit more than 30 pupils per teacher if the extra pupils are classified as excepted pupils. D does not meet the criteria as an excepted pupil.
17. The Appeal Panel considered the admission arrangements and decided they complied with the law.
18. The Appeal Panel was also satisfied that the admission arrangements had been properly applied for Mr P's application for School X.
19. The Appeal Panel's decision letter records the reasons Mr P presented at the Appeal Panel for wanting a place. It is clear the Appeal Panel considered Mr P's reasons for wanting a place and decided the decision to refuse a place was one which a reasonable authority would have made in the circumstances and in light of the admission arrangements.
20. It is unlikely we would find fault in the Appeal Panel's decision. The information I have seen supports the Appeal Panel's decision.

Final decision

21. We will not investigate Mr P's complaint because it is unlikely we would find fault.

Investigator's decision on behalf of the Ombudsman