

The Ombudsman's final decision

Summary: Mrs Y complains about the lack of support provided by the Council in respect of her son who has complex learning difficulties. The Council upheld Mrs Y's complaint and offered a remedy at the first stage of the statutory children's complaints procedure. When Mrs Y asked the Council to progress her complaint to the second stage of the complaints procedure the Council refused. This is fault. The Council has agreed to progress the complaint, apologise to Mrs Y and remind the relevant staff about the regulations and guidance.

The complaint

1. Mrs Y complains about the Council's failure to provide agreed respite provision for her disabled son.
2. The lack of provision caused significant distress and had a negative impact on her son's wellbeing.

The Ombudsman's role and powers

3. 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'. 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. If we are satisfied with an organisation'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*)

How I considered this complaint

5. During my investigation I discussed the complaint with Mrs Y and considered the complaint correspondence.
6. I contacted the Council to clarify under which procedure it had considered Mrs Y's complaint.
7. Mrs Y and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

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8. 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 this decision with Ofsted.

What I found

Children's statutory complaints process

9. The law sets out a three-stage procedure for councils to follow when looking at complaints about children's social care services. The statutory guidance, *'Getting the Best from Complaints'*, explains councils' responsibilities in more detail.
10. The first stage of the procedure is local resolution. Councils have up to 20 working days to respond.
11. If a complainant is not happy with a council's stage one response, they can ask that it is considered at stage two. At this stage of the procedure, councils appoint an investigator and an independent person who is responsible for overseeing the investigation. Councils have up to 13 weeks to complete stage two of the process from the date of request.
12. The statutory guidance makes clear that: "Where a complaint is accepted at Stage 1, the complainant is entitled to pursue their complaint further through this procedure except in the case of cross boundary issues. In all other instances, once a complaint has entered Stage 1, the local authority is obliged to ensure that the complaint proceeds to Stages 2 and 3 of this procedure, if that is the complainant's wish"
13. This approach is echoed in the LGSCO's own guidance, which says we will accept early complaints... "Only in very limited circumstances. The guidance explains the conditions a complaint needs to meet after stage two, to be considered by us instead of continuing to a stage three review panel. These are:
- Stage two has delivered a robust report, a complete adjudication and all complaints (or all significant complaints) have been upheld; and
 - The council has provided a clear action plan for delivery and agrees to meet most or all the complainant's desired outcomes"

"The decision about progressing to stage two lies with the complainant, not the council. Neither the regulations nor the guidance allow a council to refuse a stage two complaint because the stage one complaint was upheld, or because the council thinks there is no substance to the complaint.

This is also the case for stage three, apart from the limited circumstances outlined later. The guidance says once a complaint has entered stage one, the council must ensure the complaint continues to stage two and three if the complainant wishes"

14. If we investigate a complaint and find a council has not followed the statutory complaint procedure, we will usually recommend the council progresses the complaint to the next stage. We will uphold the complaint with a finding of maladministration and injustice.

What happened

15. Mrs Y has a twelve-year-old son, whom I will call B. He has complex learning difficulties and receives social care support from the Council. Mrs Y is entitled to overnight respite provision. Mrs Y complained to the Council about several issues, including:

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- Failure to provide agreed short breaks
 - Provision for B was terminated without adequate notice
 - Poor communication
 - Failure to consult Child and Adolescent Mental Health Services (CAMHS)
16. The Council accepted Mrs Y's complaint under the statutory children's complaints procedure. It upheld Mrs Y's complaint at stage one, primarily because it found Mrs Y had missed 65 nights of respite provision between April 2020 and September 2021. The Council offered a significant financial remedy in recognition of the distress caused to Mrs Y.
17. Mrs Y asked the Council to escalate her complaint to the second stage of the statutory procedure. The Council considered her request but decided "... we would not investigate your complaint at Stage 2 of the complaints process. This is because the complaint was upheld, and apologies and a financial remedy were offered. Further investigation would not result in a different response or outcome".
18. Mrs Y approached the LGSCO for an impartial review of her complaint.

Was there fault by the Council causing injustice?

19. The issues Mrs Y raised in her complaint related to the Council's actions and the social care support provided in respect of B. The law requires certain complaints to be considered through the statutory children's complaint investigation process. Mrs Y's complaint met the criteria for the statutory process. The Council accepted her complaint at stage one and should have progressed Mrs Y's complaint to the second stage when she asked it to do so. Not doing this was fault.
20. To remedy Mrs Y's injustice, the Council has agreed to undertake the remedial actions listed at the end of this statement.

Agreed action

21. Within four weeks of my final decision the Council will:
- Send a written apology to Mrs Y for the time and trouble caused by the Council's refusal to commission a stage two investigation of her complaint;
 - Contact Mrs Y and commence a stage two complaint investigation under the children's statutory complaints procedure; and
 - Remind staff dealing with complaints that, in line with the regulations and guidance, complainants are entitled to pursue their complaints through the statutory process, even when the Council has provided a remedy at stage one. The Council should share the LGSCO's 'Guide for Practitioners' with relevant staff members.

Final decision

22. We have completed our investigation with a finding of fault causing injustice for the reasons explained in this statement.

Investigator's decision on behalf of the Ombudsman