

OMBUDSMAN REPORT – REPORT NO 06/C/00693

Executive Summary

This report outlines the background to the Ombudsman's report regarding Mr C and the 3 W children. The Ombudsman has made a finding of maladministration and injustice against the council

1.0 Background

- 1.1 The Local Government Ombudsman's report was received by the Council on 11 December 2007. The Local Authority had previously had the opportunity to comment on a draft report in April 2007. The Local Authority had accepted the findings of the draft report, and the Ombudsman had suggested a local settlement was still an option. The Local Authority had agreed the financial settlement suggested of £10,350 based on the fostering rates at the time, for the dates the two children had been cared for.
- 1.2 The report outlines the 3 parts of the complaint by Mr C against the Local Authority: that the Local Authority did not make checks when the W children went to live with Mr C, and the children were not visited; that Mr C was not given financial support for children who were fostered with him and that there were excessive delays in putting the complaint through the complaints process and in particular a Stage 3 Complaints Review Panel was not convened.
- 1.3 The investigator found in favour of the complainant and made a finding of maladministration and injustice.
- 1.4 The W children were on the child protection register; the child protection plan had been for the children to live with their father Mr N, but he was unable to undertake this at the time for all the children. D, Mr C's daughter and half sister to the W children, approached the Local Authority with her father and offered to care for the children. This was agreed and 2 of the children moved with the mother's agreement to Mr C and his family in October 2004 while the eldest child lived with Mr N for the majority of the time. Council records show the children left Mr C's care to live with Mr N in June 2005, but Mr C says they remained with him until 3 September 2005.
- 1.5 The view of the social work team at the time was that this was an arrangement initiated by and agreed with family members as part of a child protection plan and that this did not make the children Looked After. However, it was accepted by the Local Authority in the response to the Stage 2 complaint investigation that regardless as to whether the children were Looked After or not, as children on the child protection register, checks including police checks and a visit to the proposed accommodation should have been made.

- 1.6 The children were also not visited for 5 weeks following the move to Mr C and his daughter. Again, the Local Authority had accepted in response to the Stage 2 complaint, that this was unacceptable and in contravention of the child protection procedures.
- 1.7 In deciding financial support, as the social work team viewed this to be a family arrangement, the expectation was that the mother and father of the children should provide financial support. However, Mr C did incur significant set up costs in having the children move in with him, and the Local Authority agreed to pay £400 as an outcome of the Stage 2 complaint. Mr C remained unhappy with this and asked for his complaint to move to Stage 3.
- 1.8 The Complaints Investigator did not accept that viewing this solely as a family arrangement was adequate, and that there was a failure to assess the needs of Mr C for financial support, either under s17 of the Children Act 1989 (financial assistance in cash or kind for a child in need) or to regard the children as looked after and pay Mr C the appropriate fostering allowances.
- 1.9 For family members to be viewed as foster carers, there first needs to be a decision that the children must be Looked After by the Local Authority. If this is the case, the Local Authority has a duty to look towards placing children with family unless this would not be in their best interests in promoting their welfare. If the child is Looked After and placed with a family member, the family member must have basic checks undertaken including police checks on all adult members of the household, checks with schools and other agencies for children and a visit to the property. The family member must sign an agreement as to the expectations of their role as a foster carer, and an interim assessment must be completed by the fostering service and presented to the foster panel within 6 weeks of the placement beginning. The family member is paid as a foster carer.
- 1.10 Both the investigating officer at Stage 2 of the Complaints process and the Ombudsman believe that the children should have been viewed as Looked After and Mr C seen as a foster carer and paid as such. The Local Authority accepted this in its agreement for the financial settlement but would note that this is a very complex area for children's social care under the Children Act 1989 and case law influences and changes the interpretation of when a child is Looked After when placed with family on an ongoing basis. In this case, financial support should have been considered under s17 at a much earlier stage and the decision making as to the legal status of the children should have been much clearer, and recorded on the case file.
- 1.11 Mr C notified the Ombudsman in June 2005 that he was not satisfied with the response to his Stage 2 complaint. The majority of the aspects to his complaint had been totally or partially upheld, but he wanted compensation and had asked the Local Authority for a Stage 3 Review Panel in May 2005, but had received no response. The Ombudsman asked the Local Authority to convene a panel but when informed in April 2006 that this had not taken place, decided to investigate.
- 1.12 The Ombudsman is particularly unhappy at the delay in the Stage 3 panel being convened, at the reasons given by the Local Authority as to why this did not take place (not being able to find a chair) and the delay in responding to her office's enquiries about the delay.

2.0 Recommendations

2.1 The Ombudsman makes 3 recommendations:

- the council should review its practices and procedures to ensure that there will be no repetition of children being placed with carers without proper checks being made
- the council should audit a sample of at least 10 emergency placements to establish what checks have been made compared to the regulations and good practice
- The outcomes of the above should be reported to the Ombudsman and the Childrens Services and Lifelong Learning Overview and Scrutiny Committee within 6 months
- The council should arrange for quarterly reports to be made for the next 2 years to the Childrens Services and Lifelong Learning Overview and Scrutiny Committee showing the number of complaints received and the stage reached in the statutory process compared to the required timescales together with a note of any action being taken to remedy any problems

3.0 Actions

- 3.1 The Local Authority had introduced a procedure for placement of children with family/friends in February 2005. This is currently in the process of being revised and updated and some changes already introduced. All requests to authorise an emergency placement must now be forwarded to the Strategic Service Manager (Children and Families) on a prescribed form which specifies what checks and visits must have been undertaken. The same senior manager also makes the decision as to whether the child is Looked After and whether the family member is therefore a foster carer; and if the child is not Looked After, what support is offered to the family member to assist in caring for the child.
- 3.2 All records relating to emergency placements are now held centrally by the Strategic Service Manager. A report will be presented to the Childrens Services and Lifelong Overview and Scrutiny Committee and Ombudsman in March 2008 outlining the revision of the practice and procedure and the findings from the audit of 10 case files. This report will also be brought to this Committee for information.
- 3.3 Responsibility for social care complaints for children, young people and families was transferred to the Children and Young People Department in July 2006. The Children's Complaints Manager with the Customer Resolution Team has cleared a backlog of Stage 3 complaints transferred into the new department and at this stage there are no historical cases waiting. In line with the legislative changes in managing complaints, there is a designated Complaints Manager who tracks complaints and provides a weekly report to all managers in children's social care which details the stage of each complaint, the timescales for response and highlights any which are at risk of falling outside of the statutory timescale.
- 3.4 Under new regulations which came into effect in September 2006, the Complaints Manager must make an annual report to the Childrens Services and Lifelong Learning Overview Committee. The first report will be presented to committee in March 2008 which will cover the period of 1st September 2006 to 31st September 2007, with an update for the remaining 6 months, and reports will be made on a quarterly basis thereafter, in accordance with the Ombudsman's recommendations.

It is a requirement under the legislation that the Council advertises by public notice in newspapers circulating in the area the fact that a report has been issued by the Ombudsman. Notices were placed in the Daily Post and Wirral Globe on 12 December 2007. The law also requires that the report be available for public inspection for a period of 3 weeks. The report was available for inspection at Wallasey Town Hall for 3 weeks from 17 December 2007. There is also a legal requirement that the authority formally responds to the Ombudsman within 3 months of the report being published setting out the actions which we have taken and/or propose to take as a response. It is proposed that a response will be sent setting out the actions referred to in paragraphs 3.1 – 3.4 of this report.

4.0 Financial and Staffing Implications

It has been agreed with the Ombudsman to pay the settlement figure of £10,350 to Mr C. This amount is based on the fostering rates for the period October 2004 - September 2005, including any allowances but less child benefit which was received. It also includes £250 compensatory amount for the time and trouble in making the complaint.

5.0 Equal Opportunities Implications

All service users of council services can make representation to the Local Government Ombudsman. However, it is expected that the complainant has exhausted the council's internal complaints process before the Ombudsman considers if there is a basis for investigation.

6.0 Human Rights Implications

The names of the complainant, the children and other adults mentioned in the report are pseudonyms as under the Local Government Act 1974, the Ombudsman shall not use the real names of people in the report nor publish information likely to identify them and the family's right to privacy is respected. There has been widespread media reporting of the Ombudsman's findings but the family have not been identified.

7.0 Local Agenda 21 Implications

None

8.0 Community Safety Implications

None

9.0 Planning Implications

None

10.0 Local Member Support Implications

None

11.0 Background Papers

- 11.1 The Ombudsman's report was used in preparing this report as was the Local Authority's complaints file in relation to this case

12.0 RECOMMENDATIONS

It is recommended that the committee:

- 12.1 Note the findings from the Ombudsman's report and agree the actions proposed by the Children and Young Peoples Department in response to the Ombudsman's recommendations; and
- 12.2 Authorise the Acting Monitoring Officer and Proper Officer to respond to the Ombudsman setting out the response to the Ombudsman's report as outlined in this report.

Howard Cooper
Director of Childrens Services