

METROPOLITAN BOROUGH OF WIRRAL COUNCIL

CHILDRENS SERVICES AND LIFELONG LEARNING OVERVIEW AND SCRUTINY
COMMITTEE: 18 MARCH 2008

REPORT OF THE DIRECTOR OF CHILDRENS SERVICES

OMBUDSMAN REPORT – REPORT NO 06/C/00693

Executive Summary

This report summarises the Ombudsman's report regarding Mr C, where a finding of maladministration and injustice was made against the authority. The Ombudsman recommended a report be made to the Overview and Scrutiny Committee regarding the outcome of a review of practices and procedures and an audit of emergency placements.

1. 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 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 caring role at that 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 went to live with Mr N from 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 between 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 at Stage 2 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 as 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 the level of financial support and asked for his complaint to move to Stage 3 of the Complaints Procedure.
- 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 ongoing support, either under s17 of the Children Act 1989 (financial assistance in cash or kind for a child in need) or as a foster carer.
- 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 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, check 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. In these circumstances the family member is paid as a foster carer.
- 1.10 Both the investigating officer at Stage 2 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.
- 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 and he asked the Local Authority for a Stage 3 Review Panel in May 2005, but had not had a 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.

- 1.13 This report is in response to two of the Ombudsman's recommendations: that a review of practice and procedures be undertaken to ensure that there will be no repetition of children being placed with carers without proper checks being made and that a sample audit of 10 emergency placements be undertaken to establish what checks have been made compared to the regulations and good practice. The Ombudsman recommended that the outcome of both be reported to this committee within 6 months of the report. It was further recommended a quarterly report regarding complaints be presented and this is subject to a separate report.

3. Actions

3.1 Review of practices and procedures

- 3.2 The authority had introduced a policy and procedure in regard to family and friends emergency care in February 2005. When a child becomes looked after and is placed with family or friends carers, there are a number of obligations on the local authority under Regulation 38 of the Fostering Regulations 2002. These include undertaking checks (including police checks) on all adults in the household, and agency checks on the children living there. The accommodation must be visited and inspected before the child is placed, and an agreement signed which outlines for the carer his/her role and expectations as a foster carer. Regulation 38 placements are only to be used where there is a need for an emergency placement for a looked after child and the placement is only lawful for 6 weeks. During this time, a fostering assessment must be undertaken and be presented to the fostering panel to make a recommendation as to the approval and registration status of the carer. Where a placement is planned, a fostering assessment should be undertaken and presented to the fostering panel before a child is placed.
- 3.3 When a Looked After child first enters care, or changes placement, there is a statutory minimum visiting requirement. For children placed with family and friends under Regulation 38, this is weekly until the placement is approved by the fostering panel. Once approved, the minimum frequency of visiting is every 6 weeks for the first 12 months and then every 3 months. The social worker should complete a statutory visit form which specifies what enquiries need to be made on each visit, and this form must be signed by the Team Manager. The department undertakes random audits of case files on a monthly basis, where checks are made to see if children are being visited in line with procedure, with action plans on each file if there is any missing information. The Team Manager should also check case files on a regular basis and review case files during monthly supervision with social workers.
- 3.4 The introduction of the Integrated Childrens System from 1st April 2008 will enable an automatic alert to be generated to the social worker and Team Manager. Timescales for visiting children and a number of other key social work tasks will be built into the system, alerting social workers when visits are due. If a visit is overdue, an alert will be automatically generated to the Team Manager within 24 hours, who will then enquire with the worker if the visit has been completed and not recorded, or not completed. The likelihood of children not being visited without managers' being aware will therefore, be substantially reduced. A business report will be requested on 14 April 2008 to confirm that the ICS system has been fully implemented and to confirm that visits to all Looked After children have taken place as required.
- 3.5 This report will also cover visits to children on the child protection register. There is no statutory visiting requirement for this group, but Wirral Local Safeguarding Children's

Board procedures stipulate that a child should be visited on a weekly basis for the first 3 months, and fortnightly thereafter.

- 3.6 The Regulation 38 procedure was further amended in June 2006 with the introduction of a Regulation 38 request form which details exactly what checks must be undertaken, the outcome and dates recorded, the outcome of the accommodation visit and the purpose of the placement. This must be accompanied by the placement agreement, and supported by the Team Manager and District Manager.
- 3.7 The agreement to the placement is made by the Strategic Service Manager who also determines if the child's status is a Looked After child. If agreed, the request for a fostering assessment is forwarded to the fostering service. A central record and database has been held by the Strategic Service Manager, to Regulation 38 requests since June 2006.
- 3.8 The Ombudsman report has highlighted a lack of clarity however, where children are not viewed as looked after but are being cared for by family and where the local authority has been involved. The current policy and procedure on Regulation 38 placement with family and friends has therefore been revised as a policy and procedure for children living with family and friends care overall. This outlines the different types of family and friends care, and refers staff to more specific procedures. The role of the local authority where a child is not looked after, but has been involved in the agreement for a child to be cared for by other family members is defined, and examples given as to when this could occur and what support can be given to these arrangements under s17 of the Children Act 1989. The importance of confirming the status of the child at the beginning of the arrangement is emphasised. The draft version of the revised policy and procedure is attached as an appendix to this report.
- 3.9 As part of the progress of Care Matters into law, this has been recognised by the government as an area that can create confusion and uncertainty for family members and local authorities and it is probable that the legal duties and responsibilities in these cases will be clarified.

3.10 Outcome of audit of emergency placements

- 3.11 Since June 2006, there have been 71 requests for Regulation 38 approval for looked after children to be placed with family and friends carers. Of these, 63 were approved as all checks were evidenced. Comments regarding plans for the child and timescales for presentation to the fostering panel were set. The fostering service has been able to complete assessments and present to the fostering panel, the majority of cases within 6 weeks. Where this has not been feasible, an exemption request has been made to the Strategic Service Manager. Not all proceeded to fostering panel as the placement was for holiday purposes, or short-term while another placement was identified for the child/ren.
- 3.12 7 were not approved on original submission, either because police and agency checks led to an issue of concern which meant the proposed placement was not conducive to the child's welfare, or checks were not evidenced. In 3 cases, social workers were asked to resubmit requests when checks were completed and the accommodation visited; these were subsequently approved.
- 3.13 All teams have been asked to review cases where a child who is not looked after is living with family members and to identify on what basis the child is living with family, what support is being offered under s17 of the Children Act 1989 and consider if the

child could be viewed as looked after. Social workers have been requested to prepare a report for the Strategic Service Manager on those cases where there is a lack of clarity regarding the child's status for a decision as to whether the child is looked after. At the time of preparing this report, all information has not yet been returned but we will be in a position to give a verbal report at the committee meeting.

3.14 Standards Committee on 28th January 2008.

3.15 A report into the findings of the Ombudsman was presented to the Standards Committee on 28th January 2008. The Committee concluded that 'whilst members were generally satisfied with the actions proposed, a number expressed concern about the breakdown in the procedures that were in operation at the time and requested a further report that would identify precisely what had gone wrong and would reassure members that such lapses would not recur'.

The Standards Committee resolved:

(i) that the Committee note the findings of the Ombudsman's report and agree the actions proposed by the Children and Young People's Department in response to the Ombudsman's recommendations;

(ii) that the Acting Monitoring Officer and Proper Officer be authorised to respond to the Ombudsman setting out the response to the Ombudsman's recommendations, as outlined in the Directors report;

(iii) that a further report be submitted to this Committee and the Children's Services and Lifelong Learning Overview and Scrutiny Committee on the line now proposed.

3.16 Conclusion

3.17 The in depth Stage 2 complaints report into this case, completed in March 2005, highlighted 'significant failings in implementing the child protection procedures'. The first significant failure was the lack of clarity about the status of the arrangements for the children moving to live with Mr C. and his adult children. As highlighted in the body of the report, it is crucial it is made very explicit, whether children are placed with family and friends as looked after children or moving to live with them as part of an agreed family arrangement. This lack of clarity resulted in different assumptions between the Local Authority and Mr C. about the type and level of support he would receive. The lack of initial clarity led to the situation being unclear for the duration of the time the children lived with Mr C, although Mr C did receive written information regarding the children's plans once their case transferred to a different Team.

3.18 The required visit to assess the accommodation, and the required statutory checks did not take place prior to the children moving to live with Mr C. The allocated social worker met with Mr C. at the social work office prior to the children's placements, but then due to annual leave, followed by a period of sickness absence did not make the required visits to the household. At the time this situation occurred there was a 32% permanently employed social worker vacancy rate across this service area. However, notwithstanding this, it was recognised at the time, that the practice in this case, fell well short of what was acceptable, and matters were addressed accordingly.

3.19 The subsequent revisions to practice and procedures taking place incrementally since 2005, have a) provided further clarity and rigor regarding children being safely placed under Regulation 38 and b) the most recent amendments presented to this committee

for consideration, provide greater clarity about when a child should be regarded as looked after and when support should be provided for children 'in need' under Section 17 Children Act 1989.

- 3.20 The audit of cases provides a positive picture of the internal scrutiny processes, and the current review to determine absolute clarity about the basis of each child's status when living with family or friends, will further support the prevention of a similar situation reoccurring. The much improved staffing situation additionally supports closer oversight and procedural compliance in respect of children Looked After and / or placed on the Child Protection register. This is an area of work which will remain under constant scrutiny and review. The Children's Social Care Branch is determined to embed the lessons learnt from the Ombudsman's findings, and to continuously improve practice.

4. Financial and Staffing Implications

The settlement figure of £10,350 has been made to Mr C. This amount is based on the fostering rates for the period June-September 2004, 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. 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. 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. Local Agenda 21 Implications

None

8. Community Safety Implications

None

9. Planning Implications

None

10. Local Member Support Implications

Children living with family and friends, as fostered children, or through family

arrangements will live in all wards across the Borough.

11. 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.

RECOMMENDATIONS

It is recommended that the committee consider this report into the Ombudsman's findings, the revised policy and procedures and outcome of the audit of cases.

Howard Cooper
Director of Childrens Services