

## **Report by the Local Government and Social Care Ombudsman**

**Investigation into a complaint against  
Surrey County Council  
(reference number: 15 012 105)**

**6 July 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 15 012 105 against Surrey 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 and Mrs P – the complainants

S – Mr and Mrs P's son

## Report summary

### Children's Services

When Mr and Mrs P asked for help in October 2009 the Council failed to properly assess the family's need for support. As a result, the family was without support until July 2011. The support the Council offered in July 2011 was too little and too late: Mr and Mrs P asked the Council to take their son, S, into care in January 2012. S lived in a children's home longer than necessary because the Council failed to progress Mr and Mrs P's request for a 52-week residential special school until they threatened litigation. The Council then delayed unreasonably in responding to their complaint.

### Finding

Fault found causing injustice.

### Recommendations

We recommend the Council:

- apologise to Mr and Mrs P, and their children, for the faults we have identified;
- refund Mr and Mrs P's legal costs (£2,200), including the Legal Aid Statutory Charge (£5,400);
- pay the family £12,000 to recognise the significant distress suffered by the family as a result of the Council's faults set out in this report; and
- pay Mr and Mrs P an additional £1,000 for their time and trouble pursuing their complaint and the additional distress this caused.

The Council has accepted our findings and recommendations and extends its formal apologies to the family.

## Introduction

1. Mr and Mrs P complain about the Council's Children's Services department. In particular, they complain:
  - the Council did not provide adequate support between 2009 and 2012; and
  - the Council placed their son, S, in unsuitable accommodation between January 2012 and August 2013.
2. Mr and Mrs P are not happy with the Council's response to their complaint.
3. When a council has investigated a complaint under the Children Act complaints process, we would not normally re-investigate it. We may consider whether a council has properly considered the findings and recommendations of the independent investigator, and any remedy the Council offers.
4. Mr and Mrs P explained in detail why they are dissatisfied with the Council's response to their complaint. We have carefully considered everything they said, but we have not addressed every complaint they made. Instead, we focused our investigation on those actions which have caused them significant injustice so that we can consider the remedy the Council offered.

## Legal and administrative background

5. We investigate 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), as amended*)
6. 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*) We decided to investigate Mr and Mrs P's complaint because they complained to the Council on time and the Council took a long time to respond to their complaint. It is not Mr and Mrs P's fault their complaint to us was more than 12 months after the events they complain about.

## How we considered this complaint

7. We examined relevant files and documents provided by Mr and Mrs P and the Council. We compared what happened with what should have happened as set out in legislation, Government guidance and the Council's policies.
8. We gave Mr and Mrs P and the Council a confidential draft of this report and invited them to comment. We took account of their comments before we finalised our report.

## Investigation

### Background

9. Mr and Mrs P have four children. Their eldest child, S, has severe autism.
10. Mr and Mrs P asked the Council to help in October 2009. They were struggling to cope with S's violent behaviour and were concerned about the risk he posed to their other children.
11. In January 2012, Mr and Mrs P could no longer cope and asked the Council to accommodate S. The Council placed S in a specialist children's home for young people with autism.
12. S moved to a 52-week placement at a residential special school in August 2013.

### Support between 2009 and 2012

13. In October 2009, when S was six, Mr and Mrs P asked the Council for help. Mrs P said she was struggling to cope and was concerned about the impact of S's violent behaviour on her other children. She said she was at breaking point and desperate for help. The Council completed a screening assessment and informed Mr and Mrs P that S was not eligible for services.
14. The Council's records show that Mr and Mrs P asked for help again less than three weeks later. S's behaviour had deteriorated and Mrs P was finding it hard to look after all the children when Mr P was at work. S's taxi had refused to transport him to school. S frequently wet and soiled himself. S's Consultant Paediatrician wrote to the Council in support. She explained that S's difficult behaviour took the form of sudden, uncontrolled aggression, usually towards his mother or female carers, who he would bite and kick. The Council wrote to the Consultant Paediatrician to explain that S did not meet the Council's criteria for support.
15. There are other records which show the family's need for support. The June 2010 review of S's Statement of Special Educational Needs noted that he had stopped using the toilet altogether; he would bite, kick and scratch; and he attempted to run away from school when he was angry. The June 2011 review noted the family's desperate need for respite. The Headteacher wrote to the Council to express her concern. A Community Nurse said the family needed respite. Mrs P also contacted the Council again. She said the family was at breaking point.
16. The Council carried out an initial assessment in July 2011. The Council agreed a care package of Direct Payments to enable Mr and Mrs P to purchase support: eight hours a month during term-time and eight hours a week during holidays, although the Council was not able to arrange for the care to start before the end of the school summer holidays. Instead, the Council made a referral to a charity citing the family's 'desperate need for support'. The charity provided support during the final week of the school holidays. At the beginning of November 2011, Mr and Mrs P asked for help because S's refusal to use the

toilet meant they were short of nappies and having to deal with significant amounts of laundry. The Council said it could not help because the NHS was responsible for the supply of nappies. From the end of November 2011, the Council arranged domiciliary support for 1.5 hours each weekday morning.

### **Consideration**

17. The Council accepts that it failed to properly assess the family's needs when Mr and Mrs P asked for help in 2009. It should have carried out a core assessment. A core assessment is a detailed assessment of a child's needs and the parents' capacity to respond. It is carried out by an experienced social worker. The Council should also have assessed Mr and Mrs P's needs as carers. The Council did not carry out the correct assessments. The Council says that its staff misapplied the eligibility criteria.
18. The Council says that as a result of its mistakes, the family was without appropriate support between October 2009 and July 2011. This is an injustice. The Council offered a payment of £7,500 to recognise the support the family should have received.
19. There were problems with the support the Council proposed in July 2011:
  - the Council did not set up Direct Payments until after the school holidays. Mrs P said it was in the school holidays that she most needed help; and
  - the Council could not provide domiciliary care until the end of November because of staff shortages.
20. Although the records show the Council attempted to make up for its inability to provide appropriate support at the right time by asking a charity to help, the Council's response falls short and does not amount to an adequate response to the urgent need described in the Council's own assessments.
21. Further, the Council was wrong to say it could not help when Mrs P complained about the problems caused by S's refusal to use the toilet and the shortage of nappies. The Council failed to consider its power to provide assistance with laundry, and there is nothing to stop the Council providing nappies. The Council should have based its decisions on need. Instead it refused to accept responsibility and did nothing about an unmet need.
22. When Mr and Mrs P asked for overnight respite care for S, the Council refused. The Council explained this was the result of a misunderstanding among officers who incorrectly believed the Council would not provide respite for children under 10. Mr and Mrs P believe that if the Council had provided overnight respite, they would not have had to put S in to care as soon.
23. The Council also failed to properly consider the impact of S's violent behaviour on his siblings. Mrs P reported S had injured his siblings on a number of occasions, yet the Council never visited to see their injuries or to assess whether they were at risk of harm and in need of protection. Mrs P and S's carers also suffered injuries, yet there is no evidence the Council re-assessed risk or took action in response.

24. The Council's assessment of the family's need for support was inadequate. S regularly needed one to one support at school and two to one support when out-and-about. There is no evidence the Council adequately considered how Mrs P could meet the needs of S and his three young siblings when Mr P was at work.
25. On 16 January 2012, Mr and Mrs P asked the Council to take S in to care because they could no longer cope. They sent S to school as normal and asked the Council not to bring him home at the end of the day. Mr and Mrs P described the trauma they experienced putting S into care in such an unplanned way. The fact they felt this was their only option, and S remained in care, further calls into question the Council's assessment of the family's needs and the support it provided.

### **S's accommodation between January 2012 and August 2013**

26. The Council accommodated S in a specialist children's home for young people with autism. He lived there for almost 18 months until he moved to a 52-week residential school placement in August 2013.
27. Mr and Mrs P complain about S's safety at the home. They say they were notified of more than 60 incidents in the first 6 months, including injuries, escapes, prolonged 'rages', and members of the public contacting the Police with concerns about S's care. In May 2012, S was found hanging out of an upstairs window. Mr and Mrs P are not happy that S was left unsupervised in his room. The Council's investigation concluded there was little evidence to show the Council reviewed and monitored risk in response to the incidents reported by the home. This is fault. Mr and Mrs P believe that taken as a whole, these incidents show the home did not meet S's needs. The incidents, and the lack of response, call into question the suitability of the home for S.
28. Mr and Mrs P believed the children's home was a temporary placement. They do not consider the home could meet S's needs. They complain about delay in moving S to an alternative placement. They say they had requested a 52-week residential school placement long before the Council accommodated him in January 2012.
29. In June 2012, S's social worker calculated the cost of Mr and Mrs P's preferred 52-week residential school placement was less than 1% more than the cost of his accommodation at the children's home, his special school place and school transport. The social worker supported Mr and Mrs P's preference for a 52-week residential school placement. However, it was not until Mr and Mrs P threatened to take legal action against the Council in March 2013 that it made the necessary arrangements and quickly agreed to fund a 52-week residential school placement.

### **Consideration**

30. The Council took too long in considering Mr and Mrs P's request for a 52-week residential school placement once the Council accommodated S in January 2012. Further, it deprived them of an opportunity to pursue a 52-week residential school placement through an appeal against S's Statement of Special Educational Needs since the Council sent paperwork from the May 2012 annual review, completed in October 2012, to the wrong address.



31. The Council says it has reviewed its decision making processes so that education and children's social care work together to consider cases like S's that need a coordinated response. This could have happened much sooner in S's case.

### **Mr and Mrs P's complaint to the Council**

32. On 1 March 2013, Mr and Mrs P complained with the help of a solicitor about the care S received at the children's home. They asked for a 52-week placement at a residential school. They also complained about the lack of support they had received before the Council accommodated S.
33. The Council responded to Mr and Mrs P's complaint by letter dated 9 April 2013. The Council said it had done nothing wrong. Mr and Mrs S were not happy with the Council's response and asked the Council to consider their complaint at Stage 2 of the Children Act complaints process. The Council declined. Instead, the Council acknowledged that it could have assessed the family's need for support earlier and offered a payment of £7,500. Mr and Mrs P remained dissatisfied and complained to us. We decided the Council should consider Mr and Mrs P's complaint at Stage 2 of the Children Act complaints process. This is a formal procedure, set out in law, which councils must follow to investigate certain types of complaint. It involves:
- a written response from the Council (Stage 1);
  - the appointment of an independent investigator to prepare a report (Stage 2); and, if the person making the complaint requests
  - an independent panel to consider their representations (Stage 3).
34. Regulations set out the timescales for the process. The Council should provide a response at Stage 1 within 10 working days, at Stage 2 within 25 working days (or exceptionally within 65 working days) and convene a review panel at Stage 3 within 30 working days.
35. The Council appointed an independent investigator and began an investigation. The investigator completed her report on 20 October 2014. She upheld 23 complaints, partially upheld a further 12 complaints, did not uphold 15 complaints and was not able to make a finding on 5 complaints. The Council apologised for the complaints she upheld. Mr and Mrs P remained dissatisfied. The Council attempted to arrange a Stage 3 Panel to consider their complaint, but Mr and Mrs P had lost faith in the Council's complaints process. We accepted their complaint in October 2015.

### **Consideration**

36. The Council has not handled Mr and Mrs P's complaint well. Its Stage 1 response did not find any fault by the Council in the services it provided Mr and Mrs P and their family. When Mr and Mrs P asked for an independent investigation at Stage 2, the Council refused. Instead, it accepted the Council had made mistakes and offered a substantial remedy. Mr and Mrs P had to complain to us twice before the Council agreed to comply

with the statutory Children Act complaints process. The Council has significantly exceeded the timescales set out in the regulations.

## Conclusions

37. The Council's mistakes have had a significant impact on Mr and Mrs P and their children.
38. **Lack of support:** the Council accepts that its failure to properly assess the family's needs in October 2009 meant they were without support until July 2011. However, once the Council agreed to provide support in July 2011, there were significant delays which meant the family was without support for the school summer holidays. The Council also failed to consider support to cope with S's refusal to use the toilet, and overnight respite care.
39. **Impact on S:** Mr and Mrs P say that S's behaviour in his 52-week residential school placement has improved significantly. The records of the Council's statutory visits support their view. This suggests that S is happier and that his needs are being met. The delay in providing this level of support is an injustice to S.
40. **Impact on S's siblings:** S's siblings have suffered injustice from the lack of support by the Council. They have been the target of S's violent behaviour. The Council failed to consider how Mrs P could meet their needs while caring for S on her own.
41. **Distress:** Mr and Mrs P described the distress they suffered as a result of having to ask the Council to accommodate S. Their distress was compounded by the circumstances in which S went into care. Mr and Mrs P felt they could no longer cope and had no options because their attempts to secure support from the Council had not improved their situation.
42. **Time and trouble:** Mr and Mrs P have been to considerable time and trouble in pursuing their complaint, including four complaints to us, to obtain the response they were entitled to from the Council.
43. **Legal costs:** Mr and Mrs P spent £2,200 on legal fees to engage a solicitor to challenge S's placement in 2012. S then secured Legal Aid. As a result, Mr and Mrs P are now subject to a Legal Aid Statutory Charge (£5,400).

## Decision

44. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr and Mrs P and their family. The Council should take the action identified in paragraph 47 to remedy that injustice.

## Recommendations

45. We have published [guidance](#) to explain how we calculate remedies for people who have suffered injustice as a result of fault by a council. Our primary aim is to put people back in the position they would have been in if the fault by the Council had not occurred. When this is not possible, as in the case of Mr and Mrs P, we may recommend the Council

makes a token payment to acknowledge what could have been avoidable distress, harm or risk that is the result of fault by the Council.

46. We also consider the impact on other members of the complainant's household, and may recommend a separate payment for them in line with our guidance on distress if we consider they too have suffered injustice as a result of fault by the Council.
47. Fault by the Council has caused Mr and Mrs P and their family injustice as described above. To remedy this injustice, we recommend the Council:
- apologise to Mr and Mrs P for the Council's failure to respond appropriately to their requests for help from October 2009, the Council's failure to provide any assistance until July 2011, the delays in providing Direct Payments and arranging domiciliary care following the July 2011 assessment, the failure to consider support for S's refusal to use the toilet and nappy shortage, the failure to assess risk and respond appropriately following the 60 incidents in the children's home, the delay in considering their request for a 52-week residential school placement, and the delay in responding to their complaint;
  - apologise to Mr and Mrs P's children in a manner appropriate to their age and understanding for the Council's failure to respond to Mr and Mrs P's reports of the injuries they sustained, and the impact on them of the lack of support to Mr and Mrs P to care for S;
  - pay Mr and Mrs P's legal costs for their challenge to S's residential placement (£2,200), including the Legal Aid Statutory Charge (£5,400);
  - pay the family £12,000 to recognise the significant distress suffered by the family as a result of the Council's faults set out in this report (if the Council has already paid the £7,500 it offered in 2013, it should now pay the balance); and
  - pay Mr and Mrs P an additional £1,000 for their time and trouble pursuing their complaint and the additional distress this caused.
48. The Council has accepted our findings and recommendations and extends its formal apologies to the family.

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