

Report by the Local Government and Social Care Ombudsman

Investigation into a complaint against Surrey County Council (reference number: 18 005 543)

23 October 2018

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.

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 B	The complainant
Mrs B	The complainant's wife
C	Mr and Mrs B's son

Report summary

Children's Services

Mr B complains the Council failed properly to provide the agreed remedy for his previous complaint to the Ombudsman.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council:

- send Mr B a further written apology, covering its delays sending the previously agreed apology and payment; and
- pay Mr B £250 to recognise the injustice to him.

The Council should also report to the Ombudsman, with evidence, to show it has reviewed its processes to ensure:

- it responds promptly, fully and accurately to our enquiries, draft decisions and other communications; and
- it checks full and prompt completion of each part of a complaint remedy it agrees with us and then updates us promptly.

The complaint

1. Mr B complains the Council failed properly to provide the agreed remedy for his previous complaint to the Ombudsman.

The law relevant to this complaint

2. 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*)
3. 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*)
4. 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)*)
5. Our investigation of Mr B’s previous complaint ended on this basis as we were satisfied with the Council’s agreement to take certain actions.
6. 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.

How we considered this complaint

7. We produced this report after examining relevant documents and considering information from Mr B and the Council.
8. We gave Mr B and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

Background

9. Mr B’s son, C, has special educational needs and disabilities. In May 2018, we upheld Mr B’s previous complaint. We did not publish that decision on our website because the contents risked identifying the family. The Council agreed to our recommendations to put matters right so we ended our investigation.
10. When the timescale for the Council to complete the agreed actions passed, it appeared the Council had not carried out any of those actions. We therefore investigated a new complaint from Mr B that the Council had not provided the agreed remedy for the previous complaint.

Our consideration of Mr B’s previous complaint

11. Our previous investigation found the Council was at fault for failing to meet C’s educational needs properly, including for C having no school place for half a school year in 2016/17. C also did not receive the speech and language therapy

(SLT) and occupational therapy (OT) the Council's education, health and care plan (EHCP) said he needed. In addition, we found that, even once C was at school, problems with the Council's OT provision meant C and other children did not receive the OT the Council said they needed.

12. We found those faults caused uncertainty about the impact on C's education and caused C's family considerable inconvenience, time and trouble pursuing matters, avoidable distress, anxiety and a justified sense of anger. There was also the possibility that other children's progress had been set back by not having OT.
13. At our recommendation, the Council agreed to do the following to resolve the complaint.
 - Apologise.
 - Obtain assessments from relevant professionals of whether C needs any extra educational provision, OT, or SLT to reach the points he would be likely to have reached if he had been in school. If he does, the Council should ensure C receives this, at the Council's expense.
 - Pay Mr B £2,200 in respect of C's missed educational provision.
 - Pay Mr and Mrs B an additional £750 each (£1,500 altogether) to acknowledge the injustice the Council's faults caused the family.
 - Obtain assessments from relevant professionals of whether other children affected by the problems with the Council's OT provision need any extra OT to make up for what they lost. If they do need this, the Council should ensure they receive it, at the Council's expense.
14. Before our final decision, we set out these recommended actions and timescales in a draft decision and invited the Council and Mr B to comment. The Council accepted the draft recommendations without suggesting there would be any problem with either the actions or the timescales.
15. The Council agreed to send the apology and payments by 17 June 2018 (one month after our final decision). It agreed to obtain the assessments by 17 June 2018 and begin any necessary catch-up provision as soon as possible after that.
16. The Council's usual procedure after agreeing our draft recommendations is to share our final decision with relevant Council managers, highlighting the agreed actions and timescale. Those managers should then complete the remedy. We have considered what the Council did on each point it had agreed.

Apology

17. The Council drafted an apology letter within a week of our final decision. However, it did not issue the letter, seemingly having overlooked this due to staff changes. It sent the apology on 4 July 2018. That was over two weeks late and evidently only happened because we had asked the Council what it had done about our recommendations. The Council was at fault for the delay.

Payments

18. The Council agreed to pay by 17 June 2018. It did nothing until early July. Then, prompted by us, it asked Mr B for his bank details, which he provided promptly. The Council then told us it had paid Mr B in July. This was not true, which the Council admitted after Mr B and we pursued the point. We do not suggest the Council deliberately misled us. Rather, the inaccuracy appears to have resulted from poor communications within the Council. The Council eventually paid the money in mid-August, two months late.

19. The Council could reasonably have sought the bank account details and made the payment well within the one-month period it had agreed. Its delay was fault. That fault was compounded, and further time wasted, by the Council wrongly telling us it had already paid.
20. These events suggest an unfocussed approach to dealing with us on this matter, even when the Council knew it had already failed to pay on time. We should not have had to chase the Council repeatedly to make it pay.

Whether C needs any extra educational provision, occupational therapy or speech and language therapy

21. On 11 July 2018, the Council told us it had not yet done anything about obtaining and acting on the assessments. It apologised to us.
22. The purpose of these recommendations was to establish whether the Council's earlier faults had set back C's progress. It was important to do this promptly so any remedial action could follow soon, minimising any effect on C's progress. Failing to do this as agreed was significant fault.
23. We asked the Council what it has now done about our previous recommendations regarding C's progress in education, OT and SLT.

Educational provision

24. Regarding C's general educational progress, the Council now says that, given C's complex special educational needs, '*...it is not possible in 2018, to assess damage caused from the period of time [when C had no school place]...*'
25. If it is 'not possible in 2018' to assess this, it is not clear why the Council agreed to do precisely this as part of the remedy for Mr B's previous complaint. This response implies the Council did not properly consider our recommendation before agreeing it. This point adds to the general impression of an unfocussed approach to remedying the complaint and to dealing with us.
26. The Council also now states that C is in a suitable school with highly specialised provision specifically tailored to his needs. It therefore says the education C has received since starting there automatically takes account of his needs, including any needs caused by his previously missing some schooling. Essentially, the Council's position is that C's current education is taking account of all his needs on a continuing basis.
27. Given the nature of C's needs, the nature of the school he attends, and the reviews of his needs that the school and Council undertake in the normal course of events, the Council's comments here seem likely to be accurate. So, we do not consider the Council needs to do more now in terms of assessing the impact of any previous shortfall in C's educational provision. Nevertheless, the Council must ensure it properly considers our draft recommendations rather than agreeing points it is unable to deliver.

Occupational therapy

28. We now understand that, before our previous investigation ended, C received additional OT sessions to catch up on what he missed. C's most recent annual review also suggested an increase in his OT provision. The Council believes it is providing everything that is appropriate in terms of OT.
29. The purpose of our recommendation was to ensure C received any necessary and possible catch-up provision if his progress had suffered during the period when the Council's faults had left him without OT. The Council's position is based

on its understanding of C's needs and on appropriate professional judgements. So, as paragraph 3 explained, we cannot criticise the Council's position. Also, the substantive position in terms of action to help C would have been the same even had the Council reacted promptly to our previous recommendations.

30. However, as the Council took some of the relevant steps before our previous investigation ended, it is surprising the Council did not tell us this when we sent our draft decision on the previous complaint. Again, there seems to be a lack of a joined-up approach within the Council and in its dealings with us.

Speech and language therapy

31. A speech and language therapist who has observed C recently has now considered C's circumstances and liaised with C's previous school. In July 2018 the therapist judged it unlikely a formal assessment of C would help because of his difficulty engaging with an assessment. That was a professional judgement the therapist was entitled to make. It was properly reached based on recent knowledge of C.
32. The speech and language therapist therefore reported based on observing C recently and on knowledge of his history before and since starting his current school. The therapist concluded: C's communication skills have deteriorated but this is in line with his overall presentation over time; C's time out of school may have affected his routine and his access to a more communication-rich environment; but it is unlikely C's time out of school directly impacted his communication skills.
33. Those points are professional judgements, properly reached based on considering C's circumstances. Also, it is likely those judgements would have been the same had the Council acted promptly on our previous recommendations and considered the situation sooner. So, we cannot criticise those judgements.
34. The Council has achieved the aim of our recommendation, namely establishing, as far as possible, the effect of C's time out of school on his speech and language. The Council properly reached its view that there was unlikely to have been an adverse effect. Therefore, the Council need not do more on this point.

Whether any other children affected need extra occupational therapy

35. During the 2016/17 school year, the Council failed to provide some OT in parts of Surrey. It told Mr B in June 2017 this was affecting some OT services in schools and to children living in the affected areas. Our draft decision on Mr B's previous complaint recommended the Council assess the affected children by 17 June 2018 then begin any catch-up work as soon as possible. The Council agreed.
36. However, it now appears the Council had already taken remedial action before our previous draft decision. The Council has now explained that a recovery plan started in April 2017, including risk assessments for each child, updates and the use of locums to provide OT. While not all children (including C) were receiving their OT by June 2017, as the Council told Mr B then, we understand the Council established in March 2018 that all OT provision was now up to date.
37. The Council now accepts it did not properly consider our draft recommendations on the previous complaint, which asked the Council to identify and assist children who had missed OT. If the Council had considered this properly, it would have been able to tell us then that it had just finished resolving the problem. Therefore, we would not have recommended the Council now deal with that point. The Council also did not explain the position fully earlier in the current investigation.

38. The Council's failure to explain the position properly to us was fault. It acknowledges it should learn from this. On the information we now have, we do not consider we need to ask the Council to do more on the underlying point about other children having missed OT.

The Council's dealings with our office

39. The time for the Council to implement the agreed actions on Mr B's previous complaint and update us passed but we heard nothing. On 22 June 2018, we emailed the Council seeking an update. The Council received this email but did not forward it to the relevant officers and did not reply. That was fault.
40. We chased the Council again on 2 July, asking what had happened. The Council did not reply until 9 July, it says partly due to confusion about which officer would reply. It says it has revised its processes to prevent such confusion happening again. The confusion and delayed reply were faults.
41. The Council's reply on 9 July said it had now sent the apology and would make the payments. The reply, from the Council's complaints section, also said that section had been unable to obtain an update from the Council's operational teams about the other agreed actions. The Council accepted this was not satisfactory.
42. The Council was at fault for its inability even to tell us what had happened on each of our recommendations. It is concerning that different sections of the Council were not communicating with each other properly.
43. On 12 July, the Council admitted to us it had done nothing about assessing whether C needed any further provision. By then, we had started investigating Mr B's new complaint about the Council's failure to provide the agreed resolution for his previous complaint.
44. We sent the Council some enquiries. The Council's response did not answer some of our enquiries and did not provide the requested supporting documentary evidence for all of the points it did answer. The inadequate response was fault, which necessitated further enquiries to obtain the relevant information.
45. Overall, the Council's dealings with us about this complaint were inadequate. This, and the seemingly poor communications between sections of the Council, implies the Council did not give sufficient priority to implementing our recommendations on the previous complaint promptly enough and to communicating fully with us about it.

Conclusions

46. The Council failed to honour its agreement with us and Mr B. That was fault, as the Council accepts. We should not have had to chase the Council repeatedly for it to do what it previously agreed.
47. We take seriously any breach of an agreement resulting from our findings. Parliament has given us wide discretion to investigate complaints and make recommendations. Implicit in this is the expectation that, if a council freely agrees our recommendations, it will do what it has agreed. The Council's failure to honour its commitments is a significant fault.

Injustice

48. Mr B had a reasonable expectation the Council's agreement to remedy his complaint showed the Council took the matter seriously and intended to make amends. The Council's failure to do that properly caused Mr B justified frustration,

anger and avoidable uncertainty. Mr B also had to go to more time and trouble complaining to us again. These are all injustices, which compound the injustice from the Council's faults that our previous investigation found.

49. The Council's faults in its dealings with us meant Mr B had to wait longer for an answer to his new complaint. Those faults also caused unnecessary additional work for our office.

Recommendations

50. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
51. To remedy the injustice caused by its faults, we recommend the Council should:
- send Mr B a further written apology, covering its delays sending the previously agreed apology and payment; and
 - pay Mr B £250 to recognise the injustice to him identified paragraphs 48 and 49 above. Responding to a draft of this report, the Council suggested £250 was excessive. We do not agree. The Council's faults providing the previously agreed remedy meant Mr B had to make a second complaint to the Ombudsman, correct inaccurate information the Council then sent us and wait longer to receive the payment the Council previously agreed. He should not have had to do any of that.
52. The Council should carry out the actions in paragraph 51 within one month of the date it considers the report.
53. The Council should also report to us, with evidence, to show it has reviewed its processes to ensure:
- it responds promptly, fully and accurately to our enquiries, draft decisions and other communications; and
 - it checks full and prompt completion of each part of a complaint remedy it agrees with us and then updates us promptly.

The Council should carry out the actions in paragraph 53 within three months of the date it considers this report.

Decision

54. We have completed our investigation of this complaint. We have found evidence of fault causing injustice. We have recommended action to remedy the injustice caused.

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