

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

**Investigation into a complaint about
London Borough of Croydon
(reference number: 20 009 010)**

28 March 2022

The Ombudsman's role

For more than 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 and Mrs A	The complainants
Child X	The child

Report summary

Children's services

Mr and Mrs A complain the Council failed to provide the support set out in a care plan for a child in their care.

Finding

Fault found causing injustice and recommendations made.

Recommendations

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*)

To remedy the injustice caused, we recommend the Council:

- write to Mr and Mrs A and apologise for the fault;
- pay Mr and Mrs A £10,500 to recognise the unsuitable conditions they and their children were forced to live in for the 21 months they were without suitable accommodation;
- pay Mr and Mrs A £250 for their time and trouble;
- pay for any remedial works that have had to be completed to the family home because of the works being left unfinished;
- pay the difference in cost if Mr and Mrs A face a higher cost of finishing the work because of the delay caused by the Council and can reasonably evidence this;
- pay the outstanding invoices for Child X's nursery fees and continue to pay Child X's nursery fees until they start primary school in September 2022;
- review how it agrees financial packages as part of care plans. Where packages are agreed, contractual agreements should be provided as part of the care plan meeting or shortly after. The Council should provide evidence to show how it has met this recommendation; and
- review how it considers complaints under the statutory complaints process to ensure that it is carrying out its duty to consider suitable complaints under the statutory process. The Council should provide evidence to show how it has met this recommendation.

The Council has agreed to our recommendations.

The complaint

1. Mr and Mrs A complain that the Council has delayed issuing a financial grant for a child in their care. They say the Council has placed the child in their care under a Special Guardianship Order, but has failed to provide the support set out in the agreed support plan.
2. Mr and Mrs A say this has caused their family to live in an unsuitable living situation amid continuing building work. They complain the Council has failed to recognise the stress and impact this has had on their family and the child in their care.

Relevant law and guidance

The Ombudsman's role and powers

3. 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*)
4. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
5. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

Special Guardianship Order

6. A Special Guardianship Order, ('SGO') is a legal alternative to adoption. The government's guidance says they are intended to:
 - give the carer clear responsibility for all aspects of caring for the child. This means that the child will no longer be a 'looked after child';
 - provide a firm foundation for a lifelong permanent relationship between the child and the carer;
 - be legally secure;
 - preserve the link between the child and their parents; and
 - be accompanied by a full range of services including, where appropriate financial support.

Our focus report 2018 ['Firm Foundations: complaints about council support and advice for special guardians'](#)

7. Councils must help meet the needs of special guardians in their area. This can include offering financial support, counselling, advice, and information. It might include help, including mediation, to help special guardians meet a child's special needs.

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8. Special guardianship regulations explain when councils can pay support to a special guardian or prospective special guardian. This includes situations where it is necessary for the guardian to look after the child, where the child has special needs with extra costs and where necessary to adapt or alter a home.

Statutory complaints procedure

9. Section 26(3) of the Children Act 1989 says councils should establish a procedure for considering complaints made by looked-after children and children in need. It says this procedure should also apply to considering complaints made by parents of such children.
10. The Children Act 1989 gives discretion to councils to decide who may bring a complaint in cases where eligibility is not automatic.
11. The Department for Education publishes statutory guidance that councils must follow called “Getting the best from complaints”.
12. This says councils must consider complaints made by “any child or young person (or a parent of his or someone who has parental responsibility for him) who is being looked after by the local authority or is not looked after by them but is in need”.
13. The statutory guidance says complaints made by or on behalf of children about council services must follow the three stage statutory complaints procedure: local resolution, investigation and review panel.
 - Stage 1 - local resolution; where a council investigates and responds to the complaint.
 - Stage 2 - investigation; the council must appoint an investigating officer to lead the investigation and an independent person to oversee this.
 - Stage 3 - review panel; the council must appoint three independent people to sit on a panel to consider the stage 2 investigation and outcomes.
14. Councils can only vary from the statutory complaints procedure in exceptional circumstances.

How we considered this complaint

15. We considered Mr and Mrs A’s complaint and information they provided. We also considered information from the Council.
16. We gave the complainants 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.
17. We took into account our focus report ‘[Firm Foundations: complaints about council support and advice for special guardians](#)’ published in 2018.

What we found

18. Mr and Mrs A have three children of their own and live in a two-bedroom house.
19. In June 2019, Mr and Mrs A agreed to care for Child X under a Special Guardianship Order (SGO). They met with the Council at a care planning meeting to agree the support for Child X.

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20. As part of the planning to care for Child X, Mr and Mrs A asked the Council to part fund an extension to their house. They got planning permission for the extension, quotes for the work and appointed a contractor.
 21. During the meeting, the Council agreed to provide a financial package towards Child X's needs. This included a contribution to nursery fees, furniture and a family car. It also included an agreement the Council would part fund an extension to the family home to ensure Mr and Mrs A had enough space to care for four children.
 22. The care plan said the Council would fund Child X's nursery fees until they were eligible for 30 hours free childcare at two years old.
 23. The care plan said the Council would pay £40,000 towards an extension. It documented the payment would be made in instalments once Mr and Mrs A had secured a bank loan, paid the initial amount and started work. It also said that a legal charge agreement would be issued to Mr and Mrs A. The care plan did not say when the legal agreement needed to be signed by or that it needed to be in place before work starting.
 24. Mr and Mrs A were granted the SGO for Child X four days after the care planning meeting. Mr and Mrs A also secured a bank loan and started the work on the extension to their house.
 25. In March 2020 Mr and Mrs A asked the Council to pay the financial package agreed towards the cost of the build as the work was undergoing and the contractor needed ongoing payment.
 26. Mr and Mrs A asked the Council several times for the payments to be made to their builder or the work would stop. The Council did not provide the payments and the contractor appointed to complete the work stopped working due to non-payment.
 27. Between March 2020 and December 2020 there was continuing communication between Mr and Mrs A and the Council to try and rectify the situation. During this time the family home remained unfinished with significant work still to be completed.
 28. Mr and Mrs A felt the Council was avoiding paying the agreed financial package and complained to the Council in December 2020.
 29. The Council responded to the complaint 16 days later. In its stage 1 response the Council accepted that providing the legal agreement had taken too long, however it said Mr and Mrs A should not have started work without the legal agreement. Mr and Mrs A remained unhappy and escalated their complaint to stage 2.
 30. The Council considered Mr and Mrs A's complaint under stage 1 of the corporate complaints process. It also offered to meet with Mr and Mrs A three months later to try and resolve the issues. The Council did not consider Mr and Mrs A's complaint under stage 2 of the statutory complaints procedure.
 31. Mr and Mrs A remained unhappy and complained to us.
 32. During our investigation the Council issued Mr and Mrs A with a legal agreement for the financial package. Mr and Mrs A felt they could not sign this legal agreement as it differed from the original agreement.

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33. In November 2021, the Council paid Mr and Mrs A the balance of £40,000 for the agreed works to their house.

Analysis

Failure to provide the agreed support for the home extension

34. We have reviewed all the communication provided between Mr and Mrs A and the Council. We have also reviewed the initial support agreed.
35. It is our view that Mr and Mrs A agreed to undertake the SGO as they were under the impression the Council would provide the package of support set out in the care planning meeting. This would mean they would be able to suitably care for Child X.
36. The support was agreed and documented in Child X's support plan. The support agreed said the Council would pay £40,000 towards the cost of an extension. The care plan set out expectations for Mr and Mrs A to meet for the Council to pay the money.
37. We consider this to be an agreement and commitment from the Council that set out the support and the terms that Mr and Mrs A were agreeing to.
38. The Council delayed providing a legal agreement for 21 months following the care plan meeting. Therefore, we consider the care plan to be the agreement that was in place for those 21 months.
39. The care plan set out the Council would pay £40,000 in four instalments towards an extension on the house. Mr and Mrs A were to provide quotes and evidence of a contractor, which they provided to the Council. They were to also secure a bank loan and start the work. The Council would then pay the money to Mr and Mrs A.
40. Mr and Mrs A then started the work on the house and kept the Council informed of this. Multiple times they asked the Council to pay the contractor appointed.
41. However, communication from the Council shows that Mr and Mrs A were repeatedly asked for information they had already given, or information that was not previously agreed for. It is our view the Council did this to delay providing the payment.
42. If the Council had terms and conditions it expected Mr and Mrs A to meet, it should have agreed this and set it out to Mr and Mrs A before the care plan meeting. This would have meant Mr and Mrs A were fully informed of the situation before agreeing to the SGO for Child X.
43. The Council did not provide a copy of the legal agreement with its final terms and conditions until March 2021.
44. The terms and conditions of this legal agreement differed to the original care plan agreement and included terms which did not appear in the care plan agreement.
45. The contractor for the build had stopped work due to non-payment, and Mr and Mrs A and the four children were living in a house that needed significant work completed. This was also during the winter months and disrupted their family life significantly. Mr and Mrs A did not have appropriate access to the front or back of their house, their walls were left with large holes open to the outside and without

proper insulation. The part of the extension that had been built was subject to flooding.

46. The Council only issued the legal agreement when we began our investigation. The Council was aware Mr and Mrs A needed to complete the work on their house and therefore may have felt pressured to sign the legal agreement despite the change in terms.

Conclusion

47. We consider the Council to have diverted from the initial agreement, not provided Mr and Mrs A with a clear expectation of the support the Council would provide and delayed issuing the final legal agreement for 21 months.
48. This has caused Mr and Mrs A and their children significant distress and has forced them to live in unsuitable accommodation for over 12 months. This was fault by the Council resulting in significant injustice.
49. Additionally, Mr and Mrs A have been able to evidence the work that was completed on the house has decayed and needs remedial work before the work can be completed.
50. Where a complainant has been deprived of suitable accommodation during what would inevitably have been a stressful period in their life, our recommendation for financial redress is likely to be in the range of £150 to £350 a month. But we may recommend a higher monthly amount in cases where the injustice is exceptional or particularly severe. In this case, we consider the injustice to Mr and Mrs A and their children to be severe and have used a rate of £500 a month to calculate the remedy for the injustice arising from this fault.

Failure to provide the agreed support for nursery fees

51. The support plan set out that the Council would pay £42 a day for five days a week for childcare for Child X.
52. The support plan set out this arrangement would continue until Child X was eligible for 30 hours a week free childcare. The Council set out that the child would be eligible for free childcare as they were previously a looked after child.
53. Child X was enrolled at a local nursery by Mr and Mrs A as detailed in the support plan.
54. Nursery staff discussed with the Council that Child X would not be entitled to 30 hours free childcare, and instead would be entitled to 15 hours as this was the government entitlement for children of Child X's age.

Conclusion

55. During our investigation, Mr and Mrs A have been able to show that the Council has not paid the outstanding nursery fees for Child X as detailed in the support plan.
56. It has also been established that Child X is not entitled to 30 hours free childcare but is only entitled to 15 hours as per the government entitlement.
57. We have not seen any evidence of the entitlement referenced by the Council for children who have been in care.

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58. On balance, it appears the Council misunderstood what childcare Child X would be entitled to, and calculated the support based on this misunderstanding. The nursery and Mr and Mrs A have tried to rectify this with the Council but have not been successful. This has resulted in the nursery fees not being paid. This was fault by the Council resulting in further distress to Mr and Mrs A.
59. In response to our draft report, the Council agreed it would pay Child X's nursery fees until they start full time education in September 2022.

Delay in communication and complaint handling

60. As part of our investigation, we have considered how the Council managed and responded to Mr and Mrs A's ongoing concerns.
61. Mr and Mrs A first raised concerns with the Council in March 2020.
62. Between March 2020 and December 2020, Mr and Mrs A continually raised concerns with the Council.
63. Mr and Mrs A complained to the Council in December 2020. They received a stage one response 16 days later.
64. Mr and Mrs A then escalated their complaint to stage two. They did not receive a response to their stage two complaint. Instead, the Council reconsidered the complaint stage one.
65. Mr and Mrs A also wrote to the family court to withdraw the SGO for Child X as they felt they could not manage their care without the agreed support from the Council. They later decided to continue with the SGO subject to the right support. This shows that Mr and Mrs A were significantly distressed during this time and felt they could not cope because of the Council's actions.
66. We have reviewed the Council's communication with Mr and Mrs A and with us. There are several occasions where Mr and Mrs A's concerns were not responded to, or responses were significantly delayed.
67. In response to our investigation, the Council accepted the case was ongoing and on multiple occasions delayed giving the requested information. It had not given Mr and Mrs A a final complaint response and had reverted to considering the issue at stage one with no clear rationale for this.
68. Although the statutory procedure should usually be followed, we have discretion to investigate complaints. Given the Council's approach and to avoid further delay, we decided to consider Mr and Mrs A's substantive complaint.
69. The Council was at fault for not considering Mr and Mrs A's complaint under the statutory complaints procedure. This meant that Mr and Mrs A were denied the opportunity to have their complaint investigated by an independent person under the statutory complaints process.
70. As a result of the Council's actions, Mr and Mrs A were put to time and trouble in bringing their complaint to us.

Conclusion

71. The Council has continually delayed in addressing this issue causing further distress to Mr and Mrs A and their children. We consider this to be poor

communication and significant fault by the Council causing injustice to Mr and Mrs A and their children.

Recommendations

72. 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*)
73. In addition to the requirements set out above, the Council has agreed to:
- write to Mr and Mrs A and apologise for the fault;
 - pay Mr and Mrs A £10,500 to recognise the unsuitable conditions they and their children were forced to live in for the 21 months they were without suitable accommodation.
 - pay Mr and Mrs A £250 for their time and trouble;
 - pay for any remedial works that have had to be completed to the family home because of the works being left unfinished;
 - pay the difference in cost if Mr and Mrs A face a higher cost of finishing the work because of the delay caused by the Council and can reasonably evidence this;
 - pay the outstanding invoices for Child X's nursery fees and continue to pay Child X's nursery fees until they start primary school in September 2022;
 - review how it agrees financial packages as part of care plans. Where packages are agreed, contractual agreements should be provided as part of the care plan meeting or shortly after. The Council should provide evidence to show how it has met this recommendation; and
 - review how it considers complaints under the statutory complaints process to ensure that it is carrying out its duty to consider suitable complaints under the statutory process. The Council should provide evidence to show how it has met this recommendation.

Decision

74. We have completed our investigation into this complaint. We find fault with the Council for failing to provide the support agreed in a SGO care plan. We also find fault with the Council for causing severe delay in implementing the agreed support. Finally, we find fault with the Council for the delay in resolving the complaint. This caused injustice to Mr and Mrs A. The Council will take the action identified to remedy that injustice.