

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>CABINET</b>
<b>REPORT TITLE:</b>	<b>Local Government &amp; Social Care Ombudsman Report Finding of Fault causing Injustice and Report by the Monitoring Officer under section 5A of the Local Government and Housing Act 1989</b>
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>Debbie Jones, Corporate Director Children, Young People &amp; Education Stephen Lawrence-Orumwence Director of Legal Services and Monitoring Officer Roisin Madden, Director, Children’s Social Care</b>
<b>LEAD OFFICER:</b>	<b>Roisin Madden, Director, Children’s Social Care</b>
<b>LEAD MEMBER:</b>	<b>Councillor Maria Gatland</b>
<b>KEY DECISION?</b>	<b>No</b>
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>No</b>
<b>WARDS AFFECTED:</b>	<b>N/A</b>

## 1. SUMMARY OF REPORT

- 1.1 On 29<sup>th</sup> November 2022 the LGSCO wrote to the Chief Executive Katherine Kerswell to confirm that after consideration of a complaint they had received, they decided to issue their findings as a public interest report. The events leading to the complaint date back to 2016 when Ms Y left care to accommodation that was not affordable and as a result rent arrears accrued. In 2018 – 19 she cared for her younger brother and was not adequately supported and the risks to her own child were not thoroughly considered. Ms Y missed a year of her university studies as a result accruing tuition fee debt.
- 1.2 The LGSCO consider six criteria when deciding whether to issue a public interest report, these are:
- Recurrent faults (for example, the organisation keeps making similar mistakes)
  - Significant fault, injustice, or remedy (by scale or the number of people affected)
  - Non-compliance with an Ombudsman’s recommendation (the organisation has not agreed or has not carried out the recommendations of the LGSCO)
  - A high volume of complaints on a subject

- A significant topical issue
- Systemic problems and/or wider lessons (for example, problems with how the organisation does things that if not put right are likely to affect others, and this is an opportunity for others to learn).

1.3 In this case the reasons for issuing the report are:

- Significant Fault, Injustice or Remedy

To remedy the injustice caused, the Ombudsman has made the following recommendations.

- 1.4 pay £9,250 plus any accrued interest to recognise the impact on Miss Y's university studies in 2018. This should be paid when Miss Y provides evidence of the cost of the additional year of study. The Council may pay this sum directly to Student Finance England to offset against the debt owed;
- 1.5 pay Miss Y £1,000 to recognise the significant distress she experienced whilst living in unaffordable accommodation and for the credible fear she endured whilst providing an unregulated placement for Mr Z, her brother;
- 1.6 pay Miss Y £300 to recognise the avoidable time and trouble she experienced, both from delays in the complaint handling and the later delay in reimbursing her rent arrears;
- 1.7 carry out work to understand why, when it was aware that Miss Y and W were at risk of harm, it did not make inquiries to establish whether it needed to safeguard W
- 1.8 ensure that all staff in its care leavers service receive a briefing that makes clear it has a duty to ensure that young people leaving care are supported to find suitable and affordable accommodation.

## 2. RECOMMENDATIONS

The Executive Mayor in Cabinet is asked to:

- 1.1 Consider the public interest report dated 29 November 2022 regarding the events from 2016 – 19, and the recommendations made by the Local Government & Social Care Ombudsman (LGSCO) in relation to Croydon Council set out in Appendix 1.
- 1.2 Accept the findings and agree the recommendations set out in the public interest report.
- 1.3 Endorse the actions taken by the Council and note the steps, progress, and timeline to implement the recommendations set out in section 7 of this report.
- 1.4 Adopt the report as the Council's formal response under section 31 of the Local Government Act 1974 to be communicated to the Ombudsman.
- 1.5 Adopt the report as the Executive's formal response as required by section 5A of the Local Government and Housing Act 1989 for distribution to all members and the Monitoring Officer.

## 3. REASONS FOR RECOMMENDATIONS

3.1 The complainant who we refer to as Miss Y complained about her experiences as a young person leaving foster care and the Council's failure to provide the support she needed as a young, single parent.

The Ombudsman's findings found failings including:

- The Council did not fully acknowledge or remedy the distress caused by its actions
- The Council failed in its duty to ensure that Miss Y and W transitioned out of care into affordable accommodation when she left her foster care placement at the age of 18
- The Council has not acknowledged the wider impact on Miss Y living in unaffordable accommodation
- Miss Y and her child experienced significant financial hardship and distress as a direct result of the Council's actions.
- there was a delay between October 2021, when the Council should have made the payment, and July 2022 when it eventually cleared Miss Y's account of rent arrears.
- Miss Y experienced further injustice when she was unable to attend the second year of her university course because of the responsibilities she had towards Mr Z.

## **4. BACKGROUND AND DETAILS**

What follows is a brief chronology of the complaint.

- 4.1 Miss Y complained about her experiences as a previously looked after child. In particular, she says the Council failed to support and prepare her for a transition into adulthood and independent living. As a result, Miss Y was placed into unaffordable accommodation and quickly accrued significant rent arrears.
- 4.2 Miss Y also complained the Council failed to safeguard her and her young child from the risk of gang-related violence when her brother moved into her property in late 2018. Miss Y says she missed a whole academic year at university because she had to support her brother, and as a result she has incurred additional tuition fees.
- 4.3 Miss Y completed all stages of the Council's Statutory Complaints Process in 2020.
- 4.4 Miss Y escalated her complaint to the Ombudsman because she says the Council's complaint investigation did not go far enough in remedying the significant injustice she experienced.
- 4.5 Details of the full scope and investigation of the complaint can be found in the Ombudsman report in Appendix 1.

What follows is a summary of the Ombudsman conclusions from the Final Decision report:

- 4.6 Failure in the Council's actions caused Miss Y significant distress. Whilst the Council's complaint investigation dealt with most of Miss Y's quantifiable losses arising from the

fault, in our view the Council did not fully acknowledge or remedy the distress caused by its actions.

- 4.7 The Council accepted that it failed in its duty to ensure that Miss Y and W transitioned out of care into affordable accommodation. Although the Council has already reimbursed the rent arrears she accrued in that period, which puts Miss Y back in the position she should have been, it has not acknowledged the wider impact on Miss Y. Living in unaffordable accommodation not only causes financial hardship, but also additional stress, worry and anxiety.
- 4.8 The distress Miss Y experienced was further exacerbated when she provided an unregulated placement for her brother, Mr Z, in 2018. The Council has already paid the equivalent rate for 'connected carers' and proposes to acknowledge the impact on Miss Y's university studies.
- 4.9 Miss Y has described how she lived in fear during the time she accommodated her brother. Mr Z's presence brought with it great risk due to the credible possibility of him being targeted by violent gangs. Each day Mr Z lived with her, Miss Y felt the need to supervise and oversee his movements to keep the household safe. The stage two investigation did not find evidence of any safeguarding interventions by the Council to assess the safety of W, who was just four years old at the time.
- 4.10 Throughout the period complained about, Miss Y and her child experienced significant financial hardship and distress as a direct result of the Council's actions.
- 4.11 The Council failed in its duty to support Miss Y in obtaining affordable accommodation when she left her foster care placement at the age of 18. At the time, Miss Y was a young single mother and she needed significant support in helping her transition out of care. Since complaining to the Council, Miss Y moved into affordable housing in February 2021. The Council has also reimbursed the rent arrears which Miss Y accrued during the time she spent in unaffordable housing and checked that Miss Y received the 'setting up home allowance'. Some of the agreed outcomes are therefore complete.
- 4.12 The Council agreed to make these payments by 31 October 2021. When we started investigating Miss Y's complaint in January 2022 the payment for rent arrears remained outstanding. We asked the Council about this; it explained that, although it had agreed to make the payment, the Council needed evidence of the rent arrears from the landlord. We would not criticise the Council for seeking proof of the arrears because this is an auditable payment, and the Council has a responsibility to ensure public money is spent carefully. With that said, there is delay between October 2021, when the Council should have made the payment, and July 2022 when it eventually cleared Miss Y's account of rent arrears.
- 4.13 The Council said it was waiting for Miss Y to confirm the arrears via her previous landlord. We have seen evidence of an email exchange between Miss Y's advocate and the Council about this matter. When Miss Y was unable to obtain the information from her landlord, the Council requested it on her behalf in May 2022. The landlord provided an invoice in June and the Council made payment in July. In our view, the Council could have acted more proactively in obtaining this information. The delay in repaying the rent arrears created avoidable time, trouble and frustration for Miss Y.
- 4.14 Miss Y suffered further loss when she looked after her young brother, Mr Z, for a period in 2018. The Council has already paid £8,017.92 to Miss Y for the time she provided an unregulated placement between 1 October 2018 and 8 April 2019. Miss Y

disputes this and says she housed Mr Z beyond April 2019. In response to our enquiries the Council provided evidence showing it funded an alternative placement for Mr Z from 8 April 2019. We would not expect the Council to fund two placements concurrently, and so in our view it has paid Miss Y the correct amount for the quantifiable aspect of this complaint.

- 4.15 Miss Y experienced further injustice when she was unable to attend the second year of her university course because of the responsibilities she had towards Mr Z. Miss Y explained how she feared for her household's safety when Mr Z lived with her due to the previous threats he had received at gunpoint. Understandably, Miss Y feared for her safety and felt she had to supervise Mr Z and stay at home to minimise the risk to her family. As a direct consequence, Miss Y missed an academic year of university.
- 4.16 Miss Y explained how the university automatically enrolled her to complete the second year of study and she had to pay the fees using a tuition fee loan, despite her non-attendance. Miss Y says Student Finance England did not reimburse her.
- 4.17 When investigating the complaint, the IO and the stage three panel did not offer any remedy for the actual losses Miss Y experienced when she was unable to attend a year of her course. The stage three panel said this was not part of Miss Y's original complaint. However, when we reviewed the case, it was clear that Miss Y had claimed this as her injustice and, in our view, it should have been considered.
- 4.18 In response to our enquiries, the Council conceded that it had not considered this important aspect of Miss Y's complaint. It has now proposed a payment of £7,000 to recognise the impact of Mr Z's placement on her university studies. This is not equivalent to the full cost of the additional fees, which Miss Y says is £9,250. We consider the Council should reimburse the full amount which Miss Y funded, via a loan, to study her second year. This is because Mr Z lived with her for most of the academic year, and it was not feasible for Miss Y to have completed that year of study alongside the responsibilities she had towards Mr Z.
- 4.19 At stage three of the statutory children's complaint investigation, the panel noted some concerns about the adequacy of the stage two investigation. In particular, they found the report lacked a chronology of key events, which is contrary to the statutory guidance 'Getting the best from complaints'. Furthermore, the panel noted the IO's 'over reliance' on assertions provided by officers in interview and had not gone far enough in analysing the files compiled at the time.
- 4.20 After reviewing the IO's report, we also noted a failure to refer to the statutory guidance mentioned in paragraph 13 of this report. Instead, the IO based their findings on a general expectation for councils to act in the best interests of the young person in their role as corporate parent. With that said, the IO was still able to reach a finding of fault and recommended a reimbursement of the rent arrears. The oversight did not, therefore, create any injustice for Miss Y. However, it is another example of how the report lacked depth of analysis which the Council failed to address at the adjudication stage.
- 4.21 We also find fault with the timeliness of the stage two investigation. The statutory guidance sets a timescale of 13 weeks for the report to be completed from the date of the complainant's request for escalation to stage two.
- 4.22 In Miss Y's case, the stage two report was concluded 26 weeks after she first asked for her complaint to progress from stage one to stage two. Having reviewed the

complaint correspondence, it is clear there was some initial delay in commissioning the IO and some further delay in agreeing a summary of complaint. Some of this delay was likely exacerbated by the restrictions imposed by the COVID-19 pandemic. Further into the investigation, the IO encountered issues with gaining consent to access Mr Z's files. Some of these matters were outside of the Council's control. However, even when accounting for those factors, it is our view the stage two investigation took significantly longer than the period stipulated in the statutory guidance.

## 5 ALTERNATIVE OPTIONS CONSIDERED

N/A

## 6 LESSONS LEARNED

Following receipt of the Ombudsman report the following actions have been taken in response to the recommendations:

- 1) *Pay £9,250 plus any accrued interest. This is to recognise the impact on Miss Y's university studies in 2018. This should be paid when Miss Y provides evidence of the cost of the additional year of study. The Council may pay this sum directly to Student Finance England to offset against the debt owed.*

To date Miss Y has not provided evidence of the cost of the years study in 2018. Once this is received the money owed will be paid direct to Student Finance England.

- 2) *Pay Miss Y £1,000 to recognise the significant distress she experienced whilst living in unaffordable accommodation and for the credible fear she endured whilst providing an unregulated placement for Mr Z, her brother.*

A combined payment of £1300 was made to Miss Y in January 2023 which included the £1000 outlined above.

- 3) *pay Miss Y £300 to recognise the avoidable time and trouble she experienced, both from delays in the complaint handling and the later delay in reimbursing her rent arrears.*

A combined payment of £1300 was made to Miss Y in January 2023 which included the £300 outlined above.

- 4) *Carry out work to understand why, when it was aware that Miss Y and W were at risk of harm, it did not make inquiries to establish whether it needed to safeguard W.*

Concerns regarding Miss Y's brother living with her and W were identified by the leaving care team manager who called a professionals meeting in November 2018, shortly after Miss Y's brother Z went to live with them. Concerns were raised in relation to overcrowding, tenancy breaches and risks from Z's connections. A risk assessment for Z living with Miss Y was undertaken by the brother's social work team, within which Miss Y viewed the risks from Z's connections as very low; the assessor did not explore this further. It was recognised that an alternative placement would be required, however Miss Y's brother refused to go to any alternative arrangements.

In 2018 Children's services were rated as 'inadequate' by Ofsted and improvement in safeguarding procedures have been implemented since this time. Today this situation would

be considered from W's perspective in more detail. Service Improvements within the Leaving Care and Looked After Teams have ensured that vulnerability and risk are considered holistically and comprehensively. In this instance the viability assessment did not explore the risks sufficiently.

- 5) *Ensure that all staff in its care leavers service receive a briefing that makes clear it has a duty to ensure that young people leaving care are supported to find suitable and affordable accommodation.*

This has been completed.

### Lessons Learned

A comprehensive review of the Council's response and provision for Care Experienced young people, i.e., Care Leavers has been undertaken since 2022 and continues through a programme of transformation to deliver a 'whole council' approach to corporate parenting.

A Corporate Parenting Strategy is in development for the first time for the Council and will be presented to Cabinet in the autumn.

The provision of stable homes for our care experienced young adults is a key element of the strategy incorporating a number of actions to provide a joint housing protocol, a range of pathways to accommodation in response to differing levels of need alongside multi-disciplinary support for young people to live safe independent lives.

Developing the knowledge and skills relating to safeguarding where there are extra familial risks continues to be an area of focus for the CYPE Directorate in partnership with Adult social care, health and police agencies. Since 2018 the development of the Complex Adolescent Panel and Young Croydon services provides a framework for such risks to be considered by a multi-agency forum.

A dedicated complaints response team has been developed within the CYPE Directorate to improve the response to complaints and aid whole system learning.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

N/A

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

- 8.1.1 The financial recommendations made by the LGSCO were: £10,550 in respect of compensation. Accrued interest on the payment of £9,250 for the impact on Miss Y's university studies in 2018 will be payable at the point evidence is received. Accrued interest is currently circa £4,000.

*Approved by:* Lesley Shields, Head of Finance for Assistant Chief Executive and Resources on behalf of the Director of Finance. 20/4/23

## 8.2 LEGAL IMPLICATIONS

- 8.2.1 Under the Local Government Act 1974 (the Act), the LGSCO has the power to investigate the complaint and to issue a report where there has been maladministration causing injustice; a failure in a service that it was the Council's function to provide; and a total failure to provide such service. The LGSCO has the power to make recommendations to the Council on how to improve its services and to put things right for the complainant. However, these recommendations are not mandatory and the Council does not have to accept or follow them.
- 8.2.2 Within 2 weeks of receiving the LGSCO's report, the Council is required to give public notice by advertisements in newspapers stating that copies of the report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 of the Government Act 1974).
- 8.2.3 The Act provides that the report shall be laid before the "authority" for consideration. In the case of a local authority operating executive arrangements, "the authority" includes the executive which under current governance arrangements means the Directly Elected Mayor and Cabinet (s.25 (4) and (4ZA) Local Government Act 1974).
- 8.2.4 Where a finding of 'maladministration' is made the Council's Monitoring Officer is obliged to prepare a report for the Executive following the LGSCO findings and to consult with the Head of Paid Service and Chief Finance Officer for this purpose. This report must also be sent to each member of the Council and the Executive must meet within 21 days thereafter. The implementation of the proposal or decision must be suspended until after the report has been considered by the Executive (s.5A Local Government and Housing Act 1989). The Executive is required to consider this Monitoring Officer report on the findings of and response to the LGSCO's report.
- 8.2.5 Where the Executive considers a LGSCO's report and it is considered that a payment should be made or other benefit given to a person who has suffered injustice, such expenditure may be incurred as appears appropriate (s.31(3) Local Government Act 1974)
- 8.2.6 Within 3 months of receiving the LGSCO's report or such longer period as may be agreed in writing with the LGSCO, the Council must notify the LGSCO of the action which the Council have taken or propose to take (s.31(2) Local Government Act 1974). If the LGSCO is not satisfied with the action which the Council has taken or propose to take, the LGSCO shall make a further report. The LGSCO can also require the Council to make a public statement in any two editions of a newspaper circulating the area within a fortnight (s.31(2A) and (2D) Local Government Act 1974).
- 8.2.7 An Ombudsman's report should not normally name or identify any person (s.30 Local Government Act 1974). Therefore, the complainant should not be referred to by name and officers are not identified.

*Approved by:* Doutimi Aseh

Head of Social Care & Education Law & Deputy Monitoring Officer

### **8.3 EQUALITIES IMPLICATIONS**

- 8.3.1 The Council has a statutory duty to comply with the provisions set out in the Sec 149 Equality Act 2010. The Council must therefore have due regard to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.3.2 Due consideration should be given Miss Y as a young person for whom the council was the corporate parent. As a young person in the care of the local authority Miss Y was not supported to advance equality of opportunity by participating in her college course. It is essential that lessons are learned to prevent a reoccurrence of these issues with other young people in the care of the local authority.

*Approved by:* Denise McCausland – Equality Programme Manager - 25 April 2023

### **9. APPENDICES**

- 9.1 Appendix A – Full Ombudsman Report

### **BACKGROUND DOCUMENTS**

N/A