

# Croydon Council

<b>REPORT TO:</b>	<b>AUDIT &amp; GOVERNANCE COMMITTEE</b> <b>7 JULY 2022</b>
<b>SUBJECT:</b>	<b>Local Government &amp; Social Care Ombudsman Report</b> <b>Finding of Fault with Maladministration and Injustice</b>
<b>LEAD OFFICER:</b>	<b>Debbie Jones, Corporate Director of Children’s Services</b> <b>and Roisin Madden, Director, Children’s Social Care and</b> <b>Kim Hyland, Complaints Resolution Manager</b>
<b>CABINET MEMBER:</b>	<b>Councillor Maria Gatland, Cabinet Member for Children</b> <b>and Young People</b>
<b>WARDS:</b>	<b>All</b>
<b>FINANCIAL IMPACT:</b>  Total of £10,750 in compensation and £31,200 for remedial works.	

## **1. RECOMMENDATIONS**

1.1 The Committee is asked to:

1.2 Consider the public interest report dated 6 December 2021 and the recommendations made by the Local Government & Social Care Ombudsman (LGSCO) in relation to Croydon Council.

The full list of recommendations can be found in section 6 of this report.

1.3 Agree the recommendations set out in the public interest report; and

1.4 Note the steps, progress, and timeline to implement the recommendations set out in section 7 of this report.

## **2. EXECUTIVE SUMMARY**

2.1 On 28 March 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.

2.2 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 (it has not agreed or has not carried out their recommendations)
- A high volume of complaints about on 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).

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

- The significance of the fault, injustice, or remedy

### 3. **BACKGROUND**

3.1 The complainants who shall be referred to as Mr and Mrs A complain the Council failed to provide the support set out in a care plan for a child in their care.

Mr and Mrs A complained the Council:

- 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.
- 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.

3.2 The LGSCO report confirmed that the following failings had been identified:

- \*The Council 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.
- \*The Council failed to pay the nursery fees for Child X.

- \*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.

#### **4 CHRONOLOGY OF THE COMPLAINT**

What follows is a brief case chronology. It does not contain all the information reviewed during the investigation.

- 4.1 Mr and Mrs A have three children of their own and live in a two-bedroom house. 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 The care plan said the Council would pay up to £40,000 towards an extension.
- 4.6 Mr and Mrs A were granted the SGO for Child X four days after the care planning meeting.
- 4.7 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.
- 4.8 There was significant delay in the legal agreement being drafted and agreed. This had a negative impact on the timing of funding being made available to Mr and Mrs. A. This caused the work started by the contractors commissioned by Mr. and Mrs. A to pause, pending the receipt of the funding.
- 4.9 Between March 2020 and December 2020 there was continuing communication

between Mr. and Mrs. and the Council in order to draft the legal agreement but to no avail. During this time, the family home remained unfinished with significant work still to be completed.

4.10 Mr and Mrs complained to the Council in December 2020.

4.11 The Council responded to the complaint 16 days later. In its stage 1 response the Council apologised and accepted that the drafting of the legal agreement had taken too long. However, it also said that Mr. and Mrs. A should not have started work without the legal agreement being completed.

4.12 Mr and Mrs A remained unhappy and escalated their complaint to stage 2.

4.13 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 complaint's procedure.

4.14 Mr and Mrs A remained unhappy and complained to the Ombudsman

4.15 Further discussions around the legal agreement started to gather pace from June 2021. Conversations involved senior leaders and Mr. and Mrs. A, culminating in the first updated draft legal agreement being sent to Mr. and Mrs. A in August 2021.

4.16 The legal agreement was finalised in October 2021, which enabled the £40,000 that was committed to be released. Mr. and Mrs. confirmed in November 2021 that they received the funds.

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## **5. CONCLUSIONS**

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

5.1 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.

5.2 Significant distress has been caused to Mr and Mrs A and their children injustice.

5.3 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.

5.4 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.

- 5.5 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.
- 5.6 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.
- 5.7 We have not seen any evidence of the entitlement referenced by the Council for children who have been in care.
- 5.8 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.
- 5.9 The Council has continually delayed in addressing this issue causing further distress to Mr and Mrs A and their children.

## **6. RECOMMENDATIONS**

To remedy the injustice caused, the Ombudsman recommend the Council take the following actions.

- 6.1 Write to Mr and Mrs A and apologise for the fault.
- 6.2 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.
- 6.3 Pay Mr and Mrs A £250 for their time and trouble
- 6.4 Pay for any remedial works that have had to be completed to the family home because of the works being left unfinished.
- 6.5 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

- 6.6 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
- 6.7 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
- 6.8 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.

## **7. ACTIONS TAKEN BY CROYDON COUNCIL**

- 7.1 The council has accepted and acted on all recommendations. A formal apology has been provided in writing and the carers have been supported by the Service Manager for Fostering directly to resolve all issues.
- 7.2 The decision process relating to the Special Guardianship Order support plans including the assessment for financial support has been reviewed with specific timescales at each stage.
- 7.3 The Council have appointed a dedicated Children's complaints and feedback manager who oversees all complaints received by the services, and who works closely with the corporate complaints team.
- 7.4 The Council have implemented a new complaints management system that improves the tracking and monitoring of the status of complaints.
- 7.5 The Council have created an online complaints training package accessible to all staff on the Croydon Learning page.

## **8. LESSONS LEARNT, IMPROVEMENT AND PREVENTION**

- 8.1 The governance system for the approval, implementation, and review of Special Guardianship (SG) support plans was inadequate in June 2019. Children's Services were operating under an Improvement Plan given the Ofsted Inspection judgement of Inadequate given in 2017. The subsequent full inspection published in March 2020 provided an overall good outcome with Requires Improvement in Children Looked After, where the support for Special Guardians is located.

- 8.2 The revision of protocols for the approval of support plans sets out delegated responsibilities and where capital costs are included this decision is made by the Director of Children's Social Care contingent upon the provision of a signed legal agreement.
- 8.3 The Service Manager holds a monthly panel to review the implementation of agreed SG support plans to ensure compliance and delivery for children.
- 8.4 SGO Payments have been included in the corporate internal audit program for 2022-23.
- 8.5 The Council are reviewing the content of the complaints intranet pages for staff to make it more streamlined and to assist staff in identifying corporate and statutory complaints and action to take should they need assistance.

## **9. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

9.1 The financial recommendations made by the LGSCO were:

- £10,750 in respect of compensation.
- In addition to the compensation payment, additional costs for remedial works that have to be completed to the family home will be incurred.
- This sum was £31,200 and has been paid in full.
- In addition to the compensation payment, additional costs for 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 will be incurred.
- No additional costs were incurred or evidenced
- All the above have been paid in full.

9.2 Section 8 - Lessons Learnt, Improvement and Prevention will help mitigate future financial risks of this type.

- New and improved governance provides effective controls to mitigate the likelihood of a re-occurrence.

*Approved by:* Róisín Madden Director, Children's Social Care

## **10. LEGAL CONSIDERATIONS**

10.1 The Local Government Ombudsman was established under the Local Government Act 1974 Part 3 (LGA 74). Changes to the Act were included in the Local Government and Public Involvement in Health Act 2007 and the Health Act 2009. The LGA 74 sets out the Ombudsman's powers. Case law has further clarified how the LGA 74 should be interpreted. The Local Government Ombudsman changed their name to The Local Government and Social Care Ombudsman (LGSCO) in June 2017.

10.2 The main statutory functions of the LGSCO are:

- to investigate complaints against councils and some other authorities.
- to investigate complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009); and
- to provide advice and guidance on good administrative practice.

10.3 Under sections 26(1) and 26A(1) of the LGA 1974, as amended, the LGSCO investigates complaints about 'maladministration' and 'service failure' referred to as 'fault'. They consider whether any fault has had an adverse impact on the person making the complaint referred to as 'injustice'. If there has been fault which has caused injustice, they will suggest a remedy.

10.4 The LGA Act 1974, as amended, also specifies how the LGSCO issues decisions which is either by:

- a statement of reasons for their decision (sections 30(1B) and (1C)); or,
- a report (section 30(1)).

10.5 There are six criteria applied by the LGSCO when deciding whether to issue a public interest report which are set out in paragraph 2.2 of this report. The issue of a public interest report under section 30(1) ensures the council remains accountable to people who use its services and help to improve services for others.

10.6 Section 31(2) provides that the Council has a period of three months from the date of the LGSCO's report for Members to formally consider the report and its recommendations following which a formal written response must be sent to the LGSCO explaining what steps the council has taken and will take to comply with the recommendations in the report. The report should be considered at a full Council, Cabinet, or other appropriately delegated committee of elected members.

10.7 Where a finding of 'maladministration' is made the Council's Monitoring Officer

has a duty to report that finding to its Members under section 5 of the Local Government and Housing Act 1989.

*Approved by:* Doutimi Aseh, Interim Director of Legal Services & Deputy Monitoring Officer.

## **11. HUMAN RESOURCES IMPACT**

11.1 The recommendations in this report do not have any direct human resources implications. Following the completion of recommendations, the learning from the case will be fed back to practitioners and managers through existing learning and development activities within the department.

*Approved by:* Debbie Calliste, Head of HR for Children, Young People and Education on behalf of the Chief People Officer

## **12. EQUALITIES IMPACT**

12.1 The recommendations in this report do not have any equalities implications. Following the completion of recommendations, the learning from the case will be fed back to practitioners and managers through existing learning and development activities within the department.

12.2 The department will actively monitor any future complaints, by protected characteristic to ensure that an appropriate service is being delivered to all communities in the Borough.

*Approved by:* Denise McCausland Equality Programme Manager

## **13. ENVIRONMENTAL IMPACT**

13.1 There are no environmental impacts arising from this report

*Approved by:* Steve Isles, Director of Sustainable Communities

## **14. CRIME AND DISORDER REDUCTION IMPACT**

14.1 I can confirm there are no community safety / crime and disorder comments needed for this report.

*Approved by:* Kristian Aspinall, Director of Culture and Community Safety

## 15. DATA PROTECTION IMPLICATIONS

- Will the subject of the report involve the processing of 'Personal Data?'
- No
  
- Has a data protection impact assessment (DPIA) been completed?
- No

To comply with data protection requirements all personal details have been removed from the published report.

*Approved by:* Róisín Madden, Director of Children's Social Care

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**CONTACT OFFICER:**

Roisin Madden, Director of Children's Social Care. Kim Hyland, Complaints Resolutions Manager

**APPENDICES TO THIS REPORT:**

Appendix 1 – Full LGSCO Report

**BACKGROUND DOCUMENTS:**

None