

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

**Investigation into a complaint about
London Borough of Croydon
(reference number: 21 008 544)**

29 November 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

Miss Y	The complainant
W	Her child
Mr Z	Her brother

Report summary

Children's Services – leaving care

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.

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 the Council should:

- 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;
- 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;
- 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;
- 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; and
- 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.

The Council has accepted our recommendations.

The complaint

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.
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.
3. Miss Y complained to us because she says the Council's complaint investigation did not go far enough in remedying the significant injustice she experienced.

Legal and administrative background

The Ombudsman's role and powers

4. 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*)
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. 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.

Looked after children

7. Section 20 of the Children Act 1989 says councils must provide accommodation to any child in need within their area who needs it, because:
 - there is nobody with parental responsibility to care for them;
 - they have been lost or abandoned; or
 - the person who has been caring for them is prevented from providing suitable accommodation or care.
8. Children accommodated by councils in such circumstances are often referred to as 'Looked after Children'.
9. Councils cannot accommodate a child under section 20 if a person holding parental responsibility objects and is willing and able to care for the child or arrange care for the child.

Care leavers

10. The Children Act 1989 places duties on councils to provide ongoing support for young people leaving care. These duties continue until they reach age 21. If the council is helping them with education and training, the duty continues until age 25 or to the end of the agreed training, which can take them beyond their 25th birthday.

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11. Councils should appoint each care leaver with a personal adviser and provide a pathway plan. The personal adviser will act as a focal point to ensure the care leaver is provided with the right kind of support. The pathway plan should be based on a thorough assessment of the person's needs. Plans should include specific actions and deadlines detailing who will take what action and when. They should be reviewed at least every six months by a social worker.
 12. Pathway plans should continue for all care leavers continuing in education or training. The plan should include details of the practical and financial support the council will provide.
 13. The 'Care and Support Statutory Guidance', which accompanies the Act says that, when young people leave their care placement, the council must ensure their new home is suitable for their needs and linked to their wider plans and aspirations. This is echoed in the statutory guidance 'The Children Act 1989: Volume 2: care planning, placement and case review', which says:

"At the commencement of any tenancy the responsible authority must establish that the accommodation is affordable for the young person on the income available to him/her and there is clarity about the services that all charges are intended to cover. At the time that the young person moves in, arrangements should be in place for funding rent, any service charges, utilities and other tenancy costs".

Statutory complaint investigation

14. The law sets out a three-stage procedure for councils to follow when looking at complaints about children's social care services. The accompanying statutory guidance, 'Getting the best from complaints', explains councils' responsibilities in more detail.
15. The first stage of the procedure is local resolution. Councils have up to 20 working days to respond. If a complainant is not happy with a council's stage one response, they can ask that it is considered at stage two.
16. At the second stage of the procedure, councils appoint an investigator and an independent person to oversee the investigation. Councils have up to 13 weeks to complete stage two of the process from the date of the complainant's request.
17. If a complainant is unhappy with the outcome of the stage two investigation, they can ask for a stage three review by an independent panel. The council must hold the panel within 30 days of the date of request, and then issue a final response within 20 days of the panel hearing.
18. If a council has investigated something under the statutory children's complaint process, we would not normally re-investigate the substantive matter unless we consider the investigation was flawed. However, we may look at whether a council properly considered the findings and recommendations of the independent investigation.

How we considered this complaint

19. Before producing this report, we considered:
 - Miss Y's written complaint to us and any supporting information she provided, including emails with the Council;
 - the responses to Miss Y's complaint made through the statutory children's complaints procedure;

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- information provided by the Council in response to our written enquiries;
 - any relevant law, guidance or procedures as referred to in this report; and
 - our internal guidance, such as our [Guidance on Jurisdiction](#) and [Guidance on Remedies](#)
20. We considered our discretion to investigate matters which Miss Y was aware of more than 12 months before she approached us. We decided to exercise discretion to investigate the whole of Miss Y's complaint for three key reasons; firstly because of her vulnerabilities as a young person leaving care, secondly due to delay in the Council's investigation and finally because some of the injustice claimed by Miss Y is ongoing in nature.
21. We gave Miss Y 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

Key background information and complaint summary

22. Miss Y became a 'looked after child' in February 2013. She gave birth as a single parent to a child, we will call W, in December 2013. Miss Y and her child were accommodated in foster care until shortly after Miss Y's 18th birthday in January 2016.
23. The complaint made by Miss Y concerns the actions of the Council during the assessment and transition process ahead of her leaving foster care in 2016. Miss Y also complained about the lack of support from the Council after she transitioned to independent living as an adult and single parent.
24. Throughout the period complained about, Miss Y and her child lived in unaffordable housing for approximately five years. Consequently, Miss Y accrued significant rent arrears. For some of this time Miss Y also accommodated her 17-year-old brother, Mr Z, between October 2018 and April 2019. This was after Mr Z left prison and whilst he was subject to electronic monitoring by the police, sometimes referred as being 'on tag'. Miss Y felt pressure to accommodate her brother because he needed an address to facilitate the tagging. After leaving prison Mr Z was at risk from gang-related violence and had received previous threats at gunpoint.
25. Meanwhile Miss Y was actively trying to access higher education.
26. The Council investigated Miss Y's complaint at all stages of the statutory children's complaints procedure in 2020. At stage two of that process, the independent Investigating Officer (IO) agreed a statement of complaint with Miss Y. We have paraphrased the five complaint headings as follows.
1. The Council failed to properly transition Miss Y from care. Specifically in relation to her homelessness, early closure of the case and lack of planning.
 2. The Council placed Miss Y's brother, Mr Z, with her for significantly longer than initially decided in the viability assessment.
 3. The Council placed Miss Y and W in unaffordable accommodation.
 4. The Council did not resolve Miss Y's ongoing housing needs.

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5. The Council did not provide an adequate response to Miss Y at the first stage of the complaint investigation.
27. To remedy the complaint, Miss Y expressed the following desired outcomes.
1. Resolve her ongoing housing needs.
 2. Receive payment for the whole period Mr Z lived with Miss Y.
 3. Receive compensation for distress caused by the Council's decisions.
 4. Clear the rent arrears accrued whilst in unaffordable accommodation.
 5. Receive an apology from the Council.
 6. Receive support in accessing university education.

Statutory complaint investigation and conclusions

28. After investigating Miss Y's complaint through all stages of the statutory process, the Council upheld or partially upheld all aspects of the complaint. However, there were some elements of disagreement between the findings made at stage two and stage three which we will summarise below.
- Complaint one: not upheld at stage two because the IO said there was no evidence that Miss Y's case was closed automatically by the Council upon her 18th birthday. The IO felt there was evidence the Council allocated a personal adviser and discussed accommodation options for Miss Y during pathway planning in November 2015. At stage three, the panel felt the IO's report lacked depth on this point and did not offer a chronology of events. The panel said the Council's transition planning was not clear in the records and there was no evidence Miss Y had made a homelessness application. Overall, the panel decided to amend the finding to partially upheld. The Council agreed with this finding at the final adjudication stage.
 - Complaint three: upheld at stage two because the Council should have done more as a 'corporate parent' to ensure that Miss Y was in affordable housing. At stage three the panel agreed that Miss Y was not in affordable housing but decided not to deliver a fully upheld finding because the claim that Miss Y was directed to make a homelessness application was not supported by the evidence.
29. In the remaining complaints the Council found the following.
- Complaint two: upheld at all stages. The Council accepted the evidence showed that Miss Y provided an 'unregulated' placement for her brother and she should have received financial support. Although Mr Z refused to leave, the complaint investigation found the Council should have intervened due to the concerns raised in the viability report. The panel agreed that safeguarding concerns about risk to Miss Y and W were not properly considered.
 - Complaint four: upheld at all stages. The Council did not find any evidence of Miss Y's housing situation being resolved despite the 'hope' to do so within 12-16 weeks. At stage three the panel said Miss Y should provide proof of tenancy dates and total arrears for an appropriate financial remedy to be calculated.
 - Complaint five: partially upheld at all stages. The panel agreed the stage one investigation was correct not to uphold all complaints because they were not supported by the evidence, such as the claims around homelessness. However, the panel concluded that some references within the complaint

response were inappropriate, the letter was too narrowly focused, did not address all concerns raised and generally presented a hostile tone.

30. To remedy the complaint, the Council agreed in June 2021 to:
- continue working with Miss Y to agree a housing solutions plan and discuss available housing options. Support Miss Y whilst her rent remains unaffordable;
 - pay the weekly allowance for 'connected carers' for the entire duration of Mr Z's stay. In the Council's view, this amounts to 27 weeks and £8,017.92;
 - apologise for times when the best intentions of officers were not put into place. Clear any outstanding rent arrears by 31 October 2021 to remedy the distress and provide ongoing support;
 - ensure Miss Y received the correct payment for the 'setting up home allowance' and pay any outstanding amounts by 31 October 2021; and
 - support Miss Y with her return to university with the help of a new personal adviser. The Council did not agree to reimburse any of Miss Y's university fees because this was not investigated as part of her complaint.
31. Miss Y complained to us for two key reasons; firstly, because parts of the agreed remedy were outstanding, despite having a deadline for completion, and secondly because she felt the proposals made by the Council did not go far enough in remedying the significant injustice she experienced.

Conclusions

Distress

32. 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.
33. 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. We do not consider the Council has remedied this.
34. 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, which we deal with in the section below. However, in our view, there is outstanding injustice to Miss Y and W which the Council has now agreed to remedy.
35. 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. The Council will acknowledge the distress caused by these failures with the remedy we have agreed in the final section of this report.

Quantifiable losses

36. 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. Some of the hardship can be quantified, and we deal with those aspects in this section of our report.
37. Firstly, 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.
38. 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.
39. 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 which the Council will acknowledge with a symbolic payment.
40. 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.
41. Finally, 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. When discussing the complaint with us, 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.
42. 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.

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43. 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.
44. 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.

Complaint handling

45. 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.
46. 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.
47. 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. Although the timescales for convening panel meetings were relaxed during the COVID-19 pandemic, via the 'Adoption and Children (Coronavirus) (Amendment) Regulations' 2020, the regulations did not impose any changes to the timeliness of stage two investigations.
48. 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.

Agreed actions

49. 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*)
50. In addition to the requirements set out above, the Council has agreed to:
 - 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;
 - 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;
 - 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;
 - 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; and
 - 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.

Decision

51. We have completed our investigation with a finding of fault causing injustice for the reasons outlined in this report. We consider the above agreed actions provide an appropriate remedy for the injustice caused by fault.