

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: AUDIT COMMITTEE

Report of: Chief Executive of Birmingham Children's Trust

Date of Meeting: 28 March 2023

Subject: Ombudsman Public Interest Report concerning a complaint in relation to respite support for disabled children.

Wards Affected: All

1. Purpose of Report

- a) In December 2006, the Audit Committee endorsed a framework for informing and involving Members of the Council when the Local Government and Social Care Ombudsman issues a report.
- b) The aim of this report is to inform members about the Ombudsman's report, issued on 2 March 2023, regarding a complaint in relation to respite support for disabled children.
- c) As the Ombudsman has found fault causing injustice and have made recommendations to remedy the injustice caused, it should be considered by this Committee on behalf of the City Council.

2. Recommendations

That the Audit Committee notes the Chief Executive of Birmingham Children's Trust response to the Local Government and Social Care Ombudsman's recommendations.

3. Background Information

3.1 A copy of the Local Government and Social Care Ombudsman's report dated 9 February 2023 is appended to this report. All Ombudsman reports are anonymous, so, whilst the events described are real, the names of those involved are not included.

3.2 The essence of the complaint:

Mrs F complained about the Council's decision in relation to respite support for her disabled children. She complained:

- the amount of respite awarded for her son in 2021 was insufficient, contradicted the social worker's recommendations and did not meet her son's or her own needs;
- the Council failed to give reasons for its decision;
- the Council had wrongly ended Child in Need meetings and the support the family was receiving from a disabilities social worker; and
- the Council did not deal with her complaint properly.

Mrs F says as a result of the lack of support she and the family are under immense stress and there is a risk of family breakdown.

4. The Key Events

4.1 Mr and Mrs F have a son, J, and a daughter, K. Both have autism, anxiety, difficulties with communication and can have challenging behaviour. Mrs F also has autism. In July 2018, mental health services referred J to the Council due to him harming himself and others. It was also noted that K had a diagnosis of depression.

4.2 The Council carried out a section 17 assessment in March 2019, when J was in secondary school and K in primary school. This found that J and K were being kept safe and their basic care needs were met, but this was at the expense of their parents. The assessment said that without support the situation was unlikely to be sustainable and the family were nearing crisis point. J needed regular opportunities to socialise outside the family and K needed her parents to have regular opportunities to rest. The assessment recommended short respite breaks for both J and K.

4.3 The Council agreed to provide J with direct payments for support to access the community for 12 hours a month, plus 30 hours for the school holiday. It would provide K with two overnight short breaks a month. Child in need plans were developed, J was referred to the Disabled Children's Family Support Team and monthly child in need meetings started.

4.4 The Council changed J's support package to two overnight short breaks a month in January 2020 and started searching for a suitable foster carer to provide them. The national COVID-19 lockdown started before J's short breaks were put in place.

Request for increase in support package

- 4.5 In October 2020 Mrs F requested a review of J's short breaks support. She said J's foster carer had made extra hours available. This was because there had been a delay in providing support due to the COVID-19 lockdown, and J was not able to attend school as he could not manage the COVID-19 restrictions. This had put extra pressure on the family.
- 4.6 Mrs F therefore asked the Council to increase J's package from two nights a month to every other weekend and a midweek night every week (a total of eight to ten nights a month). This was supported by J's school and the mental health service.
- 4.7 A family support worker carried out a section 17 assessment. This found the family was near breaking point as J's behaviour had become more challenging. The assessment recommended an increase in the short breaks to two weekends a month and one night a week.
- 4.8 The Community Resource Panel considered this assessment on 8 December 2020. It agreed to increase J's package to four nights a month. The decision letter to Mrs F said *"Please note each Foster Carer looks after up to 10 children per annum and each child has a standard 2 overnights per month, the assessments reflects J's needs and this is why an increase has been approved."*
- 4.9 Mrs F asked to appeal this decision. There are no more case records until 22 February 2021 when it is noted that the panel was due to review the decision the next day.
- 4.10 The panel, with a different chair, decided to continue the current provision of four nights a month. The decision letter to Mrs F said *"The extra nights previously agreed was an arrangement with yourself and the Foster Carer who had the extra nights due to the limited amount of children. In an emergency you can have extra nights if the Foster Carer has the availability however, this is temporary in times of crisis."*
- 4.11 A social worker emailed Mrs F saying if she wished to appeal "the next stage was the complaints process". Mrs F sent an email to the complaints team.
- 4.12 The next record is that on 26 April the social worker contacted Mrs F to say she had been allocated to re-assess J and K. It is unclear whether this was because of a request from Mrs F or a request from the panel due to her appeal. The Council temporarily increased J's respite to six overnight short breaks whilst the case was being re-assessed.
- 4.13 The social worker completed a new section 17 assessment on 22 June. This recommended the Council should either increase the current package or maintain the interim package of six nights a month, otherwise it was likely the family would break down. The assessment also says *"[an increase in provision] could potentially change the short break plan into [J] becoming a child in care by virtue of the number of nights."*

- 4.14 The panel, chaired by the assistant director, considered the provision for J and K on 29 June. It decided to continue with four nights a month for J and two nights a month for K. The decision letter does not give any reasons for the panel's decision.

Mrs F's appeal

- 4.15 Mrs F appealed the panel's decision on 10 August 2021. We have not seen any evidence of a response to her, although there is evidence the social worker was asking colleagues when the appeal would be heard.
- 4.16 In September 2021 the child in need meeting decided J and K's child in need plans could be stepped down to a family support worker with Early Help reviews and that monthly meetings with a disabilities social worker were no longer necessary. This was because there were no safeguarding concerns.
- 4.17 The Council wrote to Mrs F in January 2022. It said it should have referred her to the Ombudsman in August 2021. This was because there had already been an appeal panel in June, so the case could not be considered again. The Council apologised that an appeal had been incorrectly timetabled for November 2021 as the manager had been unaware of the previous appeal. This had caused some confusion which had taken time to clarify. Mrs F then approached the LGSCO.
- 4.18 In February 2022 a social worker emailed Mrs F saying *"we have been instructed to close this case ... due to LGO involvement"*. Then, in response to Mrs F's concern about this, the Council said *"the case has been transferred to the family support short breaks team ... the council asks that your appeal is further reviewed by the LGO."*
- 4.19 In response to our enquiries the Council said its practice was that once an assessment has been completed and a package of support put in place, children were stepped down to the short breaks team and did not have a social worker between reviews. The allocation of a social worker was not dependent on any appeals or complaints. The Council apologised that this was not properly explained to Mrs F.

5.The Ombudsman's Findings; Report issued – Upheld: Maladministration and injustice.

J and K's respite support

- 5.1 The LGSCO cannot intervene if the decision was properly taken. A decision will not be fault simply because Mrs F disagrees with it.
- 5.2 The Council's notes of the panel's decisions and its decision letters to Mrs F lack detail about what factors the panel considered and why it decided four nights respite for J was sufficient to meet his and the family's needs. There is no explanation given about why the panel did not agree with the section 17 assessments which had found he needed more care than this. The LGSCO

principles of good administrative practice say the basis on which decisions are made and resources allocated should be open and transparent. Decision reasons should be clear, evidence based and explained. The LGSCO therefore find fault in the decision letters and case records.

- 5.3 The Council did temporarily increase the respite provision from four to six nights for a period after April 2021, which remedies some of this injustice.

Child in Need meetings

- 5.4 Mrs F complained that the Council wrongly ended the child in need meetings and moved J and K to a family support worker rather than social worker.
- 5.5 J and K are children in need as they are disabled children. The Council has a duty to assess children in need, provide services where necessary and have child in need plans which are reviewed at least every six months. However, it is not required to hold monthly child in need meetings or to allocate social workers to them. As set out in paragraph 13, the Council can determine that children with additional needs do not require statutory social work support. The LGSCO find no fault.

Mrs F's appeal

- 5.6 After the panel decided in December 2020 to provide J with four nights respite, Mrs F appealed. The panel reviewed its decision on 23 February 2021 with a different chair. This is in line with its appeal process.
- 5.7 The Council says when the panel next considered J's and K's provision on 29 June 2021 this was the stage three appeal panel. However, this panel followed a fresh section 17 assessment which was carried out in April 2021. We therefore consider that this was not an appeal panel but a new decision based on a new assessment.
- 5.8 This means that when Mrs F appealed in August 2021 the Council should have reviewed that decision. Its failure to do so was fault.
- 5.9 The LGSCO cannot say that if there had been a review of the decision after August 2021 the Council would have changed its decision about the number of nights for J. But Mrs F has been caused time and trouble by the delay and by having to approach the Ombudsman.

The Council's appeal and complaints process

- 5.10 The LGSCO find fault in the Council's panel appeal process and complaint policy.
- 5.11 The Council says that following an unsuccessful appeal, parents should go to the Ombudsman. This policy wrongly excludes the statutory children's complaint procedure which children and parents are entitled to use. It also leads to early referrals to the LGSCO which they cannot normally accept as the statutory children's complaint process has not been followed.

- 5.12 The Council's complaint procedure says it is "*not a means by which the merits of decisions or professional judgements can be challenged because they are unfavourable or in dispute.*" This is not in line with the Getting the best from complaints statutory guidance, which says all complaints about children's social care services, including services for disabled children, must go through the statutory children's complaint process. This includes complaints about "disputed decisions" and the "quantity of a service".
- 5.13 In response to the LGSCO's enquiries, the Council advised that it does not consider complaints where there is an alternative appeal process but it does accept complaints about "*how the decisions of the Community Resources Panel were made – separate and distinct from a challenge to or disagreement with the decision itself*".
- 5.14 The LGSCO's view is this reasoning is flawed. A parent is unlikely to complain about the decision-making process if they agree with the panel's decision. In addition, the children's complaint process is statutory; councils have a duty to allow parents and children to use it and they may use it if they have a complaint the Council has failed to meet the assessed needs of the child and/or carer or if there is a service failure. The complaints process can review how the panel made its decision and either recommend a new decision or recommend the panel take the decision again. And the complaint investigator is not confined to looking at the panel's decision, they may also find there is a systemic failure in the Council's process. The LGSCO would therefore expect the Council to signpost parents to the children's statutory complaints process following an unsuccessful appeal.
- 5.15 In 2019 the Ombudsman found fault with the Council on this point. In that case (18 013 857) the LGSCO said:
"The Council disagrees it is at fault as it considers it would be reviewing the same decision twice if it considered Y's care package through its internal review procedure and the statutory complaints procedure. But the key point is the complaints procedure is statutory so the Trust has a duty to investigate complaints covered by this procedure. Mr and Mrs X's complaint about Y's care package is a complaint covered by the statutory complaints procedure. Furthermore, the guidance does not exclude a complaint subject to a council's own appeal procedure from the statutory complaints procedure. We therefore remain of the view the Trust is at fault for not signposting Mr and Mrs X to the statutory complaints procedure. The Trust should review its complaints procedure to ensure it complies with the statutory complaints procedure."
- 5.16 The complaint procedure the Council sent to the LGSCO was dated 2019 so it is unclear if the policy was reviewed following the Ombudsman decision as it has not changed its practice.
- 5.17 The LGSCO find the Council's processes are flawed and have the potential to hamper and delay people's access to the statutory complaint process they are entitled to and be an inefficient use of public resources.

- 5.18 During the investigation, the LGSCO became concerned this fault may have affected others who have not complained to them. Under their powers set out under paragraph 26D of the Local Government Act 1974, we were asked how many others had appealed a decision made by the Community Resource Panel since April 2021. In response the Council said there had been 27 appeals to the panel since April 2021. These appellants have therefore missed out on an opportunity to have an independent investigation. This creates uncertainty to them that their cases were properly investigated or reviewed.
- 5.19 Birmingham Children's Trust provide services for children on behalf of the Council. When a council commissions another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. So, although we found fault with the actions of the Trust, we have made recommendations to the Council.

6. The Ombudsman's Recommendations

- 6.1 The Council has agreed to take the following action to remedy the injustice identified in this report.
- Write to Mrs F with an apology and an explanation of why and how the panel reached its decision in June 2021.
 - Pay her £300 to acknowledge the uncertainty caused.
 - Pay her £200 to acknowledge the time and trouble she was put to due to fault in the appeal process.
 - Advise appellants to the appeals panel since April 2021 that, if they are unhappy with the outcome of the panel they can complain to the Council under the statutory complaints procedure.
 - Amend its complaint policy and appeal process to ensure those who raise complaints about children services have the opportunity to access the statutory children's complaints procedure, in line with the law and statutory guidance and provide evidence to us that it has done so. The Council has already implemented this.

7. The Council's View

- 7.1 The Council accepted the Ombudsman's recommendations at the draft report stage.
- 7.2 The pivotal issue this complaint has highlighted concerns the incorrect practice of referring families to the Ombudsman after the Community Resources Panel appeals process had concluded. The Trust acknowledges that this practice denied families with the opportunity to use the statutory complaints procedure to challenge decisions regarding support packages.
- 7.3 This approach was compounded by inconsistent and incorrect advice provided by staff, which created further confusion for the complainant.
- 7.4 Upon receipt of the Ombudsman's draft decision, the Trust immediately amended its practice and policy to ensure that families were not disadvantaged and had

access to the statutory complaints procedure. The statutory complaints procedure provides complainants with the opportunity to have their complaint investigated independently (at stage 2).

- 7.5 Updated literature has been produced for the revised process, which clearly advises families of their right to use the complaints procedure if they are unhappy with decisions made at Community Resources Panel.

8. Legal and Resource Implications

- 8.1 The agreed payments will be made from an appropriate budget.

9. Risk Management & Equality Impact Assessment Issues

- 9.1 As a result of the prompt changes to practice and policy the Trust has taken, the Trust is confident that the risks this complaint has identified have been fully mitigated.

10. Compliance Issues

- 10.1 The Trust has taken prompt action to comply with the recommendations made by the Ombudsman. These actions include:

- A letter of apology will be issued to the complainants by the Chief Executive of the Trust, Andy Couldrick, by the end of the month. This letter will also provide an explanation of why and how the Community Resources panel reached its decision in June 2021.
- The compensation payments identified are currently being processed and will be paid to the complainant this month.
- The Community Resources Panel appeal process and the Trust's complaints policy have both been amended to ensure that children and families who wish to complain can access the statutory children's complaints procedure.
- Details of families who have used the Community Resources Panel appeals process since April 2021 have been identified. A letter will be sent to the families by the end of the month advising them of their right to use the statutory children's complaints procedure.

In addition, the Trust is currently devising a summary learning document regarding this complaint for staff in the Children with Disabilities Service to ensure that the learning is shared across the service.

11. Recommendations

That the Audit Committee notes the actions being taken in response to the Local Government and Social Care Ombudsman's report.

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