

15 October 2013

**Local Government Ombudsman- Report on an investigation into complaint no
12 017 037 against Walsall Council**

Ward(s) Children's Service

Portfolios: Councillor Rachel Andrew

Executive Summary:

The Local Government Ombudsman has issued a report of maladministration following a complaint by a young person in the Council's care. The Ombudsman's report is attached for Member's consideration.

Section 30(3) of the Local Government Act 1974 requires the Ombudsman to issue reports such as this without naming or identifying the complainant or other individuals. Likewise the report does not identify the location of the care settings in question. Some Members will know, or may recognise, the location of these premises; however, in considering the present report tonight, they should avoid revealing details which the Ombudsman has anonymised in her report.

If Members believe it would be beneficial to discuss the case in more detail to allow effective scrutiny then they may wish to consider moving into private session in accordance with Schedule 12A of the Local Government Act 1972, this would allow more granular detail of the case to be discussed but will mean the exclusion of the press and public as it would be likely to reveal the identity of individuals involved.

The Council delegated authority to officers to settle complaints arising from reports of the Ombudsman on 13th September 2010. It is important to effect speedy resolution of complaints in the interests of both the council and complainants, and this accords with the principles of natural justice and good practice. Ombudsman guidance also advises that the anonymity of the report as issued should be respected by the parties to the complaint.

Reason for scrutiny:

To allow Scrutiny members to review the LGO findings and make any recommendations that may wish ahead of presentation to Cabinet.

Recommendations:**That the Scrutiny and Performance Panel:**

- That Scrutiny note the report in advance of the report being submitted to Cabinet by the Monitoring Officer.

Report detail

The Council received a complaint from the Ombudsman in January 2013. The Ombudsman summarised the complaint as being that the Council failed to follow the requirements of the law when attempting to move the complainant from a residential school placement.

The Complainant via an independent advocate, had previously complained to the Council about the proposed move and had asked that the move be frozen pending an investigation into the complaint. The complaint was considered under the Statutory Complaints Process at Stage 1 which accepted and apologised for the rushed way in which the move was managed and extended the placement for a short time but did not change the decision to end the placement. A request was made to progress the complaint to Stage 2 of the statutory complaints process but it was agreed not to escalate and the complainant was directed to the Local Government Ombudsman.

In carrying out the investigation the Ombudsman considered the written complaint and evidence sent through to support it, spoke to the young person's representative and made written enquiries of the Council and considered the responses to these. A draft report detailing the Ombudsman's findings was shared with the Council and the complainant who were both provided with an opportunity to comment on factual accuracy.

The Ombudsman issued her final report on 24 September 2013, finding maladministration in relation to the Council's failure to follow statutory guidance in taking an initial decision and also failing to escalate the complaint or freeze the move.

The Ombudsman has concluded that as a result of maladministration by the council, the complainant has been caused injustice in the form of distress and uncertainty.

The Council has agreed to the remedy by the Ombudsman, paragraph 36 of the report notes that the Council has agreed to:

- a) hold £1000 in trust for Miss N for a period of up to three years, to be paid at her advocate's request to fund such education, training or leisure

expenses the advocate deems appropriate in consultation with Miss N;

b) review its policies and procedures for cases where it proposes to end placements to ensure these policies comply fully with statutory guidance relating to care planning and consultation with children who are looked-after, their carers and advocates; and

c) arrange training for social workers to ensure they understand and adhere to the requirements of statutory guidance relating to care planning and consultation with children who are looked-after, their carers and advocates where it is proposed to end placements.

In addition the Council has agreed to apologise to the complainant for its failure to progress her complaint or freeze the planned move when asked to do so by her advocate, the Ombudsman and the Office of the Children's Right Director; and the social worker's attempt to get her to sign an agreement to move.

Officers are currently looking for the best trust fund arrangement for Miss N into which the £1000 will be paid. It is anticipated that this will be done by the end of October.

The review of all policies and procedures is currently underway to ensure best practice; the launch of each policy is being undertaken with individual teams and services to ensure full compliance with the regulations and that all workforce development needs are met.

Since January 2013, there has been a significant focus on improving the skills of social workers in ensuring that each contact with a child or young person provides an opportunity for that child to be heard. Training for social workers on implementing the new Care Planning Regulations has commenced and will run as a routine aspect of the Workforce Training Directory going forward.

Resource and legal considerations:

Financial - The report recommends a payment of financial compensation of £1000 to be paid in trust to the complainant. The payment will be made once an appropriate trust has been identified to hold the £1,000. It is anticipated that this will be resolved by the end of October.

Legal – The Ombudsman service was established by the Local Government Act 1974, to investigate complaints about council services by service users.

When a report is issued, the council concerned must place a notice in the local press advising residents that the report has been published and is available for inspection, and must arrange for the report to be submitted for Member consideration. Notices were placed in the Walsall Advertiser on 3 October 2013 and Walsall Chronicle on 10 October 2013 indicating that the report would be available to view and read at the First Stop Shop on the ground floor of the Civic Centre, and at Walsall Reference Library for 3 weeks from 1 October 2013. The report will be available until 21 October 2013 in this way. The report is also available on the

Ombudsman's web site www.lgo.org.uk. The Ombudsman has been advised that the report would be submitted to this meeting of Cabinet for consideration.

The Monitoring Officer has a personal duty under s5 and 5A of the Local Government and Housing Act 1989 to prepare a report to the relevant committee of the authority, namely council or cabinet depending upon the function where a proposal, decision, or omission by the authority, by any committee, or by any person holding any office or employment under the authority, has given rise to or is likely or would give rise to any such maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974

Where the Local Ombudsman reports that there has been maladministration in connection with the exercise of the authority's administrative functions, a failure in a service which it was the function of an authority to provide, or a failure to provide such a service, the report shall be laid before the authority concerned. It shall be the duty of that authority to consider the report, and within the period of three months beginning with the date on which they received the report, or such longer period as the Local Ombudsman may agree in writing, to notify the Local Ombudsman of the action which the authority has taken or proposes to take.

The Council delegated authority to officers to settle complaints arising from reports of the Ombudsman on 13th September 2010. It is important to effect speedy resolution of complaints in the interests of both the council and complainants, and this accords with the principles of natural justice and good practice. Ombudsman guidance also advises that the anonymity of the report as issued should be respected by the parties to the complaint.

Staffing

As noted above additional training is being carried out for staff

Citizen impact:

The individual distress caused to the young person in this case has been noted and remedied. The learning from this incident will help avoid this happening to other young people on the council's care

Environmental impact:

None

Performance management:

Performance: A key improvement priority is to ensure that the voice and views of children and young people inform and shape what we do on their behalf. Listening, hearing and capturing young people's voice and views is an important message to all staff and is being actively supported through briefings, supervision and monitoring. It is equally important to provide clear simple frameworks and protocols governing the processes that practitioners must follow in order to empower and support staff to use their professional experience and make judgements on behalf of young people.

Risk: In order to ensure that there is learning for this and this mitigate against a recurrence of this type of situation arising again, briefings for frontline staff and managers will be undertaken across Children's Specialist Services as well as with the local safeguarding board. Training for all staff on the new Care Planning Regulations is also underway and the focus on ensuring that staff talk with children alone will ensure that children's voices are clearly heard and inform and shape our response to them and plans for them.

Equality Implications:

None

Consultation:

The Ombudsman service, through one of their team of investigators, has liaised closely with officers of the council, and with the complainants, throughout the investigation of this complaint. The council was consulted on the draft report, and given the opportunity to correct any factual errors.

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Councillor R Andrew
Portfolio Holder
8 October 2013



Rose Collinson
Interim Director Children's Services
8 October 2013

Report

on an investigation into
complaint no 12 017 037 against
Walsall Metropolitan Borough Council

24 September 2013

Investigation into complaint no 12 017 037 against Walsall Metropolitan Borough Council

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<p>The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.</p>

Key to names used

Miss N - The complainant

Report summary

Education and children's services

Miss N (a child aged 13) complains that Walsall Metropolitan Borough Council failed to follow the requirements of the law in attempting to move her from an out-of-area placement where she had been accommodated since 2011.

The Council took an initial decision in the summer of 2012 to move her at short notice. This was without proper planning and in contravention of the requirements of statutory guidance to take account of her views and those of other interested parties. It then provided her with a series of short-term extensions to her placement. Although it apologised for its actions, it later continued to take active steps to move Miss N. These involved an attempt by a social worker to get her to sign an agreement to move even after the Ombudsman and the Office of the Children's Rights Director alerted it to the requirement of statutory guidance that it should freeze the planned move while it considered Miss N's complaint. Miss N later agreed to move.

Finding

Maladministration causing injustice.

Recommended remedy

To remedy the injustice identified the Council has agreed to:

- a) hold £1000 in trust for Miss N for up to three years, to be paid at her advocate's request to fund such education, training or leisure expenses the advocate deems appropriate in consultation with Miss N;
- b) review its policies and procedures for cases where it proposes to end placements to ensure these policies comply fully with statutory guidance relating to care planning and consultation with children who are looked-after, their carers and advocates; and
- c) arrange training for social workers to ensure they understand and adhere to the requirements of statutory guidance relating to care planning and consultation with children who are looked-after, their carers and advocates where it is proposed to end placements.

I also consider it should apologise to Miss N for:

- its failure to progress her complaint or freeze the planned move when asked to do so by her advocate, the Ombudsman and the Office of the Children's Rights Director; and
- the social worker's attempt to get her to sign an agreement to move.

Introduction

1. Miss N complains that Walsall Metropolitan Borough Council failed to follow the requirements of the law when attempting to move her from a residential school placement.
2. Miss N says this caused her serious distress.
3. As part of the investigation my investigator has:
 - considered the complainant's written complaint and the evidence sent to support it;
 - made written enquiries of the Council and considered its responses; and
 - spoken to Miss N's representative on the telephone.

Legal and administrative background

4. The Ombudsman investigates complaints of maladministration causing injustice. I have used the word fault to refer to this. When I find fault causing injustice, I can ask the Council to take action to remedy that injustice.
5. The Children Act 1989 requires that a local authority that looks after a child must, "so far as reasonably practicable, ascertain the feelings and wishes of the child". It further requires that "in making any decision in relation to the child, it should give due consideration to those wishes and feelings, having regard to the child's age and understanding".¹
6. The Children Act 1989 Guidance and Regulations require that, when a Council proposes to end a placement, "they must carry out a review of the child's case and ensure that the views of all the people concerned have been heard, including the child ... as well as ... the child's carer ...".²
7. Statutory guidance "Getting the Best from Complaints" states that decisions about placements may be frozen until a complaint is considered. It states there should generally be a presumption in favour of freezing unless there is a good reason against it, such as where a young person would be at risk by remaining where they are.³

1 The Children Act 1989, Sections 22(4) and 22(5) as quoted in The Children Act 1989 Guidance and Regulations: Volume 2, para 1.9

2 The Children Act 1989 Guidance and Regulations: Volume 2, para 3.57

3 Getting the Best from Complaints: Social Care Complaints and Representations for Children, Young People and Others, paras 6.5.1 and 6.5.2

Investigation

8. Miss N is a child aged 13 who is represented by an advocate. The Council accommodated her at an out-of-area placement in late 2011. This was a residential special school (School A). She wanted to remain there.
9. The Council's education panel decided in July 2012 to withdraw funding for the placement because it considered Miss N did not have special educational needs. As children's services only funded part of the placement, this meant it would have to end.
10. School A complained to the Council on 16 July 2012 that it had not held a care planning meeting and had given Miss N little notice of the planned move. My investigator has not seen any evidence that the Council held a care planning meeting at which School A or Miss N could have contributed prior to its initial decision.
11. The Council and Miss N's advocate disagreed about the suitability of School A for Miss N. The Council said School A would not be able to meet her future educational needs as it was designed for children with special needs and she was due to start GCSE courses in September 2013. Miss N is academically able. Her advocate said School A had told him it would be able to meet her needs in the future.
12. The Council's records show it gave Miss N short notice that she was going to move on at least two occasions in September and October 2012. A letter it provided in response to my investigator's enquiries shows it wrote to Miss N to apologise for this on 25 January 2013.
13. Miss N attended her looked-after review meetings on 6 August 2012 and 30 November 2012.
14. The documents the Council provided relating to the period between the two review meetings show social workers were unsure of Miss N's views as she had previously expressed a wish to return to her home area and to her family, but also wanted to remain at School A.
15. However, it was clear by 30 November 2012 when the looked-after review took place that Miss N did not want to move and found the prospect of doing so, on 21 December 2012 as then planned, distressing. A note on the Council's file shows a social worker felt Miss N might be reluctant as she had formed a relationship with another resident at School A. However, Miss N's file notes show the Council did not consider there were any reasons of urgency to move her arising from this relationship.
16. A file note of 3 December 2012 recorded by a social worker stated that she did not think the case had been managed in a way where Miss N had been involved.

17. Miss N's advocate complained to the Council. On 24 December 2012 he asked the Council to freeze the planned move while it was dealing with the complaint. The Council said it froze the move at Stage 1 of its process.
18. The Council's file notes show on 28 December 2012 a social worker recorded she could not freeze the move as the decision had been taken for financial reasons. They also show Miss N was distressed when a social worker visited her on 31 December 2012 to discuss the proposed move, then due for 2 January 2013.
19. The file notes also show School A was unhappy on 1 January 2013 that the Council planned to send the manager of the new placement to visit Miss N the following day. School A said this should not happen if the Council had frozen the planned move.
20. The Council sent a Stage 1 response to Miss N's complaint on 3 January 2013. It extended the deadline for her to move to 16 January 2013.
21. The Office of the Children's Rights Director asked the Council on 4 January 2013 to freeze the move.
22. The Council's files show social workers planned on 7 January 2013 to collect Miss N from School A on 12 January 2013 so she could attend a new maintained non-residential school (School B) in the Council's area on 14 January 2013, though this did not go ahead. Instead the file notes show Miss N refused to return with a social worker on 8 January 2013 to visit School B.
23. The Council did not provide any reasons of urgency for not freezing the move.
24. On 16 January 2013 the Council wrote to Miss N again. It confirmed it would not escalate the complaint to Stage 2 of its process. Miss N's advocate then approached the Ombudsman.
25. The Council held a strategy meeting on 23 January 2013. The Council did not invite a representative from School A to this meeting, though it invited a representative from School B. In its response to my investigator's enquiries, it accepted it was wrong not to invite anyone from School A. The minutes of the meeting show it authorised a social worker to visit Miss N.
26. My investigator advised the Council by telephone on 24 January 2013 that he would need to make formal enquiries given Miss N's vulnerability and the Council's confirmation to him of its refusal to escalate the complaint. He advised the Council that any further action to move Miss N might be considered as maladministration.
27. My investigator made formal enquiries of the Council on 25 January 2013 and asked whether it would now freeze the planned move given it declined to escalate the complaint to Stage 2 of its process.

28. On the same day, the Council wrote to Miss N to apologise for its actions in September and October 2012.
29. The following day, the social worker visited Miss N. She asked Miss N to sign a written agreement to visit schools and placements. My investigator has seen a copy of this agreement. Miss N refused to sign and there was an incident between Miss N and the social worker.
30. The Office of the Children's Rights Director wrote again to the Council to ask it to freeze the planned move. The Council then confirmed to the Office of the Children's Rights Director that it would do so.

Conclusion

31. The Council's records show it took a decision to move Miss N from her placement that she did not agree with. While it did not have to have her consent, the fact the decision was taken at least in part for financial reasons and its admission that it gave her short notice of a proposed move on two occasions show the Council was at fault by failing to plan properly, or to take account of Miss N's wishes in contravention of the Children Act 1989 guidance and regulations. This caused injustice to her in the form of unnecessary distress.
32. I am not able to say whether School A was the most appropriate place to meet Miss N's needs. However, the Council took its original decision in July 2012 without reference to School A. It also failed to invite a representative of School A to the meeting on 23 January 2013 that authorised a social worker to visit Miss N. Such a representative could have given School A's views. The Council's failure to do so was further fault in the form of failing to take account of the views of School A, an interested party caring for Miss N at the time, in contravention of the Children Act 1989 Guidance and Regulations.
33. The Council also declined to progress Miss N's complaint beyond Stage 1 of the complaints process. The evidence in the case records shows it simultaneously failed to freeze the move when requested to do so by Miss N's advocate and the Office of the Children's Rights Director. It only did so after a further request from the Office of the Children's Rights Director. It could not confirm any reasons of urgency that would have justified its approach. This was further fault as it contravened the requirements of statutory guidance. The Council's actions caused Miss N further injustice in the form of unnecessary distress.
34. The meeting held by the Council on 23 January 2013 authorised a social worker to visit Miss N at School A. The social worker should not have attempted to get Miss N to sign an agreement to move in such circumstances. The social worker's attempt to get Miss N to sign the agreement was further fault and must have been acutely distressing. It can only have appeared to her that the Council

intended to move her regardless of her views, her advocate's representations and the interventions of the Ombudsman and the Office of the Children's Rights Director.

35. In summary, the evidence in the Council's own records shows it was at fault by taking an initial decision without following statutory guidance. It continued with its intentions, providing a series of short-term extensions and failing to either escalate the complaint, or to freeze the move as required by statutory guidance, even initially when alerted to this by the Ombudsman and the Office of the Children's Rights Director. The injustice thereby caused to Miss N, in the form of distress over a period of six months, was serious. This was particularly acute at the time the social worker attempted to get her to sign the agreement.

Recommended remedy

36. To remedy the injustice identified the Council has agreed to:
- a) hold £1000 in trust for Miss N for a period of up to three years, to be paid at her advocate's request to fund such education, training or leisure expenses the advocate deems appropriate in consultation with Miss N;
 - b) review its policies and procedures for cases where it proposes to end placements to ensure these policies comply fully with statutory guidance relating to care planning and consultation with children who are looked-after, their carers and advocates; and
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