

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

**Investigation into a complaint against  
Newcastle upon Tyne City Council  
(reference number: 19 020 471)**

**17 December 2020**

## 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

Mr X      The complainant

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## Report summary

### Education and Children's Services

Mr X complains about the Council's handling of a children's safeguarding enquiry and his subsequent complaint.

### 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*)

In addition to the requirements set out above, the Council has agreed to:

- apologise to Mr X in writing for the faults identified; and
- pay Mr X £1,150 in recognition of the time and trouble, uncertainty, and distress he and his family have been caused.

The Council has already made significant improvements to its service following Mr X's complaint and the recommendations from the Investigating Officer, Independent Person and stage three panel. This is welcome. The Council should also take the following action to further improve service.

- Amend the Safety Plan template to ensure signatories understand the agreement is voluntary and to explain any consequences of not following the agreement.
- Remind relevant staff of the importance of providing parents with all the information needed to make informed decisions and keeping a record of any agreements.
- Produce a strategy to ensure it meets the timescales for statutory children's complaints, in particular organising and holding the stage three panel within 30 days.
- Provide guidance and training to relevant staff on unconscious bias and the importance of inclusive and diverse public services.

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## The complaint

1. Mr X complains:
  - the Council told him he had to move out of his home and give up his job caring for a vulnerable adult following a report about his treatment of his children;
  - the Council ended the family support service abruptly with no warning;
  - the Council failed to meet the statutory timescales for complaints about children's services; and
  - the stage two Investigating Officer (IO) made a discriminatory comment about him during the stage three panel hearing.
2. Mr X says he was insulted, suffered loss of dignity, and his relationship with his family has been irreparably damaged.

## Legal and administrative background

3. 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*)

## How we considered this complaint

4. We produced this report after examining relevant documents and talking to the complainant.
5. We gave the complainant 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

### Background

6. In April 2017, the Council received a report about how Mr X was treating his children.
7. Council officers and a police officer visited the children, who were at a neighbour's house. The Council decided to visit Mr X at home *"with the aim of asking father to leave over the weekend"*.
8. The Council says Mr X agreed to leave the family home over the weekend *"until further direction from day time services"*. Mr X says the Council told him to leave, and he was not given a choice.
9. Mr X told the Council officers he worked as a personal assistant for a vulnerable adult. The Council says Mr X *"was encouraged to make his employer aware of this matter and an adult safeguarding referral has been completed"*. Mr X says the Council told him he had to give up his job, and he later did so.
10. During the following week, allegations about Mr X's behaviour were withdrawn. In May 2017, Mr X returned to the family home.
11. In May 2017, the Council referred Mr X and his family to a Family Support Worker (FSW) for continuing support.

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12. The Council says the FSW visited the family seven times between May and July 2017.
  13. Mr X says the support stopped in July with no warning and the Council did not properly assess his family's needs.
  14. The law sets out a three stage procedure for councils to follow when looking at complaints about children's social care services. At stage 2 of this procedure, the Council appoints an Investigating Officer and an Independent Person (who is responsible for overseeing the investigation). If a complainant is unhappy with the outcome of the stage 2 investigation, they can ask for a stage 3 review.
  15. Mr X complained to the Council in March 2018. In March 2019, the Investigating Officer (IO) presented the final stage two report to the Council. The IO investigation found:
    - the Council did not follow its procedures by failing to make a safeguarding referral about the vulnerable adult Mr X cared for; and
    - the way in which the Council ended the family support service was abrupt and poorly communicated.
  16. The stage two investigation reports recommended the Council:
    - hold a review meeting or similar when family support ends;
    - consider a modest financial payment to Mr X for the delay in completing stage one of the complaints procedure;
    - improve its practice in making adult safeguarding referrals; and
    - due to the confusion which arose about Mr X's employment, produce a leaflet explaining the advice offered in such situations.
  17. The Council wrote to Mr X in May 2019 accepting the findings of the stage two investigation.
  18. Mr X asked the Council to consider his complaint at stage three. The stage three panel hearing took place in February 2020. Mr X says he was upset when the IO told the panel that he may not have understood advice given to him in the past because his *"first language is not English"*.
  19. The panel changed the finding of the stage two investigation about what the Council told Mr X about his employment from "not upheld" to "unable to prove/disprove".

### **Analysis**

20. If a council has investigated something under the statutory procedure for complaints about children's services, we would not normally re-investigate it unless we consider that investigation was flawed.
21. There is fault in the way the Council considered Mr X's complaint about the safeguarding process. The IO relied on the Council's account of what happened and did not consider whether the written evidence supported the Officers' version of events. Officers were interviewed over a year after events happened and, as set out below, records made at the time do not show the Council properly explained Mr X's options to him. Therefore, we will re-investigate Mr X's complaint.

### The Safety Plan

22. The Council decided it needed to take steps to safeguard Mr X's children. This is a matter of professional judgement and it is not for us to question the merits of a decision made without fault. However, the Council cannot *require* a parent to leave their home without a court order. It therefore should have sought Mr X's agreement to leave.
23. When child protection concerns arise, councils frequently enter voluntary interim agreements with parents which place certain restrictions on their contact with their children. These agreements should be time-limited – usually while the council conducts an assessment – and the council should write each agreement down, make sure the parent knows it is voluntary, and set out the potential consequences if the agreement is not followed. (*Working Together to Safeguard Children, 2018*)
24. Mr X and his wife signed a "Safety Plan" on the evening the Council responded to the concerns about the children. The Safety Plan says:  
*"[Mr X] has agreed to stay out of the family home all weekend, until further direction from day time social workers."*
25. The Safety Plan does not say the agreement is voluntary. It says Mr X will be "directed" by the Council on what to do next. Nor does it say what will happen if Mr X does not stay away from the home over the weekend. The Council has not provided any written evidence that the Officers made it clear to Mr X that leaving his home was voluntary. This is fault. As a result, Mr X did not have all the information necessary to make an informed decision about whether to leave the home.
26. Furthermore, the events of the evening would undoubtedly have been distressing and confusing for everyone involved. If the signed agreement was clear that it was voluntary and what the potential consequences would be of not following it, Mr X would have been able to refer to this over the following days to understand what was expected of him.
27. The Safety Plan Mr X signed said he agreed to leave for the weekend. After the weekend, the Council held a strategy meeting to decide what to do next. The record of this meeting says:  
*"Dad to remain out of the family home to be reviewed when the children have been interviewed."*
28. There is no evidence the Council made a new agreement with Mr X following the strategy meeting to remain away from the home while the Council investigated. Nor that Mr X was further advised of his right not to leave and that any agreement was voluntary. In the absence of such evidence, we find it likely Mr X did think he *had* to leave. This is fault. As a result, Mr X faced the uncertainty and distress of not knowing if or when he would return home.
29. The Council should apologise to Mr X for this uncertainty and pay him £250 in recognition of the additional distress this caused at an already difficult time.

### Mr X's Employment

30. The stage three panel found that it was unable to prove or disprove Mr X's complaint that the Council instructed him to give up his employment as a carer for a vulnerable adult.

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31. The Council's records say Mr X was told to inform his employer about allegations made and that Officers were going to make a safeguarding referral to the Council's Adult Social Care team. Mr X says the Council told him to give up his employment.
32. The Council failed to make a safeguarding referral. This is fault. If it had done so it seems likely Mr X and his employer would have been contacted by someone from Adult Social Care to discuss his role and any potential issues.
33. We cannot say this directly led to Mr X leaving his employment, but Mr X was left in an uncertain position. The action we have recommended regarding uncertainty caused by the Safety Plan and other advice given to Mr X already provides a suitable remedy for the injustice caused.
34. The Council has since produced an information leaflet about this to avoid any potential confusion. This is welcome.

### **Family Support**

35. The stage two investigation found the Council did not communicate properly with Mr X and his family when the family support service ended in July 2017. The Council accepted this fault and has made changes to improve its service. It now holds "step-down meetings" with families to ensure it records parents' views about support ending.
36. The Council has apologised to Mr X but we do not consider this a suitable remedy for the injustice the Council's fault caused him.
37. Because of the Council's fault, Mr X experienced uncertainty and felt abandoned and let down by services. This worsened his loss of trust in the Council because despite his difficult experiences, Mr X was still willing to engage fully in the family support the Council offered.
38. Therefore, in addition to the apology already given, the Council should pay Mr X £100 in recognition of the unnecessary extra uncertainty and distress the Council's fault caused at an already difficult time.

### **Statutory Children's Complaint Procedure**

39. [Getting the Best from Complaints](#) is the government guidance which directs councils in how to deal with complaints under the statutory procedure. The guidance contains strict timescales which councils must follow.
40. The Council accepts it did not meet the timescales in this case but says "*despite not meeting the 65 day timescale, the investigation was completed in a reasonable timeframe*".
41. The guidance says the Council should issue a response at stage one within 20 working days. The Council's failure to meet this deadline resulted in the stage two investigation. The Council has offered Mr X £200 to acknowledge this delay. This is a suitable remedy for the Council's failure to respond to the stage one complaint in March 2018.
42. The complaint progressed to stage two on 10 May 2018. The Council appointed the IO and Independent Person (IP) on 12 June 2018. Mr X agreed his statement of complaint on 8 August 2018. The IO submitted the stage two investigation report on 8 March 2019. The Council wrote to Mr X with its adjudication on 31 May 2019.
43. *Getting the Best from Complaints* says this process should take a maximum of 65 working days. From the date Mr X agreed his statement of complaint to the



date the Council issued its adjudication took 207 working days, a delay of 142 days.

44. We accept that part of this delay occurred because the IP fell ill and this is unavoidable. The report was further delayed to give Mr X an opportunity to respond to a draft version, which we consider appropriate. Nonetheless, we find the stage two investigation took at least 100 days too long. This is fault.
45. Mr X asked to escalate the complaint to stage three on 11 July 2019. The stage three panel took place on 6 February 2020. This is a period of 148 working days. The guidance says the panel should take place within 30 working days of the request. This is a delay of 118 working days. This is fault.
46. In total, we find the Council unnecessarily delayed stages two and three of the statutory complaints process by 218 days, or about seven months. By the end of the stage three process, almost three years had passed since the child protection investigation. Because of the delay by the Council, Mr X faced uncertainty and was prevented from moving on from what was undoubtedly a distressing time in his life. To remedy this injustice, the Council should apologise and pay Mr X £350.

### **Comments made during the Stage Three Panel**

47. During the stage three panel there was a discussion about the differing accounts of what the Council said to Mr X about his employment as a carer for a vulnerable adult. The IO said that because Mr X's *"first language is not English...[his] understanding may have been different from what the social workers actually said"*.
48. Mr X says he found this statement offensive and feels that it shows race discrimination by the IO.
49. It is important to consider the IO's comment, and Mr X's perception of it, in context. Mr X was representing himself before a panel comprised of white members, after an investigation conducted by a white IO.
50. *Getting the Best from Complaints* directs councils to have regard to the *"profile of the local population"* in selecting the panel. In response to our enquiries, the Council has demonstrated it is aware of this expectation and is proactive in seeking diverse applicants for its panels. It consulted its equalities lead in drawing up the contract and advertises regularly to encourage new applicants. There is no fault in how the Council selected members for the stage three panel.
51. Nevertheless, Mr X felt self-conscious of his being of a different race and nationality.
52. Mr X is of North African origin. He has been in England for almost 40 years. He speaks English and is also fluent in two other languages.
53. In response to our enquiries, the Council said:  
*"There are no recorded requests for any communication support and there are recordings on the file of communication between [Mr X] and practitioners in English with no concerns raised for understanding or communication."*
54. There is no evidence Mr X has any difficulty in understanding English. If the IO believed Mr X's grasp of English was relevant in the interaction with the Council officers, it should have been included in the report.
55. To raise it as a possible explanation for the first time during a stage three panel hearing was inappropriate and has no basis in evidence. This is fault. As a result, Mr X felt understandably insulted. It also caused him to doubt the IO's



independence, thereby undermining his confidence in the objectivity of the complaints process.

56. Mr X complained about the comment after the panel. The Council addressed the complaint in its adjudication letter following the stage three panel. It said:

*"I would like to apologise that this comment has made you feel angry and uncomfortable, in a setting where we would hope to put you at your ease."*

57. Although recognising Mr X's feelings, this apology does not accept that the comment was inappropriate and unfounded. To remedy the injustice to Mr X, the Council should apologise fully and pay him £250 in recognition of his understandable distress.

## Conclusions

58. We found the following.

- A statutory complaint investigation found the way in which the Council ended the family support service was abrupt and poorly communicated.
- The Council's Safety Plan did not say the agreement with Mr X to leave his family home was voluntary. The Council failed to review or update the plan following a strategy meeting.
- The Council failed to advise its Adult Social Care team about what happened when it was aware Mr X was a carer for a vulnerable adult.
- The Council failed to meet the timescales for dealing with complaints about children's services.
- The Investigating Officer made an inappropriate and unfounded comment during the stage three panel meeting.

59. The fault we have identified caused Mr X unnecessary uncertainty, distress and offence.

## Recommendations

60. 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*)

61. In addition to the requirements set out above, the Council has agreed to:

- apologise to Mr X in writing for the faults identified; and
- pay Mr X £1,150 in recognition of the time and trouble, uncertainty and distress he and his family have been caused.

62. The Council has already made significant improvements to its service following Mr X's complaint and the recommendations from the IO, IP and stage three panel. This is welcome. The Council should also take the following action to further improve service.

- Amend the Safety Plan template to ensure signatories understand the agreement is voluntary and to explain any consequences of not following the agreement.

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- Remind relevant staff of the importance of providing parents with all the information needed to make informed decisions and keeping a record of any agreements.

Produce a strategy to ensure it meets the timescales for statutory children's complaints, in particular organising and holding the stage three panel within 30 days.

- Provide guidance and training to relevant staff on unconscious bias and the importance of inclusive and diverse public services.

### **Final decision**

We have completed our investigation. The Council was at fault. The action we have recommended is a suitable remedy for the injustice caused.

EMBARGOED TILL 00:01, 11/02/21