

19/01/21

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

**Investigation into a complaint against
Somerset County Council
(reference number: 18 010 275)**

08 January 2021

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

Ms X The complainant
Mr Z Her eldest son

Report summary

Special educational needs (SEN) and children's services

Ms X complains of failures by the Council to meet her son, Mr Z's special educational and care needs, causing significant distress to her family. While there was no fault in the SEN matter, the Council failed to properly consider the safeguarding risks to Mr Z's younger siblings repeatedly raised by Ms X. This went on for almost three years, causing her distress and leading to the younger siblings suffering repeated unprovoked violent assaults by Mr Z, who was much larger than them, as well as fear of further attacks.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused by fault, the Council should, within a month of the date of this report:

- apologise to the family for the failings identified here; and
- pay Ms X £8,250, made up of £2,000 for her injustice, £2,000 for each of the three younger children's injustice, and £250 for Mr Z's injustice. We have confidence that Ms X will use the sum to the benefit of her children.

To reduce risk for other children, it should also, within a month of the date of this report:

- alert all staff to the fact that children have the right to be protected and that social care staff should retain an open mind. We are recommending that s.47 of the Children Act 1989 should not be ruled out and could be appropriate in exceptional circumstances when providing support to disabled children and their families; and
- remind those responsible for the conduct of placement panels that there must always be a record of what information they consider and of the rationale for their placement decisions. In response to a draft of this report, the Council told us it now does this, which we welcome.

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*)

The complaint

1. The complainant, whom we shall call Ms X, complains the Council failed:
 - in 2017 and 2018 to make the provision ordered by a Special Educational Needs and Disability (SEND) Tribunal for her son, Mr Z; and
 - to meet Mr Z's social care needs since 2015.

Legal and administrative background

2. 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*)
3. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
4. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
5. 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*)
6. The Children Act 1989 requires councils with children's services functions to meet the assessed needs of disabled children, who are children in need. (*Children Act 1989, s.17*)
7. Councils with children's services duties must also act in response to information that a child might be suffering or at risk of suffering significant harm. This duty arises under s.47 of the Children Act 1989. They must decide if there is risk of significant harm. Physical violence is one form of harm. If the physical violence is likely to be repeated, the fear of the repeat is also harm. If physical violence or the fear of it is likely to be repeated without effective preventive action, most councils find that is a risk of significant harm. When siblings fight, parents normally deal with this without the need to involve social services, and children know their parents will keep them safe. The parents thus protect their children from harm. However, regular physical attacks by one child on another that a parent says they cannot prevent, even where they are due to a disability or medical condition, are a different matter. (*Children Act 1989, s.47*)
8. Councils with children's services duties must provide accommodation for children where it appears the person who has been caring for the child is prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care. A parent may thus consent to their child entering council care if they do not feel able to care for them. This is a voluntary arrangement and the parent may withdraw consent at any time. (*Children Act 1989, s.20*)

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9. 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 report with Ofsted.

How we considered this complaint

10. We have produced this report after examining the relevant files and documents provided by both parties. Both parties have had the opportunity to comment on a draft of this report and we have considered their comments.
11. Though we have considered both points of Ms X's complaint, we have also focussed much on the safeguarding matter that was not part of her original complaint.
12. These matters go back to 2015. We have considered them because the circumstances laid out in our report were such that Ms X would have found it difficult to pursue a complaint while Mr Z remained in the family home.

What we found

Background

13. Mr Z is now an adult, but he was a child at the time of the matters complained of. His three younger siblings are all still children.
14. Mr Z has a significant condition that creates elements of physical and learning disabilities. The two most relevant to what happened in Mr Z's case are excessive appetite and unpredictable violent outbursts.
15. The family returned to the UK in 2015 after some time overseas. An important reason for their decision to return was Mr Z had experienced maltreatment at school and by carers overseas, including being tied up and physically chastised. Ms X's husband was obliged to remain overseas for much of the period from 2015 to 2018. This meant Ms X had to care for Mr Z and her three younger children as a single parent for most of these three years.
16. Ms X's view from 2015 was that Mr Z's SEN would be best met by a term-time or 52-week residential school placement.

Complaint - Making SEN provision in 2017 and 2018 ordered by a SEND Tribunal

17. The period involved is that between two SEND Tribunals in March 2017 and April 2018.
18. Ms X wanted the first SEND Tribunal to name 52-week provision at a school (School A). The first Tribunal instead named another school that did not offer 52-week provision (School B). The second SEND Tribunal a year later named another school (School C) that made 52-week provision.

Complaint - Meeting Mr Z's social care needs since 2015

19. As laid out in the next section, the Council assessed in 2015 Mr Z needed respite of one overnight a week and one weekend a month. It did not provide this.

Safeguarding Mr Z's younger siblings

Mr Z's condition and its effect on his siblings

20. Mr Z had the same diagnosed medical condition in 2015 as in 2018. He was subject to sudden, unpredictable outbursts of violence against his younger siblings and Ms X, some of them witnessed by visiting professionals. These outbursts also included throwing objects and using implements against his siblings. The records show the younger siblings suffered physical injuries and were afraid of Mr Z, often hiding to avoid him. Frequent unpredictable aggressive incidents involving Mr Z were later recorded by the residential school he attended from May 2018.
21. Mr Z's weight increased significantly during the time covered by this complaint. Ms X said he weighed 28 kilos in 2013. In May 2016, a paediatrician recorded his weight at over 67 kilos and his height as 157 centimetres. In an email to the Council of 25 September 2017, Ms X said Mr Z weighed 100 kilos. In May 2018, just before he moved to a 52-week residential placement, his weight was recorded as 106 kilos. His three younger siblings were all of slight build and much smaller than Mr Z. Ms X also weighed significantly less than Mr Z after 2016.

The Council's response to our findings

22. The Council has disputed our findings. It said they contained *"much suggestion generically which creates an image of Mr Z as a child of large stature and frame, who is regularly and consistently unable to manage and control his emotions to the extent that he is hitting, kicking, biting, scratching and attacking others with and without using weapons"*.
23. The Council took the view Mr Z's behaviour was not unusual among many of the children it has worked with. It said Mr Z had clusters of dysregulated behaviour and then more settled periods. It said that taking some specific steps as carers and professionals, this can be reduced. It said not all the incidents were attacks and that Mr Z's school said it could meet his needs. It told us that the Council's approach in treating these matters under s.17 of the Children Act 1989 rather than s.47 of the Act reflected best practice nationally and that, were we to sustain our findings, they would have national implications.

Safeguarding Mr Z's siblings in 2015

24. The Council first assessed Mr Z in July 2015. The assessment identified a physical risk to Mr Z's siblings from his violent outbursts and noted a doctor's report that stated Mr Z may eventually need a residential placement. It rated the risk of physical violence as "severe".
25. The subsequent Care Plan for Mr Z, issued on 25 September 2015, stated:

"My worry is that if [Ms X] in particular doesn't have any breaks from [Mr Z], it will eventually be difficult for [Ms X] to cope, also have concerns about how [Ms X] will cope if she is unable to prevent [Mr Z] from lashing out at his siblings in frustration."

Ms X is *"the only adult caring for her 4 children and preventing [Mr Z] from hurting the other children."*

"Concerned that younger siblings are not always able to get out of [Mr Z's] way and will be hit and kicked resulting in them shouting for a parent to rescue"

them. It appears if nothing changes [Mr Z's] frustration will just increase thereby endangering other family members”.

26. The Care Plan identified the need for respite care for Mr Z to help Ms X cope.
27. The Council referred Mr Z for one overnight respite a week and one weekend a month. But the referral stated Mr Z would probably not meet the criteria for these because of his violence. The referral also stated Mr Z would need two-to-one supervision when out in the community.
28. The Council did not provide the respite it assessed Mr Z and the family needed.
29. The Council also accepted the severe unpredictable violence that created the need would rule out providing the care required.
30. Following this, there were further reports of violence, from Ms X and third parties.
31. On 11 October 2015, Ms X emailed the Council, saying Mr Z had attacked a younger sibling with an implement and a third party, present on that occasion, had had to restrain him.
32. Four days later, Mr Z's school told the Council he had punched a child in the face whom he had attempted to strangle the previous week. The Council has questioned Mr Z's intent, and whether this was “strangling” or “strongly squeezed”.
33. The Council held a Signs of Safety meeting on 21 October 2015. This recorded that Ms X was worried about Mr Z's aggression and his attacks on his siblings.
34. By the end of 2015, Ms X's family doctor and Mr Z's school had both reported Ms X being distressed. An educational psychologist (EP) also recorded Mr Z's younger siblings were physically scared of him.

Safeguarding Mr Z's siblings in 2016

35. At the start of the year, Ms X provided her views for Mr Z's Education Health and Care (EHC) Plan. She described mealtimes involving her three younger children at one end of the table and Mr Z at the other. She said she barricaded one side of the table with chairs to prevent Mr Z attacking his siblings, while she guarded the other side. She wrote “*The children beg me to find a ‘boarding school’ where [Mr Z] can learn better.*” She described them hiding themselves and their property from Mr Z in their large house. She wrote “*It must be terrible to be 7, 9 or 11 and feel the way they tell me they feel.*” She said her children were being physically and emotionally abused by Mr Z.
36. The Council agreed some respite, beginning in spring 2016. But this was for three hours after school once a week. The assessed need was one overnight a week and one weekend a month.
37. The agency that provided the two hours a week and Children and Adolescent Mental Health Services (CAMHS) both took the view that Ms X needed to use other strategies to manage Mr Z's behaviour. The agency also stated that it would need weekends away from home with Mr Z to carry out effective work because of the situation at home. A social worker again asked for one overnight a week and one weekend a month in May 2016. Again, it was not provided, despite being Mr Z's assessed need.
38. In the same month, Ms X asked the Council to take Mr Z into care and asked for emergency respite. The Council declined the request to take Mr Z into care. An

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- officer told her it would be a last resort. The Council offered an emergency weekend respite placement, but Ms X turned this down. She told us she was concerned that Mr Z would end up in a psychiatric ward, a police station, or a children's home as his needs were so great.
39. Also, in May 2016, the paediatrician wrote to the family doctor, copying in the Council. Mr Z had been moved to another class at his school because he had been targeting a pupil. The paediatrician wrote "*[Mr Z] has clearly been physically very threatening to other pupils at school and I am concerned of the impact his physical violence could potentially have to his younger siblings and his mum at home.*" The violence reported including strangling, hitting, kicking, and striking with implements. Mr Z weighed over 67 kilos according to the paediatrician.
40. The Council pointed out this letter was not addressed to it and not made as a safeguarding referral.
41. The Council also pointed out that Mr Z's school report of April 2016 said he had settled well into the new class and that the school still said it could meet his needs.
42. Mr Z's social worker requested a residential placement for him on a form dated 11 May 2016. Ms X provided us with a copy of this form. It stated that Ms X could no longer manage Mr Z's behaviour, which was causing his younger siblings physical and emotional harm.
43. A placement panel in May 2016 did not identify a placement for Mr Z and arranged to meet again the next month.
44. In June 2016, a CAMHS nurse met Mr Z's social worker. They were concerned about Ms X's capacity to protect her younger children. The social worker recorded she had seen footage of Mr Z assaulting his sister and of a large red mark on her back caused by the assault. Ms X was advised to call the police if a physical assault occurred. The CAMHS nurse confirmed on 21 June 2016 that Mr Z's school had told her it had recorded 36 incidents of violence involving him.
45. The second placement panel in June 2016 did not identify a placement for Mr Z. It recommended guidance for Ms X and raised the possibility that an external agency might be able to provide some support.
46. A legal tracking panel sat after the placement panel. It noted serious concerns about the risk posed by Mr Z to his siblings and stated an emergency short-term placement was needed.
47. On 6 July 2016, the CAMHS nurse visited the family. She had to intervene to rescue Ms X after Mr Z sat on his mother on a sofa and she was pinned down. He weighed more than Ms X by this time. The CAMHS nurse also witnessed Mr Z strike his sister with an implement during her visit. She reported this happened without warning and would have been impossible to prevent. She said the current three hours-a-week support was "*not adequate to protect these children from further harm*". She followed up with an email to the Council describing Mr Z's siblings leaving the room as soon as Mr Z entered. She said none of the siblings could give her any information about things they were looking forward to in the summer holidays. She wrote "*I am very concerned about the safety of the children in this family home and fear there may be a serious injury to them or [Ms X]. I am also worried about [Ms X's] ability to parent [Mr Z] at this time. She is appearing exhausted and appears to have no support from [Mr Z's] father at this time.*"

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48. A complex needs panel sat the following day and was shown the CAMHS nurse's evidence. It agreed a residential placement in principle, subject to further assessment. There is no evidence the Council took any immediate action to deal with the actual harm witnessed by the CAMHS nurse. It was aware that Ms X had asked it to remove Mr Z because she could not protect her other children from repeated violent assaults.
49. The Council has pointed out it gave Ms X a list of activities available for her children during the summer holidays. Ms X says these activities were only for Mr Z, and required Mr Z to be supervised by her, so there would have been no respite.
50. The Council has also pointed out that it provided Ms X with direct payments from June 2016, but that she did not spend the whole amount, leading to a reduction a year later.
51. When we spoke to Ms X, she told us she kept a bag hidden by the front door containing a torch and a mobile phone. She told us this was for one of the siblings to take if he was running away from Mr Z. She said he would do this because of his own special needs and the area around the house was unlit countryside. Ms X said the bag proved unsuccessful because Mr Z found it, and the sibling then always kept a phone in his pocket. The Council told us it was unaware of this.
52. When the allocated social worker visited just before the summer holidays, she spoke to Mr Z's siblings. They told her Mr Z was "*unpredictable and controlling*". She recorded that Mr Z threw a metal object at a brother's head, injuring him.
53. Ms X's husband returned briefly at this time to take Mr Z on holiday with him. The siblings were therefore away from Mr Z until late August 2016. The Council says this prevented further introductory work intended to lead to overnight respite.
54. A further placement panel in September 2016 rejected the request for a residential placement. It took the view there was no evidence in the application to say what strategies were in place at home and if they were working.
55. By the end of the year, the relationship between Ms X and professionals was under strain. CAMHS had stated that Ms X had a "*relaxed and chaotic parenting style which may scrape along with children without a disability however this was not enough to manage [Mr Z's] needs*". Ms X refused to attend another Signs of Safety meeting as she said the Council was wrongly focussing on her perceived inadequacy, not the help she needed. She says this meeting was not presented to her at the time as a Signs of Safety meeting. The Council carried out a s.47 strategy meeting regarding the risk posed to Mr Z by Ms X's parenting. Ms X contests the evidence for this, but she agreed to the actions the s.47 strategy meeting outlined to protect Mr Z. We have not seen any evidence that the Council considered the physical risk Mr Z posed to his siblings at this meeting.

Safeguarding Mr Z's siblings in 2017

56. The records the Council sent us in response to enquiries show an increasing Council view that Ms X's inflexibility in insisting upon a residential placement was not helping matters.
57. The family's situation remained the same, other than Mr Z's increasing size and weight.

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58. An email to the Council from the CAMHS nurse in February 2017 relayed the siblings' views. The CAMHS nurse had seen Mr Z throw a shoe at a brother, hitting him in the face and making him cry. When she spoke to him, he told her *"I avoid [Mr Z]. I stay out of the way. I don't know what will happen. He hits me when I pass him."* The CAMHS nurse said the brother *"looked very sad and subdued today"*. The CAMHS nurse said Mr Z's sister told her *"I stay behind Mum. I scream for Mum if [Mr Z] comes near me."* The CAMHS nurse said she had witnessed this happen.
59. In March 2017, Ms X appealed unsuccessfully to the SEND Tribunal for a 52-week placement for Mr Z.
60. The Council carried out a fresh assessment of Mr Z's social care needs. During the assessment, Mr Z's school stated his violence occurred without warning and that he had targeted a specific pupil. A teaching assistant said she had seen Mr Z's sister hiding behind curtains when he returned home, and she felt the sister was frightened of him. We have not seen any evidence that Mr Z's violent assaults on his siblings had lessened.
61. The Care Plan completed in May 2017, after the assessment, took the view Mr Z was being ostracised within the family. It said the siblings were avoiding him due to *"what they view as sometimes frightening and unpredictable behaviour"*. Child in Need minutes of a meeting of the same day state the younger brother would sometimes try to protect Ms X from Mr Z. The social worker again put in a request for respite care. The subsequent panel, in June 2017, again declined to approve overnight short breaks. It asked for another risk assessment. Another panel, in September 2017, decided Mr Z needed a capacity assessment.
62. There were several violent incidents involving Mr Z and third parties in September 2017, both at school and during school transport.
63. The Council held a Team Around the Child meeting in October 2017 because of Mr Z's increasing violence at school. His teacher said he was sometimes not physically strong enough to control Mr Z.
64. Other than the two hours a week from an agency, we have not seen any evidence the Council provided the respite care in 2017 it had assessed Mr Z as needing, though it proposed two short break placements and considered short break foster carers. Ms X reported that incidents continued at home.

Safeguarding Mr Z's siblings in 2018

65. In February 2018, the Council told Ms X it had been unable to find a short break foster carer. Mr Z received a two-day fixed-term exclusion from school that month after a violent assault on a teacher.
66. The following month, a social worker observed Ms X to be exhausted when she visited the family home. Ms X says this was typical throughout the period 2015-18 as Mr Z was often awake at night because of his condition. The Council offered Ms X a carer's assessment, but this visit had to be cancelled for Ms X to collect Mr Z from school following an incident there.
67. In April 2018, at a SEND Tribunal, it was recorded the Council accepted Mr Z needed a 52-week residential school placement. It amended his EHC Plan and he attended the school from May 2018.

Conclusions

Making provision in 2017 and 2018 ordered by a SEND Tribunal

68. While Ms X's view is that the Council misrepresented Mr Z's SEN to the first SEND Tribunal, we have no authority to consider that. We must accept that the first SEND Tribunal had authority to decide Mr Z's SEN provision. Whether it was correct for him to remain in the family home was a social care matter that we have dealt with separately. Mr Z was able to attend School B, which the SEND Tribunal decided. We do not therefore find the Council failed to make the provision ordered by the SEND Tribunal in March 2018.

Meeting Mr Z's social care needs since 2015

69. The Council did not provide the respite one overnight a week and one weekend a month it assessed Mr Z needed. This failure went on for almost three years. We find the Council at fault.

Safeguarding Mr Z's younger siblings

The Council's response to our findings

70. We do not accept the Council's view. As already stated, Mr Z became a child of large stature and frame. And there is ample evidence in the records of the views of a range of professionals, based on their observations, that Mr Z was regularly unable to control himself, and that this resulted in violent incidents that Ms X could not control. Even if Mr Z's school had been able to cope with his physical behaviour, that would be irrelevant to what happened in the home. But there is evidence that there were violent incidents at school, too, and Mr Z's teacher confirmed later in the period that he could not physically overpower him. At home, Ms X could not call upon colleagues to assist her and she had three other children to care for at the same time. It is also irrelevant whether the incidents were all attacks, what Mr Z's intent was, or whether Ms X could have done more, which she disputes. It is also irrelevant that external professionals did not explicitly state that they were making safeguarding referrals. The relevant issue is that Mr Z's younger siblings suffered harm or fear of harm, which they disclosed to professionals, and which the Council was aware of. There is no evidence the Council assessed the risk to the younger siblings despite several reports that they were suffering harm while Ms X was unable to protect them. This was fault.
71. The Council is correct that we have a different interpretation of "significant harm" to its interpretation. Mr Z's school reported that he strangled another pupil. Suggesting that Mr Z's intent in attacking a child was significant and seeking to distinguish between "strangled" and "strongly squeezed", amount in our view to minimisation of actual harm to a child. In our view, that Mr Z was "a child of large stature and frame, who is regularly and consistently unable to manage and control his emotions to the extent that he is hitting, kicking, biting, scratching and attacking others with and without using weapons", is a matter of fact from the Council's own records and the testimony of professionals.
72. The Council has offered only assertion for its contrary view, which is based on its view of Ms X's parenting. It has not accepted that Mr Z, while not directly responsible, caused his siblings actual physical and emotional harm for three years. Ms X's parenting skills have no relevance to this harm, though it must be pointed out she acted responsibly by alerting the Council repeatedly to her inability to cope, and by asking it to accommodate Mr Z, which she had a right to

do under s.20 of the Children Act 1989. The Council's response amounts to minimisation and normalisation of harm to three children. We are concerned that there is a risk that, faced with similar circumstances, the Council would again fail to protect children from actual harm.

Safeguarding Mr Z's siblings in 2015

73. As stated earlier, the Council did not provide the respite it assessed Mr Z and the family needed. This was fault. The Council also accepted the severe unpredictable violence that created the need would rule out providing the care required. Given this, the Council should have considered what other action to take to protect Mr Z's younger siblings from the physical risk from violence they were suffering and the psychological risk from their anxiety about the threat from Mr Z.
74. By the end of 2015, Ms X had told the Council Mr Z had attacked a younger sibling. Mr Z was causing his siblings physical harm and it is likely they were being psychologically harmed by the fear of violence.
75. The Council identified the risk Mr Z posed to the family in July 2015. It identified Mr Z's needs and the provision required to meet those needs. Despite this, the Council did not take any action until Ms X disclosed Mr Z had attacked his sibling in October 2015. This was the start of an almost three-year delay to meet the needs of the family leaving them subject to physical and psychological harm. This delay was fault.

Safeguarding Mr Z's siblings in 2016

76. The Council's approach to the family continued in 2016.
77. We take no view about the opinions of the agency that provided the two hours a week and CAMHS that Ms X needed to use other strategies to manage Mr Z's behaviour. This is because it was irrelevant to the Council's duty to protect the younger siblings from the harm all the evidence suggested they were suffering. The Council again failed to provide the respite needed despite the request from the social worker in May 2016.
78. Although the Council says it did not ignore Ms X's two direct requests to take Mr Z into care, it accepts it should have provided some overnight respite care. We take the view Ms X made her two direct requests as a result of her increasing desperation given the lack of help she had received from the Council. She had a right to do so under s.20 of the Children Act 1989. Declining them was fault.
79. We accept the Council was entitled not to treat the paediatrician's copied letter as a safeguarding referral. However, the Council's comment about Mr Z's school report of April 2016 does not invalidate the paediatrician's concerns about the risk the reported violence posed at home. These concerns, voiced by a professional, reported similar behaviours in a school setting to those reported to the Council by Ms X.
80. The Council also failed to take action to deal with the actual harm witnessed by the CAMHS nurse, despite being aware that Ms X had asked the Council to remove Mr Z because she could not protect her other children from repeated violent assaults. This was also fault.
81. The Council's comment that it gave Ms X a list of activities available for her children during the summer holidays is disputed by Ms X. Regardless of whether these were just for Mr Z, or involved his younger siblings, this cannot gainsay the children's comments about the summer holidays. They would have known they

were likely to spend much more time with Mr Z during the school holidays than during the school term. And despite the positive comments by the siblings about Mr Z in 2015, to which the Council has referred in its response to the draft report, the majority of the siblings' reported views, as well as their observed behaviour, speak of their justified fear of physical harm in the three years that followed.

82. Despite the Council's comment about direct payments, it is not surprising that Ms X struggled to source and arrange care, given the high needs created by Mr Z's condition and the situation the family was in, as well as the Council's own acknowledged difficulties in doing the same.
83. The Council says Mr X taking Mr Z on holiday with him in August 2016 prevented further introductory work intended to lead to overnight respite. However, while we do not dispute the Council's point, Ms X and her younger children gained immediate respite for several weeks through the family's own actions, not through any by the Council, which had not yet provided what it had assessed as necessary in 2015.
84. Regardless of whether the information presented to the September 2016 panel was sufficient, we find the Council at fault. This is because the Council was corporately aware of actual harm to Mr Z's siblings continuing for more than a year, but it did not take any action to prevent further harm.
85. It is irrelevant whether Ms X's parenting of Mr Z was adequate. She had asked for help in protecting Mr Z's younger siblings in 2016, to the extent of asking the Council to take Mr Z into care, but she had received little help. The introductory sessions that were intended to lead to some respite had still not been done by the time Ms X's husband returned and took his own action in August 2016. Despite professional recommendations for a placement, none had been found. Ms X had admitted she could not protect her younger children, and her inability to physically control Mr Z, who was larger than her, had been witnessed by a professional. He remained subject to unpredictable violent outbursts that caused actual harm to his siblings and made them afraid. While the Council acted properly in acting to remove risk to Mr Z via s.47 of the Children Act 1989, it failed repeatedly in 2016 to act on opportunities to prevent harm to his siblings. This was fault.

Safeguarding Mr Z's siblings in 2017

86. As in 2016, we find the Council failed to act to protect Mr Z's siblings from actual harm. Professionals witnessed sudden violence from Mr Z that caused actual harm. This was a feature of his condition. They witnessed and heard first-hand of the younger siblings' fear of Mr Z. The Council was aware throughout the year that Ms X had said she could not protect them from him. And it had evidence that Mr Z was too large and strong to be physically restrained by one person. Regardless of the adequacy or otherwise of Ms X's parenting, the Council was at fault for not protecting Mr Z's siblings.

Safeguarding Mr Z's siblings in 2018

87. Given there is no evidence Mr Z's violence lessened in 2018, and no evidence of the assessed respite need being provided, we find the Council continued to fail to protect his siblings from actual harm until Mr Z left the family home.

Injustice caused by fault

Injustice to Mr Z

88. It is not possible to say Mr Z would have been able to continue to live at the family home after 2018 if the Council had met his care needs by providing the respite care it assessed him as needing. The opinion of a doctor as early as 2015 was that he would be likely to need a residential placement at some point. So, we do not find he has had to leave the family home because of fault by the Council. We also note that Mr Z has not welcomed the separation. We therefore find it likely he would have felt the same way had he left the family home earlier.
89. However, had the Council met his care needs, it is possible there would have been some better days and fewer bad ones in the family home. The loss of opportunity to enjoy a better relationship with his mother and his siblings at points between 2015 and 2018 is an injustice to Mr Z.

Injustice to Ms X

90. Ms X accepted she could not protect her younger children from Mr Z all the time. Given there were three of them and she was alone, that was inevitable. Professionals accepted Mr Z needed a high level of supervision. Ms X could not have provided this. So, regardless of Ms X's parenting style, they were at risk, a risk to which she had honestly alerted the Council. We note the Council made some offers of help in response to crisis. However, if the Council had made the provision it had already identified Mr Z needed, it is much less likely these would have been necessary. Ms X's inability to protect her children from harm, and the Council's failure to properly consider her repeated requests for help, caused her distress over a period of three years that is clear in the Council's own records. This distress was a significant injustice.
91. Added to that was Ms X's lost family time with her other children. Had the Council provided the respite it identified as necessary, Ms X could have had one night a week and one weekend a month for her three younger children. The loss of that family time was injustice to her, as it was to them.

Injustice to Mr Z's siblings

92. This injustice was in three forms. First, each of Mr Z's siblings suffered physical violence from Mr Z. This left physical injuries that were recorded by professionals as well as Ms X.
93. Second, each of them was afraid of unprovoked assault by Mr Z. The accounts of hiding away possessions for fear of wilful destruction, or of hiding themselves behind curtains or in places where Mr Z would not think to look, or of eating quickly at one end of a table while Mr Z was at the other end beyond Ms X, are striking. Ms X has told us the children have had to unlearn three years of very odd coping behaviours. She understandably fears they will be marked by their experiences. While we cannot take any view about that, it is clear they spent three years afraid they would be seriously hurt by a large, unpredictable sibling.
94. Third, they lost social time. This includes normal family time with their mother, doing the kinds of things that children do with their parents. All the reports we have seen suggest Mr Z became jealous if she spent time with other siblings and that he would intervene, often violently, to prevent this. Had there been appropriate respite, the impact of this would have been lessened. The same is

true of other independent activities in the house, and social contact with other children.

95. We aim to put the person who has suffered an injustice back in the position they would have been in, but for the fault. Where that is not possible, we suggest a financial sum instead to recognise the injustice. This is not compensation. Compensation is a matter for a court and the sums awarded are on a different basis. Where we find injustice has been significant or prolonged, we may recommend a sum of £1,000, more in exceptional cases. In this case, the injustice to Ms X and her three younger children caused by fault was significant and prolonged. Removing Mr Z from the family home earlier, while not fault, would have caused him distress. Therefore, the extra injustice caused by fault was less significant for Mr Z, involving the loss of opportunity to enjoy better relationships with his mother and siblings. We note that Ms X does not accept this view.

Recommendations

96. To remedy the injustice caused by fault, the Council should, within a month of the date of this report:
- apologise to the family for the failings identified here;
 - pay Ms X £8,250, made up of £2,000 for her injustice, £2,000 for each of the three younger children's injustice, and £250 for Mr Z's injustice. We have confidence that Ms X will use the sum to the benefit of her children.
97. To reduce risk for other children, it should also, within a month of the date of this report:
- alert all staff to the fact that children have the right to be protected and that social care staff should retain an open mind. We are recommending that s.47 of the Children Act 1989 should not be ruled out and could be appropriate in exceptional circumstances when providing support to disabled children and their families; and
 - remind those responsible for the conduct of placement panels that there must always be a record of what information they consider and of the rationale for their placement decisions. In response to a draft of this report, the Council told us it now does this, which we welcome.
98. 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*)