

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

**Investigation into a complaint about
Staffordshire County Council
(reference number: 20 012 417)**

1 March 2022

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Miss C The complainant

Report summary

Education & Children's Services

Miss C complained about the care and support she received from the Council as a child. Miss C says because of the Council's fault she did not receive proper support and missed out on a care leavers grant.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice caused, we recommend the Council reconsider Miss C's request for her complaint about children's social care to be investigated within one month of the date of this report.

If the Council decides not to investigate, it should show how it has taken account of the statutory guidance in reaching its decision and write to Miss C explaining the reasons for its decision.

The Council should also advise Miss C of her right to reapproach the Ombudsman.

The Council has accepted our recommendations.

The complaint

1. The complainant, whom we have called Miss C, complained about the care and support she received from the Council when she was a looked after child and as a care leaver. Miss C says because of the Council's fault she did not receive proper support and missed out on a care leavers grant.

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*)

How we considered this complaint

3. We produced this report after examining relevant documents and interviewing the complainant.
4. 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.
5. We took account of our report '[Are we getting the best from children's social care complaints?](#)' published in March 2015 and [guide for practitioners about the statutory complaints procedure](#) published in March 2021.
6. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

What we found

Background

7. The Children Act 1989 says councils have a duty to safeguard and promote the welfare of children within their area who are in need.
8. A Looked after Child (LAC) is any child who is subject to a care order or accommodated away from their family by a local authority under [section 20 of Children Act 1989](#). The accommodation can be voluntary or by care order. The child becomes looked after when the local authority has accommodated them for a continuous period of longer than 24 hours.
9. The law and regulations also set out a three-stage statutory procedure for councils to follow when looking at most complaints about children's social care services. The accompanying statutory guidance, Getting the Best from Complaints, explains councils' responsibilities in more detail. We would normally expect a council and complainant to follow the full complaint procedure.
10. The guidance says councils do not need to consider complaints made more than one year after the grounds to make the complaint arose. However, it says decisions should be made on a case-by-case basis and there should generally be a presumption in favour of accepting the complaint unless there is a good reason not to.

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11. The guidance says councils have discretion to extend the time limit for making a complaint if it is still possible to investigate effectively and efficiently. Councils may also wish to consider complaints if it would be unreasonable to expect the complainant to have made the complaint sooner. For example, a child may not be able to make a complaint or feel confident to do so within the year time limit.
 12. The guidance sets out possible grounds for accepting a complaint made after one year, including:
 - genuine issues of vulnerability;
 - the council believes there is still benefit to the complainant in proceeding; and
 - information and individuals involved at the time are likely to be available to enable an effective and fair investigation.
 13. In our focus report '[Are we getting the best from children's social care complaints?](#)' (2015) we found a common problem was councils refusing to allow complaints to go through all stages of the statutory complaints procedure.

What happened

14. Based on the records the Council provided to us, there was contact with Miss C and her family by the police and the Council in early 2011. Miss C moved into an emergency foster placement in May and her mother agreed a voluntary care arrangement under section 20 of the Children Act 1989. Miss C moved to a more permanent foster placement in June. During this period the Council completed an assessment, care plan and care plan review. Miss C returned to her parent's address towards the end of August and the voluntary care agreement was discharged in early September. The Council completed a further care plan review in September and completed the core assessment at the end of September and recommended the case be closed. Miss C contacted the Council again in October to seek help as she was 15 years old and pregnant and her parents did not want to support her.
15. Miss C wrote to the Council towards the end of November 2020 when she was aged 24 to complain about the care she received while in the care of the Council. Miss C said she had been told during a telephone call that the Council did not have any record of her being in its care despite being placed in foster care in 2011. Miss C raised issues about her second foster care placement and that her concerns about this and feeling she had no alternative but to return home to her parents were not properly considered. Miss C says she was also not offered adequate support when she returned to her parents and after this arrangement broke down despite having a new baby. Miss C also asked why she had not received a care leavers grant and specific questions about the above events.
16. The Council responded to Miss C towards the end of January 2021 and apologised for the delay in replying. The Council stated it could not investigate the matter she had raised under its complaint procedure as the matters happened some years ago and the legislation which supported the complaints procedure stated the Council did not need to investigate complaints which were over 12 months old. However, the Council was able to reply to some of Miss C's specific questions.
17. Miss C remained unhappy with the Council's response and complained to us.
18. In response to our enquiries the Council said it gave due consideration to Miss C's circumstances and history in reaching its decision not to accept a late complaint. The Council noted the matters Miss C had raised related to events

some 9 or 10 years ago and its involvement with her as an individual appeared to have stopped in 2014. The Council says it did not consider a meaningful investigation could take place given the passage of time and says this was in line with the statutory guidance. The Council noted it had attempted to answer some of Miss C's questions to bring her some form of resolution outside of the statutory complaints process.

Analysis

19. Paragraph 3.3.1 of the statutory guidance referred to above says "Local authorities do not need to consider complaints made more than one year after the grounds to make the representation arose (regulation 9). In these cases, the Complaints Manager should write to advise the complainant that their complaint cannot be considered and explaining the reasons why he has adopted this position. This response should also advise the complainant of their right to approach the Local Government Ombudsman. However, as with freezing decisions, decisions need to be made on a case by case basis and there should generally be a presumption in favour of accepting the complaint unless there is good reason against it."
20. Paragraph 3.3.2 of the guidance says "The time limit can be extended at the local authority's discretion if it is still possible to consider the representations effectively and efficiently. Local authorities may also wish to consider such complaints if it would be unreasonable to expect the complainant to have made the complaint earlier. For example, where the child was not able to make the complaint or did not feel confident in bringing it forward in the year time limit."
21. Paragraph 3.3.3 of the guidance says "Though not exclusive, possible grounds for accepting a complaint made after one year are:
 - genuine issues of vulnerability.
 - the local authority believes that there is still benefit to the complainant in proceeding.
 - there is likely to be sufficient access to information or individuals involved at the time, to enable an effective and fair investigation to be carried out; and
 - action should be taken in light of human rights-based legislation."
22. Miss C was 15 years old and pregnant at the time of the matters affecting her. There is evidence that Miss C's return to her parents broke down soon after her return and she sought further help from the Council. Miss C says she has only more recently had the support of a previous foster carer in making her complaint. The Council has been able to provide records relating to the period in question.

Conclusions

23. As the Council closed Miss C's case more than 12 months ago, her complaint is late. However, the guidance says councils should be in favour of accepting a late complaint unless there is a good reason not to. When deciding whether to investigate, the Council needs to show it has considered Miss C's age, any issues of vulnerability, any potential benefit to Miss C of now investigating the complaint, and whether a fair and effective investigation can still take place. The Council's response to Miss C in January 2021 did not evidence it properly considered these factors which is fault.

Recommendations

24. 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*)
25. In addition to the requirements set out above, the Council has agreed within one month of the date of this report, to reconsider Miss C's request for her complaint about children's social care to be investigated.

If the Council decides not to investigate, it should show how it has taken account of the statutory guidance in reaching its decision and write to Miss C explaining the reasons for its decision.

The Council should also advise Miss C of her right to reapproach us.

Decision

26. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Miss C. The Council should take the action set out at paragraphs 24 and 25 to remedy that injustice.