

Report to Cabinet



Date of Meeting	31 st August 2021
Portfolio	Children's Services and Education
Report Author	Monitoring Officer
Public/Private Document	Public

Local Government and Social Care Ombudsman

Finding of Fault by the Council

Executive Summary

1. To advise members of the findings of the Local Government and Social Care Ombudsman (LG&SCO) issued on 7th April 2021. The LG&SCO summarised that: "Miss X complains that the Council failed to provide financial support when she agreed to accommodate a child. She says its communication and complaint handling were poor. The Council has agreed it is at fault and has caused injustice. It has agreed a financial remedy and service reviews".

Recommendation

2. That Cabinet note that the agreed financial remedy and service reviews have been completed, leading to the LG&SCO to conclude in writing on 2nd August 2021 that a compliance outcome has been recorded, with the outcome of *Remedy complete and satisfied*.

Cabinet also note that lessons learnt are being embedded to prevent further re-occurrence.

Reason for Recommendation

3. Cabinet is legally required to consider the LG&SCO findings, actions and outcomes. In this case the Council, having considered the LG&SCO representations on a number of points, reviewed its paperwork and swiftly concluded it was at fault and proposed a remedy. In the interests of open and transparent governance Cabinet are required to receive information about the complaint and remedy, to ensure in so far as is possible, that a similar situation does not re-occur in future.

Key Points for Consideration

4. The Council's Monitoring Officer is required (in accordance with section 5A of the Local Government and Housing Act 1989) to report an LG&SGO finding of fault causing injustice on the part of the Council.
- 4.1 Two Acts of Parliament govern the actions the Council must now take in Response to the LG&SGO report. They are the Housing and Local Government Act 1989 (the 1989 Act), which sets out the Monitoring Officer's responsibility to report and the Cabinet's corresponding duties and the Local Government Act 1972 (the 1972 Act) which addresses the duty to advertise the LGO&SCO's findings and other related matters.
- 4.2 There is no decision to be made by Cabinet, since the Council's proposed remedy has been accepted by the LG&SCO who is satisfied that the remedy is complete.

Background

- 4.3 The LG&SCO investigated a complaint by Miss X who said that "the Council wrongly characterised her agreement to accommodate a child (in May 2017) as a private fostering arrangement. Miss X did not receive financial help with the child's care, putting her family finances under strain, which affected her own four young children. She said the Council's communication and complaints handling have been poor".
- 4.4 The facts of the LG&SCO's investigation and their analysis are set out in their report dated 7th April 2021 (Appendix 1).
- 4.5 It is noteworthy that the Council sought clarification about the role of the LG&SCO investigating this complaint, however, at no point did they stop considering the concerns. From the outset, the Assistant Director felt the Council may have caused Miss X an injustice
- 4.6 In finding fault with the Council, the LG&SCO identified that the Council should have communicated effectively with Miss X regarding her complaint, and also should have provided an interpreter, when her English was insufficient to grasp the significance of the legal arrangements.
- 4.7 The LG&SCO concluded that: "After my discussions with the Council, it swiftly accepted my jurisdiction over the complaint and that it is at fault and has caused injustice to Miss X. It said it "apologised unreservedly" to Miss X for what had happened and was keen to put things right. It met with Miss X to discuss its proposed remedy. This is good practice and meant Miss X has been given certainty over her finances without protracted negotiations".
- 4.8 At the meeting with Miss X, the Council agreed to make a payment of £22,114.86 as back-payment for missed fostering allowances between 2017

and 2020, minus any tax credits received by Miss X. It also agreed a £322 back payment of holiday allowance. Finally, it also proposed post-18 support for D, depending on further discussions with Miss X and D, as well as £500 for Miss X's time and trouble. The Council has said it will review all Child Arrangement Orders made since May 2017 to determine if other carers may have experienced detriment and establish whether there are training deficits. It will also review the circumstances in which the Council decided not to proceed with Miss X's request for her complaint to be considered under Stage 2".

- 4.9 In their letter to the Chief Executive accompanying their final report on 7th April 2021, the LG&SCO thanked the Council "for frankness and candour and your swift response to resolving this complaint."

Actions taken to remedy the injustice

- 4.10 The LG&SCO made five recommendations to be implemented within one month of the final decision:

- a) Pay Miss X £22,114.86 as back-payment missed fostering allowances between 2017 and 2020, minus any tax credits received by Miss X;
- b) Pay Miss X £322 back-payment for holiday allowance;
- c) Pay Miss X £500 reflecting the financial strain arising from the Council's fault and for her time and trouble in bringing the complaint.

Payments for b) and c) were made within one month as agreed. Payments of a) were made by 24th May 2021, after considerable work with Miss X and the HMRC to determine the amount payable.

d) Review all Child Arrangement Orders made since May 2017;

- 4.11 This in-depth work took a considerable period of time. Firstly reviewing 301 sets of private law proceedings, the Council clarified that there were 23 Child Arrangement Orders made to none parents. Each case was thoroughly audited by a senior children's social care manager, independently employed to undertake this work and a lawyer, also with no previous knowledge of any of the cases. This review concluded on 28th July. There is one case where remediation actions are being implemented in line with the LG&SCO findings.
- 4.12 Training has been provided for all Senior Managers which is due to be rolled out to all front line managers in September 2021. This training takes account of the most recent case law, so that managers and practitioners can determine the difference between family arrangements and those circumstances where the duty to accommodate a child is triggered (Section 20 Children Act 1989)

e) Review its decisions not to proceed with complaint escalation requests since May 2017.

- 4.13 During this period there were a total of twenty six complaints into Children's Services where escalation was requested; twenty of which were escalated. The six complaints where escalation was requested and did not proceed have been reviewed.
- 4.14 Four of the six cases related to active cases before the Family Court where parents were represented in legal proceedings. Parents were appropriately referred to their legal team. The organisational learning from these cases is that they should not have been regarded as Stage 1 complaints.
- 4.15 Two of the six complaint escalation requests were from a prospective foster carer and an existing foster carer, in 2017 and 2018, where their request to escalate their complaint to the next level of investigation was not agreed. The letters explaining why this was refused included details of the Local Government Ombudsman, with advice about how to proceed should the complainant wish to make further representation. In retrospect, both complaints should have been escalated within the Corporate Complaints procedure.
- 4.16 Informed by the Local Government and Social Care Ombudsman's most recent publication Children's Statutory Complaints Process (March 2021), this learning has been implemented.

Costs and Budget Summary

5. The costs incurred in making a back-payment to Miss X for missed fostering allowances, including a holiday allowance and a time and trouble payment were met from the Fostering Allowances budget. This was a single payment made within the delegated authority of the Children's Services Directorate. This process will also apply to the single case identified through the auditing process should any financial remediation be required.

Risk and Policy Implications

6. The two service reviews, covering a period of four years from May 2017 and resultant actions, will considerably reduce the risk of a similar situation occurring in future.

Consultation

7. There has been widespread consultation within Children's Social Care about the findings from the LG&SCO to ensure that lessons are learnt.

Background Papers	Attachment
<p>8. Local Government and Social Care Ombudsman Final Decision – 7th August 2021</p> <hr/>	<p>Appendix 1</p>  <p>Final decision.pdf</p>

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