

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

**Investigation into a complaint against  
Lancashire County Council  
(reference number: 18 009 920)**

**8 May 2019**

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## The Ombudsman's role

For 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
Ms X	The complainant's fiancée (now wife)
Y	Mr X's son

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## Report summary

### Statutory complaints procedure

Mr X complains the Council failed to provide the necessary support to his family and himself. And, the Council failed to consider his complaint at stage 2 of the statutory children's complaints procedure.

### 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 also agreed to:

- provide Mr X with a written apology;
- pay Mr X £300 in recognition of the avoidable distress caused to Ms X and him;
- pay Mr X £250 for his time and trouble;
- inform staff in children's services of our view that the Council does not need a child's consent to investigate a parent's complaint and ensure staff follow the statutory children's complaints procedure in future; and
- provide evidence to us that it has completed the above actions.

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## **The complaint**

1. Mr X complains the Council failed to provide the necessary support to his family and himself when he agreed to take care of his son, Y, causing distress. He says the Council failed to consider his complaint at stage 2 of the statutory children's complaints procedure, causing frustration.

## **Legal and administrative background**

### **The Ombudsman's role**

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. 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*)
4. 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.

### **Statutory complaints procedure**

5. Section 26(3) of the Children Act 1989 Act says councils should establish a procedure for considering complaints made by looked-after children and children in need. It says this procedure should also apply to consideration of complaints made by parents of such children.
6. The Children Act 1989 gives discretion to councils to decide who may bring a complaint in cases where eligibility is not automatic.
7. The Department for Education publishes statutory guidance that councils must follow called "Getting the best from complaints".
8. This says councils must consider complaints made by "any child or young person (or a parent of his or someone who has parental responsibility for him) who is being looked after by the local authority or is not looked after by them but is in need".
9. The statutory guidance says complaints made by or on behalf of children about council services must follow the three stage statutory complaints procedure: local resolution, investigation and review panel.
  - Stage 1 - local resolution; where a council investigates and responds to the complaint.
  - Stage 2 - Investigation; the council must appoint an investigating officer to lead the investigation and an independent person to oversee this.
  - Stage 3 - Review Panel; the council must appoint three independent people to sit on a panel to consider the stage 2 investigation and outcomes.

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10. Councils can only vary from the statutory complaints procedure in exceptional circumstances.
  11. A complainant can approach us at any stage in the process and ask us to consider the complaint.

### **Data Protection Law**

12. Consent is just one of the lawful bases a council can rely on to process personal data in accordance with the General Data Protection Regulation 2016/679 (“GDPR”) and the Data Protection Act 2018 (“DPA 2018”).
13. Under Article 6(1)(c), GDPR, a council can process a person’s data if processing is necessary for compliance with a legal obligation to which the controller is subject.
14. A council has a legal obligation to investigate complaints made by parents about children’s services. And, it is necessary for a council to access and review a child’s records to do so. It is therefore our view that Article 6(1)(c) is the most appropriate lawful basis a council can rely on to process a child’s data when investigating complaints under the statutory procedure.
15. Although a council appoints independent persons at stages 2 and 3 of the statutory procedure, these people are providing a service for the council and are bound by the same laws.
16. It is usual for a council to appoint or engage a third party to provide services. We would expect a council to have agreements in place with such third parties to ensure they comply with the law. In relation to allowing third party access to council files, the statutory guidance says:
  - “The investigating officer should have access to all relevant records and staff. These should be released within the bounds of normal confidentiality and with regard to relevant legislation in the Freedom of Information Act, 2000 and the Data Protection Act, 1998.”
  - “Panels should observe the requirements of the Human Rights Act 1998, the Data Protection Act 1998, and other relevant rights-based legislation and conventions in the discharge of their duties and responsibilities.”

### **Statutory visits**

17. The Department for Education publishes statutory guidance “The Children Act 1989 Guidance and Regulations, Volume 2: care planning, placement and case review”.
18. This says, where a council places a child back with a parent it should visit within one week of the placement and then at least once every six weeks. However, the frequency of visits should always be determined by the circumstances of the case and the council must arrange a visit whenever reasonably requested by a child or carer.
19. Visits have a number of purposes, including to:
  - “evaluate and monitor the achievement of actions and outcomes identified in the care and placement plan and to contribute to the review of the plan;”
  - “identify any difficulties which the child or carer may be experiencing, to provide advice on appropriately responding to the child’s behaviour and identify where additional supports and services are needed;” and

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- “monitor contact arrangements, to identify how the child is responding to them and to identify any additional supports carers may need to support positive contact arrangements.”

## **How we considered this complaint**

20. We produced this report after speaking to Mr X and examining relevant documents provided by Mr X and the Council.
21. We gave Mr X 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**

### **What happened**

22. Mr X had no contact with his son, Y, for several years. In 2016 the Council asked Mr X if Y could live with him. The Court granted a 12 month Supervision Order in July 2016 and Y moved in with Mr X and his fiancée Ms X.
23. The Supervision Order says the Council will supervise the contact between Y and his mother initially for three months. Further, that it will seek to assist the families to begin to supervise the contact with Y’s mother.
24. A social worker carried out a statutory visit at the end of August 2016. The record of this visit says:
  - “Y presented well and Mr X stated that he has settled in very well and is looking forward to starting his new school tomorrow”;
  - “Y is receiving a good level of care and there are no concerns in respect of Mr X and Ms X’s ability to safeguard and protect Y”;
  - Y has fortnightly contact with his mother, supervised by the Council.
25. The records of a family group conference, held in September 2016, show the family agreed they would consider supervising contact within the family network if it was done collectively. It was agreed the adults would discuss any concerns between themselves and inform the relevant services if necessary.
26. A social worker carried out a statutory visit at the end of September 2016 and was happy with how things were progressing.
27. The Council’s case notes say the family began to supervise contact from 21 October 2016.
28. The record of the Child in Need review meeting of November 2016 says Y is happy and settled. Mr X is reported to say: “Y appears happy and settled and has presented no management difficulties.”
29. Case notes report the case was then handed over to a family support worker and a transfer meeting took place.
30. At the end of November 2016 Ms X contacted the support worker with concerns about Y’s behaviour. She explained his behaviour had deteriorated and they needed some help. The support worker agreed to speak to Y’s school and meet with the family.

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31. Case notes show the support worker visited the family on 2 December 2016 and gave them some coping strategies to put in place. The support worker agreed to speak to Y's school (having been unable to do so previously) and meet with the family again in two weeks. Ms X said she was not happy supervising contact.
  32. On 12 December 2016 the support worker told Ms X the Council had no concerns with unsupervised contact. Ms X raised concerns about this and the support worker agreed to discuss with her manager.
  33. The support worker carried out a statutory visit on 20 December 2016. Her record of this visit says "Ms X reports that things are much better since my visit as she feels they just needed some guidance. She said since they have put the things I advised in to place things are much better." Ms X was still not happy to supervise contact and the support worker agreed to discuss the possibility of a contact centre with her manager.
  34. On 20 January 2017 Mr X complained to the Council about the lack of support it had provided since his son, Y, moved in. In summary, he said:
    - no-one warned of Y's behavioural issues and they had to rush to find a suitable property so Y could live with them;
    - Ms X reluctantly agreed to supervise visits between Y and his mother but the Council should do this; the Council then suggested they could arrange unsupervised contact themselves which they feel is inappropriate;
    - their social worker left and they were not told who the replacement was;
    - the Council failed to give advice on how to manage Y's difficult behaviour;
    - they asked for counselling for Y and were told to arrange this themselves.
  35. A Council officer spoke to Mr X on 23 February 2017. Case notes show Mr X complained he had sent emails and left messages seeking support over the last two months that had been ignored. Case notes report Mr X said "they have got Y the help that he needs now anyway and he is doing really well, he is secure, stable and he says that he feels safe."
  36. Mr X made a further complaint on 25 February 2017. In summary, he said:
    - a social worker should have visited them regularly, in line with the supervision order;
    - a new social worker had only now taken over from the previous one, who had been off sick since December 2016;
    - they told the new social worker they did not want any visits or support now, since they had been managing without them;
    - the Council should supervise contact between Y and his mother;
    - a manager from the Council should not respond to his complaint as they will be biased and so he will contact the Ombudsman.
  37. In April 2017 the Council provided its stage 1 response. We have summarised the key points as follows.
    - There was a rush at the start as the Council was keen to place Y before he started a new school year.
    - Mr X should let it know what support he wanted and it will feed this back.

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- Social workers visited until the case was transferred to the Child in Need team in November 2016. A social worker was then off sick.
  - The Council accepts it should have put cover in place to ensure contact and statutory visits continued as agreed. It apologises for this and the lack of communication.
  - The Council notes Mr X's concerns about supervising contact and therefore proposes to resume supervising contact.
  - It will allocate a new worker and a manager will oversee the case and act as a point of contact on any further concerns.
38. On 18 April 2017 a new caseworker visited the family. Case notes show Y's behaviour had deteriorated and Mr X was not able to get a referral to a mental health charity. Mr X said Y's behaviour was causing him stress and affecting his own mental health. The caseworker agreed to organise a review meeting and look at a referral for the charity.
39. At the end of April 2017 the caseworker visited the family again and completed the referral forms.
40. A Child in Need ("CIN") review meeting took place on 5 May 2017. This says "Y has exhibited some behavioural issues since December 2016. Work to be completed with Y regarding emotional wellbeing, and relationships at home. Y is being supported to develop his self esteem by the allocated caseworker".
41. On 16 May 2017 the caseworker visited the family and did some work with Y. The Council's records show it then continued to carry out statutory visits and Child in Need reviews. The allocated caseworker also continued to visit regularly to carry out direct work with Y.
42. A Child in Need review meeting took place in July 2017. Mr X and Ms X said they did not want to continue to receive support from the Council once the supervision order ended of July 2017. The record of the meeting says Mr and Ms X feel that "due to the mental health charity being involved there was little point in the allocated caseworker replicating work." "Another reason for not extending support was the inconsistency in support at the beginning of the Supervision Order". It reports "Y appears happy and settled living with his father and his partner. Y does not present with unmanageable behaviour currently however this will be monitored via the CIN plan and supported by the allocated caseworker until the end of the supervision order." It says there are no reported issues with contact.
43. On 8 August 2017 Mr X contacted the caseworker to say Y's behaviour had significantly deteriorated and Y could no longer stay with them. The caseworker visited the family on 10 August 2017. The case notes show Mr X and Ms X were struggling with Y's behaviour and they asked for temporary foster care.
44. Case notes show the Council arranged a care planning meeting and considered activities Y could take part in during the summer holidays to provide day care support to the family.
45. On 15 August 2017 Mr X contacted the caseworker to say they needed respite and Y needed removing from the home.
46. The Council arranged for a childminder for Y from 18 August 2017.
47. On 18 August 2017 Mr X complained to the Council again. In summary, he said:

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- the Council pushed him to look after Y and pressured them to act quickly, ignoring the mental fragility of Ms X and himself;
  - there was a lack of social worker visits and poor communications, they were not given help to deal with Y's behaviour or counselling;
  - he appreciates the Council's earlier complaint response but the damage has been done;
  - Y's behaviour got worse so in April 2017 they asked the Council for help again. A new caseworker visited and they were referred for counselling;
  - the new caseworker's involvement did not help, nor did counselling;
  - if the Council had followed the Supervision Order and provided support from the start the situation would have been different;
  - Y needs removing for his own sake and his; he is now mentally unwell and he and Ms X are separating.
48. The Council took Y into care at the end of August 2017. It responded to Mr X's further complaint by letter of 28 September 2017. However, we note this was a further stage 1 response and, although the Council repeated apologies it offered no further remedy for accepted faults.
49. Mr X then contacted us.
50. We told Mr X he had not yet completed the three-stage Children Act complaints procedure. We then asked the Council to investigate Mr X's complaint.
51. The Council told us it would not do so because Mr X did not ask for a stage 2 investigation; the Council would have nothing to add after stage 1; it would need Y's consent to investigate and it was not in his best interests and; family court proceedings had been initiated.
52. We issued a decision in April 2018. We found:
- there is no time limit to make a stage 2 complaint and Mr X clearly felt the stage 1 response had not addressed his complaint;
  - it is for a stage 2 investigator to decide if the stage 1 response addressed issues raised; not the Council;
  - Mr X had a right to complain as the parent of Y.
53. The Council agreed it would tell Mr X he could resubmit his complaint for consideration under stage 2 of the Children Act complaints procedure, once family court proceedings had concluded.
54. Mr X contacted us again. He said he had resubmitted his complaint to the Council on 4 June 2018, on the date of the final Court hearing, but he had not heard anything further.
55. The Council told us it had responded to Mr X on 19 June 2018 to explain it needed Y's consent for an investigator to access his files, under data protection law.
56. We issued a draft decision finding the Council at fault. We said the Council could investigate the complaint, that it did not need Y's consent and so its refusal to go to stage 2 was fault.

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57. The Council said it would not usually go to stage 2 when complaints are upheld at stage 1 and; it needed Y's consent to access his files to comply with data protection law.
  58. The Council says it always seeks the consent of a child aged 13 or over, in deciding whether it can investigate a complaint under the statutory children complaints procedure.
  59. Our view is that a parent has the right to complain and the Council has a legal obligation to consider that complaint. The Council does not need the child's consent to investigate.

### **Findings**

60. The Council can only vary from the statutory children's complaints procedure in exceptional circumstances. Although the Council considered there was nothing to be achieved by a stage 2 investigation that is not the Council's decision to make. We made it clear in our decision of April 2018 that we expected the Council to progress to stage 2 and the Council agreed to do so.
61. Having reviewed the relevant data protection laws we are satisfied the Council did not need Y's consent to investigate the complaint made by his father, Mr X. That is not to say the Council should share Y's personal data with Mr X. The Council had a legal obligation to investigate Mr X's complaint and it could process Y's data under Article 6 1) c) of the GDPR. This extends to persons appointed by the Council to investigate the complaint.
62. The Council repeatedly refused to consider Mr X's complaint at stage 2 of the statutory complaints procedure.
63. Although the statutory procedure should usually be followed, we have discretion to investigate complaints. Given the Council's approach and to avoid further delay, we decided to consider Mr X's substantive complaint. In doing so we considered the information the Council held about Y, but we did not share any of Y's confidential personal data with Mr X.
64. The Council did not visit Y at home within one week of his moving in with Mr and Ms X. It also did not visit Y within six weeks of the visit on 20 December 2016.
65. The Council supervised contact between Y and his mother for the first three months and then handed over to the family to supervise contact. This was in line with the Supervision Order. When Ms X said she was not happy to supervise contact, the Council said Y could have unsupervised contact with his mother. Ms X complained this was inappropriate on 13 December 2016 however the Council did not address this until 18 April 2017, when it agreed to resume supervision itself.
66. Mr X complained about a lack of support on 20 January 2017. On 23 and 25 February 2017 Mr X also complained about the lack of support and absence of visits from a social worker, despite his requests. However, he also said he no longer wanted any visits as they had managed without the help of children's services.
67. If a social worker had visited the family on 31 January 2017 (at six weeks) or earlier, they could have provided "advice on appropriately responding to the child's behaviour and [helped to] identify where additional supports and services are needed". However, because of the Council's fault, Mr X and Ms X had to manage without this support.

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## Conclusions

68. The Council was at fault for refusing to consider Mr X's complaint at stage 2 of the statutory complaints procedure.
69. The Council is also at fault for refusing to investigate other complaints made by parents on the basis that the relevant child has not given consent.
70. We have now investigated Mr X's complaints and find the Council at fault because it:
- did not carry out all statutory visits as required;
  - did not support positive contact arrangements; and
  - delayed in addressing concerns raised by Mr X and his partner about Y.
71. Mr X was put to time and trouble in bringing his complaint to us. He also suffered avoidable distress due to the lack of support he received from the Council.
72. Mr X felt pushed into taking Y in the first instance and says he had to rush to put things in place for him. However, it remained Mr X's decision whether to agree to care for Y or not. We cannot say the Council is responsible for any injustice arising from his decision.
73. Mr X considers things would have been different if the Council had provided more support early on. However, we cannot say with any certainty that would be the case.
74. The Council has accepted our findings, which we welcome.
75. In response to the draft the Council said it would "... *process parental complaints where it is necessary to do so in order to comply with the legal obligation under s26 of the Children Act 1989, and where it is in the child's best interest. Appropriate weight will be given to the child's wishes. We recognise that this is a matter to be considered on a case by case basis and that a child's consent is not a basis upon which not to process a complaint.*"
76. We note that neither the Children Act 1989 nor the statutory guidance says a council can refuse to consider a parent's complaint on the basis that it is not in the child's best interests to do so. Such an approach would deny a parent their own right to complain under s26 of the Children Act 1989. Our view is a council can only depart from the statutory complaints procedure in exceptional circumstances. So we would not expect any council to routinely refuse a parent's complaint on the basis of the child's interests and wishes.

## Recommendations

77. 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*)
78. In addition to the requirements set out above the Council has also agreed to:
- provide Mr X with a written apology;
  - pay Mr X £300 in recognition of the avoidable distress caused to Ms X and him;
  - pay Mr X £250 for his time and trouble;

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- inform staff in children's services of our view that the Council does not need a child's consent to investigate a parent's complaint and ensure staff follow the statutory children's complaints procedure in future; and
  - provide evidence to us that it has completed the above actions.

## **Decision**

79. We have completed our investigation into this complaint. We found fault by the Council which caused injustice to Mr X. The Council should take the action identified in paragraph 78 to remedy that injustice.