

Report by the Local Government Ombudsman

Investigation into a complaint against Lancashire County Council (reference number: 13 020 158)

5 August 2015

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.

Investigation into complaint number 13 020 158 against Lancashire County Council

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<p>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.</p>

Key to names used

Mrs M – the complainant

S – the complainant's son (he has not made a complaint to the Ombudsman)

Mr D – S's father

The Council – Lancashire County Council

Officer A – a senior officer in the Council's children's services

Council X – another council, where Mrs M lives

Report summary

Children's services: child in need; care of a looked after child; and statutory complaints procedure

Mrs M complains the Council failed to involve her properly in its assessments and decisions regarding her teenage son, S. In particular she complains about a period from August 2013 to the end of December 2013 when S lived with his father, Mr D. S has behavioural, emotional and communication difficulties and is a cannabis user. Mrs M believes she could have made a valuable contribution to the Council's knowledge and understanding of her son, and his father's ability to cope with his behaviours. As a result she says the Council caused her unnecessary frustration and distress.

Mrs M says when she complained to the Council there were delays in the statutory children's services complaints procedure that caused her unnecessary distress. The Council has accepted fault and it offered Mrs M £250 for her time and trouble in pursuing her complaint but she feels this is not adequate.

During our investigation it came to our attention that S may have been caused an injustice because the Council had placed him in bed and breakfast accommodation when the statutory guidance says this is never suitable for a young person of 16 or 17.

Finding

Fault found causing injustice and recommendations made.

Recommendations

For Mrs M we recommend the Council:

- apologises to Mrs M for failing to involve her in its 'child in need assessments' and for the additional time it took to consider her complaint at all three Stages of the statutory complaints procedure.
- pays Mrs M £200 for the frustration caused by not being able to contribute to her son's 'child in need' assessments.
- increases its offer to her for the additional time and trouble she spent pursuing her complaint over that allowed by the statutory complaints guidance from £250 to £300 due to the delays at Stage 3.

To prevent injustice to others we recommend the Council:

- ensures it involves both parents in its 'child in need' assessments unless there are specific and recorded safeguarding reasons not to. Also, ensures it shares copies of those assessments to parents where it is safe to do so, in a timely manner, redacted where necessary.

- improves its policy for homeless 16 and 17 year olds to include reference to bed and breakfast accommodation not being suitable even in an emergency. It should then ensure its children's services' staff are aware of this condition.
- ensures it does not place homeless 16 and 17 year olds in bed and breakfast accommodation (including the use of unsupported hotels) even in an emergency. If the Council decides to act in breach of the statutory guidance, the decision to do so should continue to be made by the Head of Service. The Head of Service's decision, and the reasons for it, should be recorded on the child's file.
- ensures it records important decisions on the child's case file when considering providing accommodation to 16 and 17 year olds covering such areas as:
 - whether a section 20 duty arises.
 - whether it is obliged to conduct a new Initial Assessment of the child's needs now they are homeless.
 - how it has explained the implications of becoming a 'looked after child' to the young person.
 - any refusal by the young person to become a 'looked after child' and how it explained that assistance may be available to them from the housing department.
 - any contact with the Council's housing department after a young person who requires accommodation refuses to become a 'looked after child'.
- carry out a review of whether it is meeting its sufficiency duty regarding the provision of accommodation to its 'looked after children'.

The Council has accepted our recommendations.

Introduction

1. Mrs M complains the Council failed to involve her properly in its assessments and decisions regarding her teenage son, S. In particular she complains about a period from August 2013 to the end of December 2013 when S lived with his father, Mr D. S has behavioural, emotional and communication difficulties and is a cannabis user. Mrs M believes she could have made a valuable contribution to the Council's knowledge and understanding of her son, and his father's ability to cope with his behaviours. As a result she says the Council caused her unnecessary frustration and distress.
2. Mrs M says when she complained to the Council there were delays in the statutory children's services complaints procedure that caused her unnecessary distress. The Council has accepted fault and it offered Mrs M £250 for her time and trouble in pursuing her complaint but she feels this is not adequate.

Legal and administrative background

The Ombudsman's role and powers

3. The Ombudsman investigates 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))
4. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3))
5. The Ombudsman cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to the Ombudsman about something a council has done. (Local Government Act 1974, sections 26B) Although some of the events occurred more than 12 months ago, Mrs M only received the Council's final response to her complaint within the last 12 months. We therefore decided to investigate matters back to August 2013.
6. The Ombudsman 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). Mrs M's teenage son S has not consented for his mother to complain on his behalf either as part of her complaint to the Council or to the Ombudsman. However we have considered matters that may have affected S as part of our powers to investigate matters coming to our attention during an investigation.

The law, statutory guidance and the Council's policies

7. The Children Act 1989 defines a child as someone under the age of 18.
8. Councils must provide a range of services for children and their families where the child is assessed as being 'in need'. A child might be 'in need' because:
 - he is unlikely to achieve or maintain, or to have the opportunity to achieve or maintain, a reasonable standard of health or development without provision of services from the council;
 - his health or development is likely to be significantly impaired, or further impaired, without the provision of services from the council;
 - he has a disability.
9. Councils must assess what services a 'child in need' requires. Those assessments used to be in two stages, an Initial Assessment and then if councils required more detail, a Core Assessment. Some councils now conduct these assessments as one single 'child in need' assessment. Where safe for the child to do so, the assessment should involve speaking to the child and seeing and meeting with their parents. The assessments are completed only once the council has shared the assessment with the child and family and a team manager has approved the assessment.
10. The 'child in need' assessment should cover:
 - the child's developmental needs;
 - the capacity of parents or caregivers to respond appropriately to those needs, including their capacity to keep the child safe from harm;
 - the impact of wider family and environmental factors on the parents and child.
11. The Council's policy on 'child in need' assessments is that parents would be fully informed of the outcome in writing, unless prejudicial to the child's welfare. The Council should record in the child's assessment any reason for deciding not to share the assessment with a parent.
12. The statutory guidance for complaints about children's services is *Getting the Best from Complaints Social Care Complaints and Representations for Children, Young People and Others 2006*. The statutory children's services complaints procedure has three stages:
 - local resolution. The law says councils can take up to 10 working days, or 20 working days for more complex cases, to complete this stage.

- independent investigation by an Investigating Officer overseen by an Independent Person. The process ends when the Council's Adjudicating Officer provides their response to the Stage 2 findings. The law says councils can take 25 working days to complete this stage or 65 working days if it is a more complex investigation and it has agreed an extension with the complainant.
 - consideration by an Independent Review Panel. Councils must arrange a Review Panel within 30 working days of the request.
13. We issued a focus report in March 2015 on learning lessons from common faults in children's services complaints: *Are we getting the best from children's social care complaints?*
14. Section 20 of the Children Act 1989 says:
- councils must provide accommodation to a 'child in need' in its area:
 - if the person who has been caring for him is being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care. (20(1)(c))
 - if the child has reached the age of 16 and the authority consider the child's welfare is likely to be seriously prejudiced if they do not provide him with accommodation. (20(3))
 - before providing such accommodation the council must consider the child's wishes and feelings, in so far as is consistent with the child's welfare. (20(6))
 - providing accommodation under this duty would make a child 'looked after' but parental responsibility would remain with the child's parents.
15. Section 22C requires councils to place 'looked after children' in the most appropriate placement available.
16. Section 22G requires councils to take steps to secure, as far as reasonably practicable, sufficient accommodation within its area to meet the needs of its 'looked after children'. The statutory guidance for sufficiency of accommodation explains councils should look at accommodation suitable for those at risk of care or custody. It says councils cannot assume it is not 'reasonably practicable' to secure appropriate accommodation simply because it is difficult or because they do not have the resources to do so.
17. There is statutory guidance on the *Provision of Accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation 2010*. Unless there are exceptional reasons in individual cases, councils are expected to comply with this guidance. The guidance says:
- when 16 and 17 year olds appear to be homeless children's services must assess whether the young person is a child in need and whether it is under any duty (under section 20 of the Children Act 1989) to provide the young person with accommodation. If they have nowhere to stay for the night, children's services must get them suitable

accommodation which will mean the young person will become 'looked after' under section 20. As they cannot receive state benefits, children's services will have a duty to maintain the child.

- children's services must only provide young people with supported accommodation which is suitable and of high quality. The use of bed and breakfast accommodation to house 16 and 17 year olds is unsuitable even in an emergency.
- where a young person is assessed as requiring accommodation, when seeking their views the child may say they do not wish to be accommodated. Councils should only consider the young person's wishes as decisive as part of an overall judgment of their assessed welfare needs and the type and location of accommodation that will meet those needs. Where a young person decides they do not wish to be accommodated, it is important the young person's decision is properly informed and reached after careful consideration of all the relevant information. Children's services should satisfy itself whether the young person is competent to make such a decision. Councils should keep careful records.
- if the young person does not become 'looked after', children's services should ensure the young person has accurate information about what assistance may be available to them from housing services. It should assess whether it has a duty under Part 7 of the Housing Act 1996. It should explain the possible risk of becoming intentionally homeless in the future. Children's services should notify housing services of the young person's refusal to become a 'looked after child'. This would allow housing to complete their enquiries under section 184 of the Housing Act 1996 and decide whether it owes any duty under Part 7. Children's services should ensure the young person receives accurate information in a child friendly format at the start of the assessment process. It should be available for the young person to take away for full consideration and to help them seek advice.
- ultimately it is not possible to force services on young people who continue to refuse them. However councils should carefully record how they tried to engage with the young person to provide suitable services.

18. The Council's *Joint Working Protocol for Homeless 16/17 Year Olds* states:

"Children's Services will determine if the young person is homeless. If they have nowhere to sleep that night, children's services will arrange and fund emergency accommodation (as a Section 20, Child Looked After). This must involve liaison with housing services, who will assist with background information and access to appropriate local accommodation. A child in need assessment will be initiated."

19. The law defines bed and breakfast accommodation as accommodation which, whether breakfast is provided, is not self contained or which involves sharing certain amenities with another household such as shared cooking facilities. (The Homelessness (Suitability of Accommodation) (England) Order 2003)

20. We issued a focus report in October 2013 on the use of bed and breakfast accommodation by councils: *No place like home: Councils' use of unsuitable bed & breakfast accommodation for homeless families and young people.*

How we considered this complaint

21. This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Council.
22. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Investigation

Key events

23. Until 2013 Mrs M's teenage son, S, attended a residential school in another local authority's area (Council X) for children with emotional and behavioural difficulties. He had a Statement of Special Educational Needs (Statement) and a diagnosis of oppositional defiance disorder. S has used cannabis since the age of 13. During the weekends and school holidays S lived with Mrs M or her mother. Mrs M said S's behaviour was making it increasingly difficult for her to cope with him at home. S had made threats of violence towards Mrs M. S had been involved with the Police and the Courts.
24. S left the residential school in July 2013 at the age of 16. Mrs M said S could not come to live with her because she found his behaviour and drug taking too difficult to manage. She arranged with Council X for S to live in supported housing near to her home. However S refused to go there. S said he wanted to live with his father, Mr D. Mrs M worried Mr D had not had much involvement with S in the past. She questioned Mr D's ability to cope with S's behaviour. Mr D agreed S could live with him. Mr D lives in the Lancashire County Council area (the Council). Mrs M accepts communication between her and Mr D could be difficult.
25. After coming to live with Mr D, there was an incident when S alleged he had been assaulted by an adult. The Police and the Council investigated. The Council's children's services offered Mr D and S support but they both declined to accept it.
26. As a result of the incident the Council decided to undertake an Initial Assessment of S's needs. The result was the Council decided to conduct a more comprehensive Core Assessment. The Council spoke to Mr D and S. The Council did not interview Mrs M as part of this assessment or share a copy with her at the time. The Core Assessment said S had had a Statement. The Core Assessment did not have any information from S's former residential school.
27. Mrs M says S's behaviour and drug use became increasingly difficult for Mr D to cope with. The Council's records show it was in regular contact with Mrs M regarding her concerns about S's behaviour and Mr D's ability to cope.

28. Mrs M says when Mr D found S's behaviour difficult, Mr D would agree to S's request to drive him to her area (Council X) with money so he could buy drugs. S would then go to Mrs M's house or her mother's house and cause a nuisance and make threats. The Police were frequently called to respond to S's behaviour. Mr D told the Council S would threaten to hurt him and would damage his property if he did not agree to help S go to Council X's area to buy drugs. The Police arrested S on more than one occasion for criminal damage of his father's property and threats to harm his father. S was arrested and bailed on several occasions.
29. In November the Council completed its Core Assessment of S's needs. It acknowledged it had been completed outside the required timescale, noting it was due to a high workload. As a result of the Core Assessment the Council decided to support S with a Child in Need Plan. The Council again offered Mr D and S support services but they declined. The Council did not consult Mrs M as part of this Core Assessment and did not share a copy with her at the time. The Council has since accepted it should have had more formal communication with Mrs M and she should have received a copy of the Initial and Core Assessments at the time. She has since received copies as a result of her complaints.
30. The Child in Need Plan drawn up in November said a worker from the Council's Youth Offending Team (YOT) would regularly support S. The YOT had agreed to help children's services during periods of high workload. Officers have told us at the time children's services had a significant backlog of cases which meant it turned to its colleagues in the YOT for help with managing some of its cases.
31. The YOT worker met Mr D and S. The YOT worker is not a qualified social worker. He says after meeting S he was concerned about S's behaviour. He felt S was an aggressive and volatile young man who was capable of carrying out his threats.
32. In January 2014 S made threats against his father in the presence of the YOT worker. The Police were called and arrested S for harassing and putting the fear of violence into Mr D. S was held in police custody for two days until his Court appearance.
33. The Court gave S bail conditions not to have any contact with Mr D. It said S should live and sleep as directed by the Council. No family members were able or willing to take S. Mr D was prevented by bail conditions and Mrs M felt it was unsafe to have S living with her. The records show the YOT worker told his children's services colleagues *"he would be concerned if [S] was to be placed in B&B because of his level of violence"*. The Council's children's services decided to place S in bed and breakfast accommodation while awaiting the date of his next Court appearance.
34. Officer A, the senior children's services officer who authorised S to be placed in bed and breakfast, told us the Council had no other choice as S had refused to become a 'looked after child'. If he had agreed to be a 'looked after child' she said children's services would have placed him in a residential home or foster home regulated by Ofsted. She said the Council is not allowed to place 'looked after children' in bed and breakfast accommodation. Officer A said she felt S had continually expressed a wish to live independently if he could not live with his family. She felt he was competent to make a decision to refuse to become a 'looked after child'.

35. The Council's records do not record the Council asking S about becoming a 'looked after child', what information it had given him to make an informed decision, or his decision to not be become a 'looked after child' after this first Court appearance.
36. Officer A told us because S had refused to become a 'looked after child', she believed children's services were placing him in a bed and breakfast due to its homelessness duties. Children's services contacted the bed and breakfast accommodation and paid for S's stay there. Children's services did not tell the Council's housing services that it was not going to accommodate S under section 20 or that housing services would need to consider S's needs under the Housing Act 1996.
37. Officer A said in coming to her decision she had noted S's bad behaviour had been directed at family members. She therefore concluded there was no significant risk to the public by placing him in a bed and breakfast.
38. The Council did not carry out a new assessment of S's needs, such as an Initial Assessment. It is required to do so by the statutory guidance on homeless 16 and 17 year olds and the Council's policy.
39. The records show the Council conducted Police checks of the bed and breakfast premises. The Council's notes say a support plan was put in place for family members to support S where appropriate. There are no details in the Council's records of what this support plan entailed. While at the bed and breakfast S was visited by his paternal grandfather who told the Council S said he did not feel safe in the area. S spent five days in the bed and breakfast.
40. Officer A told us as S was not a 'looked after child' and his paternal grandfather had offered to support him, the Council felt S was supported in this accommodation. If his family had not agreed, Officer A said the Council would have provided more than bed and breakfast alone.
41. The Council visited S at the bed and breakfast two days after S was placed there. The record of the Council's visit notes S had hoped he would be moved from the bed and breakfast that day. S said he felt unsafe when leaving the bed and breakfast. However the Council explained there were no other placements available. It said it would review the situation after his next Court appearance three days later. The Council's record notes:

"The current bed and breakfast accommodation meets [S]'s immediate needs, although it is noted he needs support to rebuild family relationships to enable him to return home, or to secure independent housing in the more long term."
42. Mrs M says S told her that he was scared at the bed and breakfast. He told her he only had soup to eat and no one from the Council had visited him over the weekend. In response to Mrs M's complaint, the Council explained it felt S's period in bed and breakfast accommodation was not ideal but was temporary and it had no other alternative.

43. At S's second appearance, the Court gave S a non-custodial sentence. The bail conditions restricting S's contact with his father ended. The Council's files note that after the hearing Mr D and Mrs M told the Council they and other family members were unwilling to take in S. The Council discussed S's housing options and said the only option in the short term was for S to remain at the bed and breakfast. The Council asked S if he would like the Council to treat him as a 'looked after child' under section 20 of the Children Act 1989. S agreed to think about it overnight.
44. The next day the Council met with S and his father to go through S's housing options. S said he did not want to become a 'looked after child'. He said he would prefer to go into supported housing in Council X's area. The Council agreed to make a referral but explained there was a two to three month waiting list. Meanwhile it offered S a temporary supported accommodation scheme but he refused. The Council offered to continue to accommodate S in the bed and breakfast but again he refused. The Council's notes record Mr D said he felt compelled to take S back to live with him to prevent him having to return to the bed and breakfast accommodation. The Council's records show Mr D felt a bed and breakfast was not suitable and he felt S was vulnerable. The Council continued to treat S as a 'child in need'.
45. Mrs M says when S was allocated a new Social Worker, in January 2014, she felt more involved in the Council's decisions about S.
46. S continued to live with Mr D for three months until the placement broke down. S moved into the supported accommodation in the Council's area he had earlier refused to accept. This did not succeed and S became homeless a few months later. In the Spring of 2015 S moved into private rented accommodation with the help of Mrs M and her mother.

Mrs M's complaint to the Council

47. In October 2013 Mrs M complained to the Council about how it had managed the family's case and about its communication with her. The Council responded a week later. However as Mrs M remained dissatisfied, in November 2013 she asked the Council to progress her complaint to Stage 2. In December 2013 the Council said it wanted to try to resolve her complaint before going to Stage 2. It decided to complete another Stage 1 response as it felt the first one in October lacked enough detail. Mrs M complained the Council was trying to have 'two bites of the cherry'.
48. At the end of January 2014 children's services passed on Mrs M's request for a Stage 2 investigation. This was more than two months after she had first asked for a Stage 2 investigation. At the end of March 2014 the Council confirmed it would consider her complaint at Stage 2. The Stage 2 report completed in June 2014 noted that S had refused to engage in the complaint investigation.
49. The Stage 2 Investigating Officer (IO) said it was clear from the files that S wanted to live with Mrs M or her mother, and if not then his father, Mr D. The IO said it was difficult to imagine what other work or sanctions the Council could have applied to Mr D regarding S's drug use, especially given the threats S made against Mr D.

50. The IO found the Council could have produced a more robust Core Assessment. The IO said the Council should have arranged for a multi-agency meeting as it is required under its 'child in need' procedures. However the IO noted the success of such a meeting would have depended on S's agreement to engage and the evidence was he would not have done so. The Council apologised to Mrs M for the lack of a multi-agency meeting and accepted the completion of the Initial Assessment and Core Assessment were slightly outside the required timescales.
51. The IO upheld Mrs M's complaint about the Council's delay in agreeing to, and starting, the Stage 2 investigation. Mrs M had the right to ask for a Stage 2 and for it to be conducted without delay. Part of the delay had been caused because the Council had asked S's view about his mother's complaint. S said he did not want his mother to complain on his behalf. The IO said although it was important for the Council to consider S's views, they were not a factor in deciding whether to undertake a Stage 2 and should not have caused the delay. The IO said the delay in starting the Stage 2, of four and a half months, caused considerable uncertainty to Mrs M. The Council accepted the IO's findings and offered Mrs M £250 for the time and trouble caused by the delay in the complaints procedure. It also agreed to improve its complaints handling.
52. Mrs M remained dissatisfied and at the end of June 2014 asked for her complaint to be considered at Stage 3, an Independent Review Panel. The Review Panel hearing was held in September. The Review Panel was not held within the required 30 working days. The Review Panel explained this was because it had adjourned an earlier hearing after relevant Council officers could not attend the earlier date. The Review Panel felt the IO's report was thorough. It recommended the Council apologise to Mrs M for not being clear about what it could and could not do to support S, given that parental responsibility for S had remained with Mrs M and Mr D.

Mrs M's claimed injustice

53. Mrs M says the Council's communication with her and its complaints process was poor. She felt no one in children's services was responding to her pleas for help.
54. Mrs M believes S's behaviour worsened when he went to live with his father and she feels the Council should have explored why his behaviour changed. She feels the Council did not place enough emphasis on S having special educational needs.
55. She says her family felt terrorised by S. She wants the Council to accept it should have intervened more with Mr D's frequent abandonment of S in Council X's area.

Conclusions

The support the Council offered to S

56. The Council identified S as a 'child in need' in 2013 soon after it received the referral from the Police that S may have been harmed. The Council offered services to Mr D and S however they would not accept the support offered.

57. At various intervals over the next few months the Council repeated its offer of support to Mr D and S. This included the offer of a Family Support Worker, signposting to addiction support and to S's GP, information about when to contact the Police, and information about housing options. On the whole Mr D and S continued to refuse the support the Council offered to S as a 'child in need'. Nevertheless Mr D and S occasionally met with the YOT worker appointed to oversee S's care in November 2013.
58. Throughout the period of the complaint Mrs M and Mr D held parental responsibility for S. Case law says as young people approach 18 parental responsibility is a dwindling right. Therefore S's parents and the Council could not force S to accept the support the Council offered to him as a 'child in need'. A young person who makes bad decisions is not necessarily incompetent to make their own decisions. Therefore we find support was offered to S as a 'child in need' and there was no fault.

The Council's involvement of Mrs M in its assessments of S

59. Although the Council carried out an Initial and Core Assessment in 2013 it failed to seek Mrs M's views as part of those assessments. The Council communicated with Mrs M about her concerns about S. However that is not the same as including her in its assessments of her son's needs.
60. Mrs M believes she would have been able to contribute significantly to the Council's assessment of her son's needs and wished to comment on his father's ability to parent him, given S's challenging behaviour. We agree she would have been able to contribute to all the key areas of the assessment including:
- S's development needs including his special educational needs. The Council said it was unable to find out about any special educational needs S had as his old school had closed down. Mrs M could have given more information.
 - the parenting capacity of Mr D and Mrs M.
 - the family and other environmental factors affecting S.
61. Involving Mrs M may have led to the Council including different information in S's Core Assessment, especially about any special educational needs S had and his behaviour while attending his residential school. However at this late stage, and without S's involvement in any complaint, we cannot say with enough certainty if that would have changed the Council's approach to S or how it decided to support S as a 'child in need'. The evidence shows it was likely S would have declined any support offered.
62. The Council failed to send Mrs M copies of the assessments at the time. The Council's policy is parents are fully informed of the outcomes of assessments unless prejudicial to the child's welfare. There is no evidence it would have been prejudicial to S's welfare.

63. The failure to involve Mrs M in S's 'child in need' assessments and the subsequent failure to send her the assessments in a timely manner, would undoubtedly have caused her unnecessary frustration. It would have led her to feel uninformed and her views not respected by the Council. Therefore we find fault causing Mrs M an injustice. We are unable to conclude whether S was caused any injustice as a result of these faults.

General communication with Mrs M

64. The Council's records show it regularly spoke to Mrs M and Mr D about S. The Council received regular phone calls and texts from Mrs M regarding her concerns about S. The records show the Council regularly updated Mrs M by telephone, roughly once a week. This may not have been at the frequency Mrs M would have liked but it was open to her to speak to Mr D to ask for any updates on S. It appears the Council may have decided to treat Mr D as the main source of information about S because at that time he was providing the day to day caring role for S.
65. Mrs M complained that the Council did not update her on one occasion when S was released from police custody in Council X's area. Council X had the most up to date information and had communicated with Mr D. S was a 'child in need' but was not in the care of the Council. Therefore his parents had a role in keeping each other informed about what was happening to S. If Mrs M and Mr D had felt better able to communicate with each other this may have allowed for greater updates without the need to involve children's services.
66. Therefore on the issue of general communication with Mrs M we find no fault.

The Council's use of bed and breakfast to accommodate S

67. During our investigation it became apparent that S may have suffered an injustice as a result of fault by the Council when it placed him in bed and breakfast accommodation. Therefore, although S was not party to his mother's complaint to the Ombudsman, we decided to use our powers to investigate matters coming to our attention relating to his time in bed and breakfast accommodation.
68. In January 2014 the Court ordered S to live and sleep as directed by the Council until the next Court appearance five days later. The Court determined that S could not return to his father's home. Mrs M would not allow S to live with her. We conclude that under the duties owed under section 20 of the Children Act 1989, because the person caring for him was prevented from providing him with suitable accommodation or care, S needed the Council to provide him with accommodation. However there is no record on S's file showing the Council realised it was now under such a duty to provide S with accommodation under section 20. As S was homeless the Council was also required, by the statutory guidance on homeless 16 and 17 year olds and its own policy, to conduct a new 'child in need' assessment. It did not do so and that was fault.

69. The Council says S had refused to become a 'looked after child'. However its records do not show the Council asking S this when the Court ordered him to live as directed by the Council. The records also do not show it asked S about becoming a 'looked after child' in the previous five months it had been in contact with S. Therefore there is no evidence S had at that stage refused to become a 'looked after child'.
70. After speaking to relevant officers, it is clear that in January 2014 the Council thought by placing S in a bed and breakfast it was not treating him as a 'looked after child' but acting under its housing obligations to homeless people. The Council says if S was a 'looked after child' it would not have been allowed to place S in a bed and breakfast. This may have been the Council officers' intention, however the evidence points to S being placed there as a 'looked after child' as:
- it appears a section 20 duty was owed.
 - there is no evidence S refused to be a 'looked after child' at the time of his first Court appearance in January 2014.
 - the Court's bail conditions had in effect made S homeless. Case law says the duties under section 20 of the Children Act take precedence over the duties in the Housing Act 1996.
 - children's services, not housing, took the decision to place S in bed and breakfast and children's services arranged and paid for the accommodation.
71. The Council was not permitted to place S in a bed and breakfast as either a 'looked after child' or as a homeless 16 to 17 year old. Placing S in bed and breakfast, even in an emergency, is a breach of the statutory guidance. This is a significant fault concerning a vulnerable young person.
72. The Council's records indicate it did not take the decision to place him in bed and breakfast as seriously as would be suggested when breaching the statutory guidance. This is probably because it had not realised it was acting with fault. Its officers only visited him once, two days after he had been placed there. It did not see him again until after the Court hearing three days later. This would not be permitted if it had recognised it had placed him there as a 'looked after child'.
73. The Council says while S stayed at the bed and breakfast there was a support plan in place for his family (paternal grandparent) to support him including the provision of meals. However, there is no record of the details of any support plan on the Council's file. Therefore we are unable to see what was agreed and what his family understood the Council would provide, or what the Council expected the family to provide.

74. Mrs M alleges that apart from breakfast S only had soup to eat. When Council officers visited S two days into his stay at the bed and breakfast the records show an officer purchased food for S to last until his next Court appearance. The records also show that the Council advised S's grandfather should give S money for provisions. If the Council had recognised S was a 'looked after child' the Council would have provided all his meals and other daily support.
75. The possible options for accommodating S as a 'looked after child' could have been: a foster carer with specialist training in older children involved in offending behaviour; children's home; or other supported accommodation. There is no evidence the Council considered any alternative to placing S in a bed and breakfast. A failure to do so may be an error of judgement but also may bring into question whether the Council is meeting its obligation to ensure it has sufficient appropriate accommodation. (Section 22G of the Children Act 1989)
76. S was a vulnerable teenage boy with a drug problem. The notes show the Council felt the bed and breakfast would 'meet his needs' without any reference to the statutory guidance which says bed and breakfast is not suitable, even in an emergency. Bed and breakfast accommodation leaves young people accommodated alongside adults. Therefore as the statutory guidance says bed and breakfast is not suitable we can conclude S was likely to have suffered an injustice. In addition, the Council's protocol on homeless 16 and 17 year olds fails to make clear that bed and breakfast accommodation should never be used even in an emergency. This is fault. However as S has not asked to be party to this complaint by his mother, we cannot suggest a suitable remedy for any injustice suffered by S because of this significant fault. Nevertheless we will recommend the Council takes action to prevent a recurrence in the future when dealing with other 16 and 17 year olds who require accommodation.
77. When the Court removed the bail conditions five days later, the Council asked S if he would like to be accommodated under section 20 but S refused. This is the only record of the Council asking him about becoming a 'looked after child'. It is our view that S had already been a 'looked after child' for the previous five days. The Council took S's views that he did not want to be a 'looked after child' to be decisive. The statutory guidance says it is important that the young person's decision is properly informed and reached after careful consideration of all the relevant information. The statutory guidance says children's services should also be satisfied the young person is competent to make such a decision. The statutory guidance says councils should take careful records of what it explained to the young person and their refusal and it should provide child friendly advice for the young person to take away to consider. The Council has not recorded what information it gave to S about becoming a 'looked after child' or how it balanced S's views with his competency to make such a decision, his needs and the problems he was causing both of his parents. That was fault.
78. The Council says that since January 2014 all placements of young people into bed and breakfast or hotel accommodation have to be approved by the Head of Service. The Council says it no longer uses bed and breakfast accommodation to house young people and would instead use hotels.

79. Government guidance states bed and breakfast establishments typically involve the use of privately managed hotels. Bed and breakfast means accommodation which is not separate and where households share at least some basic facilities. (The Homelessness (Suitability of Accommodation) (England) Order 2003) Hotels can only be used when they have been specially commissioned to provide high quality supported temporary accommodation to young people. Therefore a hotel is still classed as bed and breakfast accommodation if it has shared facilities and it is not registered as supported housing. The hotels the Council uses are normal hotels in which members of the general public may book a room. They are not registered as supported temporary accommodation to young people. As a result the Council's current decision to use hotels to accommodate 16 and 17 year old young homeless people would also be in breach of the statutory guidance. That is fault.

Complaint handling

80. For the additional time and trouble spent pursuing a complaint, over and above that set down in the complaints procedure, we usually recommend anything from an apology to a few hundred pounds. Our recommendations are not based on the cost of making a complaint but are an acknowledgement of any frustration caused by delay. We recognise Mrs M found it frustrating when the Council continually delayed in starting the Stage 2 investigation. We agree with the Stage 2 Investigating Officer, the statutory guidance says the Council had to start the investigation without delay once Mrs M requested it. The Council failed to do so and that delay was fault. The amount the Council has offered for the delays in the Stage 2 process is in line with our guidance on remedies.
81. Mrs M suffered additional time and trouble when the Stage 3 was delayed by a month. This was not as a result of any action or inaction on her part but because of the inability to get Council officers to a meeting in August. It was outside timescales set out in the statutory guidance. This additional fault would have caused Mrs M additional time, trouble and frustration that the Council has yet to remedy.

Decision

82. We have completed our investigation into this complaint. There was fault causing injustice to Mrs M and others. The Council should take the action identified in paragraphs 83 to 85 to remedy that injustice to Mrs M and others and to improve its practices in the future.

Recommendations

83. To remedy the injustice caused to Mrs M by the faults identified above, we recommend within two months of our final report the Council should:
- apologise to Mrs M for failing to involve her in its 'child in need' assessments and for the additional time it took to consider her complaint at all three Stages of the statutory complaints procedure.

- pay Mrs M £200 for the frustration caused by not being able to contribute to her son's 'child in need' assessments.
- increase its offer to her for the additional time and trouble she spent pursuing her complaint over that allowed by the statutory complaints guidance from £250 to £300 due to the delays at Stage 3.

84. To prevent injustice to other members of the public, we recommend within three months of our final report the Council should:

- ensure it involves both parents in its child in need assessments unless there are specific and recorded safeguarding reasons not to. Also, ensure it shares copies of those assessments to parents where it is safe to do so, in a timely manner, redacted where necessary.
- improve its policy for homeless 16 and 17 year olds to include reference to bed and breakfast accommodation not being suitable even in an emergency. It should then ensure its children's services' staff are aware of this condition.
- ensure it does not place homeless 16 and 17 year olds in bed and breakfast accommodation (including the use of unsupported hotels) even in an emergency. If the Council decides to act in breach of the statutory guidance, the decision to do so should continue to be made by the Head of Service. The Head of Service's decision, and the reasons for it, should be recorded on the child's file.
- ensure it records important decisions on the child's case file when considering providing accommodation to 16 and 17 year olds covering such areas as:
 - whether a section 20 duty arises.
 - whether it is obliged to conduct a new Initial Assessment of the child's needs now they are homeless.
 - how it has explained the implications of becoming a 'looked after child' to the young person.
 - any refusal by the young person to become a 'looked after child' and how it explained that assistance may be available to them from the housing department.
 - any contact with the Council's housing department after a young person who requires accommodation refuses to become a 'looked after child'.
- carry out a review of whether it is meeting its sufficiency duty regarding the provision of accommodation to its 'looked after children'.

85. The Council should report back to us on our recommendations within three months of our final decision. If there are any outstanding matters it should report to us monthly until all the actions are completed.
86. The Council has accepted our recommendations. It is consulting on a revised version of its homeless protocol for 16 and 17 year olds and its sufficiency strategy. It is also revising its guidance for staff. It expects to complete this work by September 2015.