

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

**Investigation into a complaint against
Council of the Isles of Scilly
(reference number: 15 019 440)**

6 February 2018

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 and Mrs B The complainants

Report summary

We have written this Further Report because the Council has failed to comply with recommendations made in a report issued on 8 August 2017. The recommendations were made to remedy the injustice caused due to fault by the Council. The Council was given three months to respond to the report and provide evidence of compliance. It failed to do so and we are therefore issuing a Further Report to highlight the ongoing concerns about the Council's failure to fully acknowledge and remedy its faults.

Finding

Fault causing injustice and further recommendations made.

Recommendations

To remedy the injustice caused to Mr and Mrs B and their family, the Council should ensure full compliance with the recommendations set out in the original report of 8 August 2017 and provide evidence of this without delay.

The Council should also pay an additional £250 to Mr and Mrs B to remedy the injustice caused by the need to issue a Further Report on this complaint.

The Council should lay the original report and this Further Report before the Authority. If it is minded not to comply with our recommendations, then this report is required to be considered by full Council in accordance with Section 31A(1A) of the Local Government Act 1974.

The Council has raised concerns about the implications of this requirement. We are willing to consider an alternative approach, but this must include consideration by a properly constituted body of elected members of the Authority with formal delegation to deal with this matter on behalf of the Authority. All those involved in considering this report should be informed of the continuing requirement for confidentiality and the need to ensure the anonymity of the family involved.

Introduction

1. Mr and Mrs B previously complained to us about the Council's failure to provide a vulnerable family member with support and its failure to follow the appropriate complaints procedure when the family complained about this.
2. We investigated the complaint and found the Council to be at fault in several areas. A report was issued on 8 August 2017 explaining the basis for the findings of fault and making several recommendations to remedy the injustice which had been caused as a result. These included a payment to Mr and Mrs B for the time and trouble they had been put to in pursuing their complaint; an apology; a payment for the failure to provide services; a review of procedure and staff training.
3. After concerns were raised by the Council that the family may be identifiable and this could cause potential issues to a particularly vulnerable member of the family, the report was issued, but not published, in accordance with Sections 30 and 31B of the Local Government Act 1974 (The Act). Mr and Mrs B did not share the Council's concerns and were willing to be identified. But they respected our decision that it was not in the best interests of the family to publish the report and made no attempt to place matters in the public domain. The publication of this Further Report does not alter the decision not to publish the original report. We maintain our view it is not in the public interest to publish the original report and we expect all parties to this complaint to respect that position.
4. The Council were informed that under Section 31(2) of The Act, the report must be laid before the authority concerned. It was asked to arrange for the report to be considered at either full Council, Cabinet or another Committee with delegated authority and tell us, within three months of receiving it, the action it had taken or proposed to take.

Legal and administrative background

5. 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*)
6. The Council must consider the report and confirm within three months the action it has taken or proposes to take. (*Local Government Act 1974, section 31(2), as amended*)
7. If we do not receive a response within the agreed time, or if we are not satisfied with the action the Council takes or proposes to take, we shall issue a further report. (*Local Government Act 1974, section 31(2A)*)

How we considered this complaint

8. We produced this report after giving the Council several opportunities to provide evidence to demonstrate it had complied with the recommendations made in the previous report.

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9. We gave the complainants and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the Further Report.

Investigation

10. The original investigation into Mr and Mrs B's complaint concluded that the Council had been at fault in a number of areas. Further information cannot be provided in this report as the concerns about a vulnerable family member potentially being identified remain. However, this report is being written in a form which will allow publication but will not risk identifying the family.
11. The original report was issued on 8 August 2017. The Council was given three months to consider and respond to it and was asked to notify us by 8 September 2017 the arrangements it was making to do this. It failed to provide this information despite further requests being made.
12. The three-month period ended on 8 November 2017. We had received no response or contact from the Council. Mr and Mrs B also confirmed the Council had not contacted them in the intervening period.
13. The Council was notified on 10 November 2017 that due to the lack of contact the matter would be referred to the Ombudsman with a recommendation that a Further Report is issued.
14. The Chief Executive responded later that day and explained that despite disagreeing with the original recommendations they had been accepted. A decision was taken that, to ensure the family would not be identified, the matter should not be put to full Council, Cabinet or a Committee with the appropriate delegated authority. Instead, the report had been discussed with key members. The Council had intended to inform us of this but the communication was not sent from the Council's server. The Council had considered the recommendations had been fully complied with and the case was now closed.
15. A further response was sent to the Chief Executive on 10 November 2017. We asked for copies of any minutes from the meetings and discussions with key members to enable us to consider if the Council had fulfilled its obligations under Section 31(2) of The Act. We also asked for detailed evidence of compliance with all the recommendations originally made.
16. A lead member responded on 20 November 2017. He confirmed:
- the payment for the time and trouble Mr and Mrs B had been put to had not been made but the Council would now arrange this;
 - the payment for loss of services had not been made because the family member had not accepted the services offered. This was addressed in the original report in which the basis for the payment was clearly explained; and
 - policies and procedures were regularly reviewed but offered no evidence of this.
17. There was no reference in the response to the specific staff training we had recommended. There was also no indication or evidence an apology had been made to the family. The member confirmed the report had not been laid before the Authority but had instead been discussed with the Vice Chair of the Council

and senior officers. Following this response, a draft of this report was prepared and sent to both parties.

Events since the draft Further Report was issued

18. Since the receipt of the draft version of this report, the Council has confirmed that due to loss of personnel and capacity issues, not all of our original communications on the case were appropriately forwarded. Whilst we acknowledge these difficulties, it is clear the original report was received by the Council and the requirements to report back and provide evidence of compliance was set out in the supporting documents sent when the report was issued. The Council failed to do this or to contact us if any clarification was needed.
19. An apology letter was belatedly sent to Mr and Mrs B in December 2017. The letter gave details of changes to complaints policy and procedure and training delivered to staff. It also included a payment of £250 to acknowledge the time and trouble Mr and Mrs B had been put to. The letter stated the Council did not accept there had been a failure to provide services and referred to case notes indicating the family failed to engage with the services offered. The Council did not provide adequate evidence of this when the original report was issued and has provided no further evidence to support its assertions.
20. The Council has confirmed it has laid a copy of the draft of this Further Report before Full Council in January 2018. A decision was taken that authority to formally respond would be delegated to a Councillor with lead responsibility for the service area in question.

Conclusions

21. The Council failed to notify us within the time allowed of the action it had taken or proposed to take in response to our original report. It had originally confirmed it intended to comply with two of the recommendations (payment to Mr and Mrs B and an apology to the family) when it received a draft decision on the complaint. Whilst it is encouraging an apology has now been given and a time and trouble payment made, it is extremely disappointing that it required the issue of this Further Report in draft to prompt that action. The Council has still not remedied the injustice caused by the failure to provide services. We remain of the view this payment is due and our original recommendation still stands.
22. The Council has also failed to confirm it is willing to pay the additional £250 payment recommended in this Further Report. This is a remedy for the additional time and trouble Mr and Mrs B have been put to due to the failure of the Council to act within the stipulated timescale.
23. The Council failed initially to satisfy us that it had fulfilled the obligation to lay the report before a body that had the necessary authority and delegation to reach a decision about the action it had or intended to take in response to the recommendations. It cited concerns about the need to protect the identity of the family and ensure their wellbeing as reasons for this. Whilst this may have been well intentioned, it was undermined by the Council's failure to remedy the loss of provision for the family member and led us to question if the report has received proper democratic scrutiny. The Council has now confirmed Full Council has considered the draft of this report and has delegated authority to respond to the Further Report to a Councillor. However, if the Council is still minded not to comply with our original and further recommendations, then this report is required to be considered by Full Council in accordance with Section 31A(1A) of The Act.

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24. It is highly unusual for a local authority to fail to give proper consideration to an Ombudsman's report and to fail to notify us of the actions it intends to take in response to his recommendations. This falls below the high standards of governance and accountability that are expected of a public body.

Injustice

25. The injustice originally caused to Mr and Mrs B and their family by the failings detailed in the original report has yet to be fully remedied.
26. The failure of the Council to respond to the original report in accordance with its statutory responsibilities is disrespectful to the family and has caused further injustice. The family have been left frustrated by the lack of a formal response and have been put to further time and trouble in pursuing matters.

Decision

27. The previous investigation into this complaint was completed and a report issued. That explained the faults that had occurred and the resulting injustice. Recommendations were made to remedy that injustice. The Council failed to provide evidence it had considered the report properly, complied with the recommendations, or indicate what action it intended to take. The family has been caused additional injustice as a result. This has led to this Further Report being issued.

Recommendations

28. To remedy the injustice caused to Mr and Mrs B and their family, the Council should ensure full compliance with all the recommendations set out in the original report of 8 August 2017 and provide evidence of this without delay.
29. The Council should also pay an additional £250 to Mr and Mrs B to remedy the injustice caused by the need to issue a Further Report on this complaint.
30. The Council has delegated authority to a Councillor to respond to this Further Report. If it is minded not to comply with our recommendations, then this report must be considered by Full Council in accordance with Section 31A(1A) of The Act.
31. The Council has raised concerns about the implications of this requirement. We are willing to consider an alternative approach, but this must include consideration by a properly constituted body of elected members of the Authority with formal delegation to deal with this matter on behalf of the Authority. All those involved in considering this report should be informed of the continuing requirement for confidentiality and the need to ensure the anonymity of the family involved.