

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

**Investigation into a complaint against
East Riding of Yorkshire Council
(reference number: 17 006 049)**

18 December 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 F	The complainant
Mrs PGM	The complainant's mother
B and G	The complainant's children
Ms M	The children's mother
P	Their mother's partner

Report summary

Children's Services

Mr F complains the Council failed to protect his young son, B, from harm. B's mother, Ms M, told the Council she had ended her relationship following an assault by her partner, P. However, she quickly resumed the relationship. B was seriously injured by P. B now lives with his father, Mr F.

Finding

The Council missed opportunities to protect B from harm. When concerns were raised about Ms M's children, the Council did not have a plan to check on the children's whereabouts or welfare. While the Council did not cause B's injuries, Mr F is left in the undesirable position of wondering whether, if the Council had put in place a plan to check on the children's whereabouts and welfare, B could have been spared the injuries he sustained at the hands of P. The Council unfairly blamed Mr F and his mother, Mrs PGM, for failing to raise their concerns sooner. The Council also disregarded a Court Order in respect of contact between Ms M and her daughter, G, following the incident. The Council took 76 weeks too long to consider Mr F's complaint. Its investigation was flawed.

Recommendations

To remedy the injustice caused, the Council has agreed to:

- apologise to Mr F and Mrs PGM for the faults we have identified, including the Council's unfair attempt to blame Mrs PGM;
- pay Mr F £1,000 to acknowledge his distress caused by the Council's faults;
- pay Mrs PGM £1,000 to acknowledge her distress caused by the Council's faults;
- pay Mr F £1,500 for B's benefit to acknowledge the Council's failure to protect B from harm; and
- pay Mr F £500 for G's benefit for disregarding the Court Order in respect of contact between G and Ms M following G's disclosure.

The Council should also make a referral to the East Riding Safeguarding Children Board Serious Case Review Panel (or its successor organisation when new safeguarding partner arrangements are in place). The Panel has a statutory duty to undertake a serious case review when a child has been seriously harmed and there is cause for concern about the Council's handling of the case.

The Council must consider this 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*)

The complaint

1. Mr F complains the Council failed to protect his son, B, from harm.
2. Mr F complains the Council did not begin care proceedings when B suffered non-accidental injuries.
3. Mr F complains about the lack of support from the Council to care for his children when they came to live with him.
4. Mr F complains about the Council's decision to allow Ms M's family to supervise contact between Ms M and G following G's disclosure in August 2014.

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. We cannot investigate a complaint about the start of court action or what happened in court. (*Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended*)
7. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
8. The events Mr F complains about happened in 2013. However, the Council did not complete its investigation until 2017 and Mr F complained to us as soon as the Council's investigation was complete, so the delay was not his fault.
9. 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 decision with Ofsted.

How we considered this complaint

10. We produced this report after making enquiries of the Council and examining relevant documents.
11. We have considered:
 - information provided by Mr F and his mother, Mrs PGM;
 - information provided by the Council, including records from Children's Social Care and its response to Mr F's complaint;
 - *Working Together to Safeguard Children (March 2013)*, Government guidance which was current at the time of the complaint; and
 - [Guidance on good practice: remedies](#), published by the Local Government Ombudsman in 2013 (updated in May 2018).
12. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We took account of their comments before we finalised the report.

What we found

13. Mr F has two young children, B and G. He separated from the children's mother, Ms M, in June 2013. B and G lived with Ms M until November 2013.

What happened

14. Ms M and her partner, P, are alleged to have had an altercation at home on Monday 18 November 2013. Ms M was taken to hospital by ambulance on Wednesday 20 November suffering headaches and blurred vision. Children's Services received a referral about the incident on Thursday 21 November.
15. The record of the referral contains details of the alleged altercation between Ms M and P; the names and dates of birth of Ms M, P, B and G; and a note that G was with Mrs PGM (her paternal grandmother), B was with his maternal grandmother and P remained at the family home.
16. The Council assigned a social worker to the case and held a case supervision discussion between the social worker and a manager.
17. The record of the case supervision discussion says that Ms M had been admitted to hospital and was expected to be there overnight for tests; her children were safe because they were staying with Mrs PGM; and the social worker was to visit Ms M in hospital. The social worker was to challenge Ms M about domestic violence in her relationship with P. If Ms M intended to continue her relationship with P, the Council would consider removing the children and placing them with a family member. The Council decided to begin a *Single Assessment*.
18. Ms M was discharged from hospital later the same day.
19. The Council met with Ms M the following day, Friday 22 November. Ms M asked Mrs PGM to join the meeting. Ms M said she had ended her relationship with P. The Council was concerned how P, and his family, who lived locally, would react. Ms M said she would spend the weekend with a relative before returning with B and G on Sunday 24 or Monday 25 November. Mr F and Mrs PGM would then care for B and G for a week.
20. The Council has no further records until Wednesday 27 November when there is a note of a telephone call from Mrs PGM to say that B had been admitted to hospital. The note says he had suspected meningitis.
21. There is a note of a further telephone conversation with Mrs PGM later that evening in which she reports that doctors are concerned B has suffered a non-accidental injury. The Hospital made a safeguarding referral.
22. P was subsequently convicted of causing B serious injuries by shaking him and is serving a lengthy prison sentence. Ms M was also convicted of failing to protect B from harm.

Safeguarding children: the law and government guidance

23. The government has issued guidance to Councils managing cases where there are concerns about a child's safety or welfare. (*Working Together to Safeguard Children*)
24. When somebody makes a referral, the Council must decide how to respond within one working day. The Council must first determine whether the child requires immediate protection and urgent action is required. A social worker should lead a multi-agency assessment. The assessment may be very brief. If the Council suspects the child is suffering, or likely to suffer significant harm, the Council should hold a strategy discussion to enable it to decide, with other agencies, whether to begin enquiries under s.47 of the Children Act 1989. Further specialist

assessments may be required to help the Council decide what action to take or what services are required.

Complaint 1: the Council failed to protect B from harm

25. When the social worker and manager assessed the referral on Thursday 21 November, it does not appear they considered B and G to be in need of immediate protection or that urgent action was required since the children were being cared for by grandparents. They mistakenly believed both children were with Mrs PGM, but B was, in fact, with his maternal grandmother.
26. However, it appears they considered Ms M's children were at risk of significant harm since the record of their discussion says that if Ms M continued her relationship with P, the Council would consider removing her children. P was known to the Council because of domestic violence in a previous relationship.
27. The social worker telephoned Ms M on Friday 22 November to arrange a meeting. The case note says a man answered her mobile phone. The social worker asked to speak to Ms M, but the man said she was unwell. The social worker persevered and the man passed the phone to Ms M. Ms M confirmed the man was P. The social worker agreed to meet Ms M at the local Children's Centre.
28. The Council's record of the meeting at the Children's Centre later that day says Ms M "claimed" she had ended her relationship with P. This suggests the Council was sceptical.
29. It appears the Council was also concerned how P, and his family, who lived locally, would react to the news. The Council and Ms M agreed that the children would spend the weekend away with Ms M and then spend the following week with Mr F and Mrs PGM. Ms M agreed to hand the children over to Mrs PGM on Sunday 24 or Monday 25 November.
30. The social worker's record says she made it clear to Ms M 'there would be concerns' if she resumed her relationship with P.
31. The Council did not speak to P or visit Ms M's home.
32. There is no evidence the Council made any plans for the children's return. From the Council's records, it does not appear the Council checked Ms M had complied with the plan to keep her children safe and taken them to Mrs PGM on Sunday 24 or Monday 25 November. It does not appear the Council checked on the children's whereabouts or welfare at all.

Consideration

33. The Council had begun a *Single Assessment*. Government guidance says that whatever the nature of the assessment, it should always be 'child centred' and analyse the nature and level of any risk and harm from the child's perspective. The Guidance specifically cautions against 'a desire to think the best of adults and to hope they can overcome their difficulties'. Social workers should not wait until the assessment reaches a conclusion before taking action if the child or family need support. (*Working Together to Safeguard Children, Chapter 1*)
34. If the Council suspects children are likely to suffer significant harm, the guidance says the Council should hold a strategy discussion with other agencies to decide whether to begin an investigation.
35. In response to our enquiries, the Council said the social worker believed Ms M had ended her relationship with P and was able to ensure her children's safety. It

said the fact the social worker wrote that Ms M “claimed” to have ended her relationship with P did not mean she had any doubts. The Council’s response is not credible.

36. Based on the information we have seen and summarised above, we uphold Mr F’s complaint that the Council failed to protect B from harm. The Council clearly considered the children to be at risk, yet failed to analyse the risk and put in place a plan to check on their safety. It did this in spite of the social worker’s reservations about Ms M’s ability to protect the children from harm by ending her relationship with P. The assessment was not child-centred and the Council’s inaction reflects its desire to think the best of Ms M. The Council had not considered any risk P may pose to the children. The Council mistakenly believed B was with Mrs PGM when he was in fact with P’s mother. The Council did not consult other agencies or hold a strategy discussion. This is fault.
37. Mr F is left in the undesirable position of wondering whether, if the Council had put in place a plan to check on the children’s whereabouts and welfare, B could have been spared the injuries he sustained at the hands of P. Our role is not to speculate about what might have happened, but to look at what did happen. We have set out why we have concluded the Council was at fault, but we cannot say what might have happened if the Council had acted differently.

Other matters

38. Mrs PGM exchanged text messages with Ms M on Sunday 24 November. She wanted to know when Ms M was bringing the children to stay. It was clear from Ms M’s messages that she had not ended her relationship with P.
39. Mrs PGM says she made many telephone calls to the Council on Monday 25 November to raise her concerns for the children. She says she telephoned both the duty social work number for emergency child protection matters and the direct numbers of the social worker and manager involved. She says she spoke to the social worker who telephoned her to ask for Ms M’s telephone number. Mrs PGM is particularly aggrieved the Council did not take action when she reported the fact Ms M and P had resumed their relationship on Monday 25 November.
40. The Council says it has no record of Mrs PGM’s calls, and the social worker and manager both deny speaking to her on Monday 25 or Tuesday 26 November. The Council says it was not aware that Ms M and P had resumed their relationship until B was admitted to hospital.
41. In responding to her complaint, the Council implied that Mrs PGM was at fault for not raising her concerns sooner when she learned on Sunday 24 November that Ms M and P had not ended their relationship. This is unfair. It was not Mrs PGM’s responsibility to police the relationship between Ms M and P. The Council, not Mrs PGM, had a statutory duty to protect the children. The Council was doubtful Ms M would end her relationship with P on Friday 22 November, yet did not put in place any measures to check. The Council’s record says Ms M will drop the children off on “Sunday or Monday”. As a plan to protect children, this is too vague.

The Council’s records

42. Mrs PGM and the Council have spent a lot of time on a fruitless dispute about when the case supervision discussion between the social worker and manager actually took place. The Council says the manager made a handwritten record of the discussion on Thursday 21 November which was entered on the computer system on Monday 25 November. Mrs PGM, who has only seen a redacted

version of the records, believes the meeting took place on Monday 25 November. She believes this would support her claim the Council was aware Ms M and P had resumed their relationship. Having seen the full text of the record, we are satisfied it refers to a meeting that took place on 21 November. However, since the hand-written note appears to be the only record of the Council's plan to ensure the safety of Ms M's children, the failure to record the plan on the computer system for five days exposed the children to risk. It is unclear, for example, how the duty social work team would have known about the Council's concern for the children should anybody have reported their concerns between Friday 22 and Monday 25 November when the notes were entered on the computer.

43. The level of detail in the Council's records also raises questions about their adequacy. The records show the Council made notes of telephone conversations without making a record of who took the call or the time of the call. The record of the case supervision discussion is incorrectly dated. There is a record dated Wednesday 27 November of a call from Mrs PGM to say B had been admitted to hospital when other evidence suggests the call was received on Tuesday 26 November. Accurate records are essential in child protection cases to ensure the safety of the children involved.

Complaint 2: the Council's decision not to begin care proceedings

44. Mr F complains the Council did not begin care proceedings when B was found to have suffered non-accidental injuries.
45. Mr F says the Council told him to apply for a Residence Order. He says he instructed a solicitor and incurred significant legal costs before he secured Legal Aid. He believes his children would have been better protected, and he would not have incurred costs, if the Council had applied for a Care Order. He believes care proceedings would have concluded more quickly than his Residence Order application, avoiding considerable stress.
46. The Court granted Mr F an Interim Residence Order and Prohibited Steps Order on 6 December 2013. B was discharged from hospital to his care. Ms M opposed Mr F's application. The case returned to court on 12 December 2013. The Court ordered the Council to carry out an investigation of the children's circumstances and consider whether to apply for a Care Order. The Court did not use its power to make an interim Care Order for the children while the Council conducted the investigation, and the Council did not apply for a Care Order. The Court granted Mr F a full Residence Order.

Consideration

47. We cannot consider Mr F's complaint that the Council did not begin care proceedings. A Court considered the welfare of Mr F's children and decided not to make a Care Order. We cannot investigate complaints about matters that have been considered by a Court.

Complaint 3: lack of support from the Council to care for B and G

48. Mr F complains about the lack of support from the Council to care for his children. He says he was without benefits for three months and his mother had to support him. He says he faced significant travel costs attending medical appointments with his son and taking his daughter to school.
49. The Council provided practical and financial support to Mr F to care for his children. Support included food parcels, cash payments equivalent to Child Benefit until Mr F was able to claim himself, cash payments for gas and electricity,

and a welfare grant. The Council also supported Mr F with his claim for housing benefit. The Council's records say Mr F said he was managing with the support he received.

50. Mrs PGM says the financial support provided by the Council was inadequate, and Mr F would say that he was coping even if he was not.
51. Mr F was caring for his own children. The Council helped him to claim all the benefits to which he was entitled, and supported him with payments equivalent to those benefits until the benefits were paid. Mr F did not tell the Council he was struggling. The Council says B did not need significantly more care than a child of the same age and stage of development when he first returned home from hospital. In these circumstances, while it will no doubt have been a struggle for Mr F caring for his children, there are no grounds for us to criticise the Council.

Complaint 4: allowing G's maternal family to supervise contact with her mother following her disclosure in August 2014

52. In August 2014, G made a disclosure about P.
53. The Council held a strategy discussion with the Police on 1 August 2014 and decided the Police would lead an investigation. The case was allocated to a Police officer to arrange an interview. The Police interviewed G on 20 August 2014. She could not remember anything about the disclosure she made on 1 August 2014.
54. Mr F complains about the delay in interviewing G, and the arrangements for contact between G and Ms M between her disclosure and the interview.
55. The Police were responsible for arranging the interview. We cannot consider complaints about the Police.
56. When G made her disclosure, private family proceedings between Mr F and Ms M were ongoing. Ms M was contesting Mr F's Residence Order application, and the Court was considering the non-accidental injuries B received while in the care of Ms M and P. The Council supervised contact between Ms M and her children.
57. There was a hearing on 4 August 2014. Ms M had asked for unsupervised contact with her children. The Court Order issued that day says that contact was to be supervised by the Council until the Police had interviewed G.
58. The Council says it took a *best interests decision* to allow maternal relatives to supervise contact between G and Ms M because Council-supervised contact was causing her distress. There is no record of this decision. The Council did not refer the matter back to the Court before changing the arrangements for supervised contact. This is fault.
59. Mr F says the Council's decision to allow maternal family to supervise contact with Ms M following her disclosure caused G significant distress. The Council believes the ongoing court proceedings will have been a cause of distress for G. This is no doubt the case, and we do not see a way to meaningfully identify the additional distress caused by these events.
60. However, Ms M's subsequent conviction for her failure to protect B from injury highlights the weight of the issues with which the Council was dealing when it made its decision to allow maternal family members to supervise contact. The Council's failure to record its decision, and its failure to refer a matter as important as contact between a potential witness and alleged perpetrator back to the Court, suggests the Council did not accord events the seriousness they deserved.

The Council's response to Mr F's complaint

61. The Council considered Mr F's complaint at all three stages of the Children Act complaints process. This is a formal procedure, set out in law, which councils must follow to investigate certain types of complaint. It involves:
 - a written response from the Council (Stage 1);
 - the appointment of an independent investigator to prepare a report (Stage 2); and, if the person making the complaint requests
 - an independent panel to consider their representations (Stage 3).
62. Regulations set out the timescales for the process. The Council should provide a response at Stage 1 within 10 working days, at Stage 2 within 25 working days (or exceptionally within 65 working days) and convene a review panel at Stage 3 within 30 working days.
63. The Council far exceeded the statutory timescales. Mr F complained on 6 October 2015. The Council responded at Stage 1 by letter dated 22 March 2016, 216 days later. Following an investigation at Stage 2, an independent investigator issued a report on 7 November 2016. The Council responded to the investigator's findings on 12 December 2016, 62 weeks after Mr F first complained. A review panel considered Mr F's complaint on 22 March 2017 and decided that further investigation was needed. The independent investigator issued a further report on 5 June 2017. A further review panel considered the complaint on 12 June 2017 and the Council issued its final response on 3 July 2017, 91 weeks after Mr F first complained.
64. Except for complaints about its response to Mr F's access to records (which are outside the scope of our investigation), the Council did not uphold Mr F's complaint. The Council did not accept it had failed to protect B from harm.
65. The Council offered Mr F a payment of £200 to acknowledge the delays in the complaints process.
66. For the reasons set out above, we consider the Council's investigation and response to Mr F's complaint is flawed.

Conclusions

67. From the evidence we have, we have concluded there was fault in the Council's response to concerns for the welfare of Mr F's children and the Council failed to protect B from harm. In particular:
 - the Council failed to conduct a child centred assessment and assess risk from the children's perspective when concerns were raised about their welfare following a report of domestic violence between Ms M and P;
 - the Council failed to put in place a plan to check on the children's safety when Ms M returned home on Sunday 24 or Monday 25 November. It did this in spite of its own reservations about Ms M's ability to protect the children from harm; and
 - the Council's record keeping in this case was poor, and calls into question its management of a situation in which children were at risk.
68. The Council ignored a Court Order which required the Council to supervise contact between G and Ms M, thereby allowing contact between a potential witness and alleged perpetrator to be supervised by the alleged perpetrator's family.

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69. The Council's response to Mr F's complaint was inadequate. In particular:
- the Council far exceeded the statutory timescales to respond to Mr F's complaint, and its response, when it finally came, was flawed. Mr F had to complain to us to get a satisfactory response;
 - the Council unfairly attempted to blame Mrs PGM when the Council was responsible and failed to protect the children.
70. We find no grounds to question the level of support offered to Mr F when he assumed care of his children in December 2013.

Recommendations

71. We have published guidance to explain how we recommend remedies for people who have suffered injustice as a result of fault by a council. Our primary aim is to put people back in the position they would have been in if the fault by the Council had not occurred. When this is not possible, as in the case of Mr F, we may recommend the Council makes a symbolic payment to acknowledge what could have been avoidable distress, harm or risk.
72. When we recommend a payment for distress, we only take account of avoidable distress that is the result of fault by the Council. A remedy payment for distress is often a moderate sum of between £100 and £300.
73. Claims of injury or harm to health are usually a matter for the Courts, but we may recommend a small payment to acknowledge the risk of harm somebody faced where there are faults in the Council services intended to provide protection. We will take account of:
- the severity of the harm or risk of harm;
 - the length of time involved;
 - whether the person affected is vulnerable; and
 - any professional opinion about the effects on the individual.
74. Where the fault exposed the individual to the risk of harm, rather than actual harm, we may recommend a remedy payment of up to £500. Where the risk was significant, or harm actually occurred, we may recommend a payment of up to £1,500. We will also consider whether the complainant's actions, or inactions, affected the outcome of events and take this into account.
75. The Council did not cause B's injuries. However, from the evidence we have seen, it appears the Council missed opportunities to take action which may have prevented them. Mr F and Mrs PGM are left in the undesirable position of not knowing whether B could have been spared his life-changing injuries if the Council had responded properly to their concerns for the children. Their uncertainty, and the distress this causes them, are the injustice caused by the Council's mistakes, and it is this injustice for which we recommend a remedy.
76. The Council's failures exposed B to harm. B is a vulnerable small child who is dependent on adults for his safety. Mr F and Mrs PGM took action to protect B, but they were let down by the Council.
77. In addition to the payments the Council has already offered, the Council has agreed to:
- apologise to Mr F and Mrs PGM for the faults we have identified, including the Council's unfair attempt to blame Mrs PGM;

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- pay Mr F £1,000 to acknowledge his distress caused by the Council's faults;
 - pay Mrs PGM £1,000 to acknowledge her distress caused by the Council's faults;
 - pay Mr F £1,500 to acknowledge the Council's failure to protect B from harm; and
 - pay Mr F £500 for disregarding the Court Order in respect of contact between G and Ms M following G's disclosure.
78. The Council should also make a referral to the East Riding Safeguarding Children Board Serious Case Review Panel (or its successor organisation when new safeguarding partner arrangements are in place). The Panel has a statutory duty to undertake a serious case review when a child has been seriously harmed and there is cause for concern about the Council's handling of the case.
79. The Council must consider this 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*)

Decision

80. The Council did not cause B's injuries. P has been convicted of causing his injuries and is serving a lengthy prison sentence. Ms M has also been convicted of failing to protect B from harm.
81. We have issued this report for two reasons. The first is to highlight the importance of the basic principles of child protection set out in *Working Together*. When dealing with concerns for the welfare of children, councils must assess risk from the child's perspective. We also wish to repeat the caution in *Working Together* against 'a desire to think the best of adults and to hope they can overcome their difficulties'. Had the Council followed this advice, the outcome could have been different. As a result, Mr F is left in the undesirable position of wondering whether, if the Council had put in place a plan to check on the children's whereabouts and welfare when Ms M said she had separated from P, B could have been spared the injuries he later sustained.
82. We are also issuing the report because the Council has consistently denied any responsibility to check on the children's whereabouts or welfare. The Council has sought to blame others, and in particular Mrs PGM. This is wholly unacceptable.
83. The Council has accepted our findings and recommendations. It disagrees with our conclusion the social worker was sceptical when she wrote that Ms M "claimed" she had ended her relationship with P, but accepts this does not detract from our finding of fault. The Council also says that it never intended to imply Mrs PGM was at fault for failing to raise her concerns sooner.