

The Ombudsman's final decision

Summary: Mrs M complains the Council has not provided overnight respite care for her children since August 2022. We uphold Mrs M's complaint. The Council has agreed to make a symbolic payment to acknowledge the impact on Mrs M and her family.

The complaint

1. Mrs M complains the Council has not provided overnight respite care for her children since August 2022.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I refer to this as 'injustice'. If there has been fault which has caused injustice we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
3. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)
4. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

How I considered this complaint

5. I have considered information provided by Mrs M and the Council. I invited Mrs M and the Council to comment on my draft decision.

What I found

6. Mrs M has three children. In August 2022, the Council undertook *child in need* assessments and decided Mrs M's youngest children needed one night of overnight respite care per week to provide Mrs M and her husband a break from caring and time to spend with their oldest child.
7. The Council has been unable to provide the overnight respite care it decided the children needed. At the time of the assessment, the children were too young for the Council's overnight respite facility. Now they are old enough, there is a long waiting list as the centre is heavily oversubscribed.

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8. The Council has offered alternative provision, including daytime activities on a Saturday and direct payments, but has been unable to provide the overnight care it decided the family needed.
 9. Mrs M complained to the Council on 8 March 2023.
 10. The Council responded to her complaint at all three stages of the statutory children's complaints procedure. 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).
 11. When a council has investigated a complaint under the Children Act complaints process, the Ombudsman would not normally re-investigate it. We may consider whether a council has properly considered the findings and recommendations of the independent investigator and review panel, and any remedy the Council offers.
 12. The independent panel (stage 3) upheld Mrs M's complaints. The notes of the panel hearing show there was discussion about how the Council commissions overnight respite care and the efforts the Council was making to increase capacity at its overnight respite facility. However, the Panel was critical of the Council's lack of short-term planning to address the children's immediate needs. The Panel recommended the Council produce a plan for the children as a matter of urgency, including timescales and alternative sources of respite.
 13. The Council accepted the Panel's findings and recommendations in full. The Council apologised for the delays arranging respite for the children. The Council explained what it was doing to increase capacity at its respite centre. The Council noted that introductions had begun to familiarise the children with the respite centre in February 2024 and said progress towards overnight stays would be 'child-led'. The Council offered payments of £500 for the delay arranging respite, and £500 towards adaptations in Mrs M's home.
 14. Unhappy with the Council's response, Mrs M complained to the Ombudsman. She complained the Council was still not providing overnight respite and had not proposed an alternative. The Council had cancelled the introductory visits at the end of March due to a shortage of staff and said they were unlikely to resume before August or September 2024. Mrs M also wanted compensation for the impact of the lack of respite on her family.

Consideration

15. The Council decided Mrs M's youngest children needed one night of overnight respite a week in August 2022. The Council has yet to provide the overnight respite care they need. This is fault.
16. Where we find fault, we consider the impact on the complainant. We refer to this as the injustice. We may recommend a remedy for injustice that is the result of fault by the Council.
17. The Council's failure to arrange respite has had a significant impact on Mrs M and her family. I understand the children have poor sleep patterns and need constant supervision to ensure their safety. Overnight respite is intended to give Mrs M and her husband an opportunity to rest and recuperate, as well as to spend time with their oldest child.

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18. Almost 100 weeks have passed since the Council decided the family needed respite (at the time of writing). The Council should have provided 200 nights of respite care for the children.
 19. The impact on Mrs M and her family is incalculable. There is no formula I can use. I will recommend a symbolic payment in recognition of the impact. It is not 'compensation'. My recommendations are at the end of this statement.
 20. A recurring theme in Mrs M's complaint, and the recommendations of the independent review panel, has been the lack of a credible 'plan B' if the respite centre is unable to offer support.
 21. In its April 2024 letter to Mrs M, the Council explained it had consulted alternative providers and neighbouring councils without success. The Council confirmed it will continue to provide daytime activities, and offered overnight respite in Mrs M's home, although it acknowledged Mrs M does not consider this would meet the family's needs.
 22. I appreciate the drawbacks of overnight respite being provided in Mrs M's home. I also appreciate the challenges of finding suitable respite provision to meet the needs of Mrs M's children. Taking all these factors into consideration, I do not consider there are further recommendations I could usefully make regarding a 'plan B'.
 23. Through her complaint, Mrs M has demonstrated a clear understanding of the challenges facing the Council, and other councils, and an interest in securing change that will benefit other families. Discussions have included commissioning arrangements, the Council's 'sufficiency duty' and the way it uses capacity at its respite centres.
 24. We can also make recommendations to ensure similar faults do not happen in the future.
 25. We cannot, however, tell the Council how to prioritise its limited resources or how to solve the problems it faces. I note from the Council's correspondence with Mrs M there is already considerable work in progress to address the shortage of overnight respite. I recommend the Council presents a copy of my final decision to the Children's Services Scrutiny Panel. This will ensure the Panel is aware of the problem and support elected members to fulfil their role in holding the Council to account.

Agreed action

26. 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 Mrs M and her family, we may recommend the Council makes a symbolic payment.
27. The Council has already offered a payment of £500. I welcome the Council's recognition of the impact on Mrs M and her family of its inability to provide the respite care they need. However, I do not think the payment reflects the impact on the family. I recommended the Council offers Mrs M an additional symbolic payment of £4,000. This is to recognise the impact of not having weekly overnight respite since August 2022. It is not compensation.
28. If the Council is unable to re-start introductions to the respite centre by September 2024, it should consider offering a further symbolic remedy payment for the

additional injustice this will cause. Should Mrs M complain to the Ombudsman again, we would be likely to consider the injustice to increase the longer the family is without respite.

29. I recommended the Council makes the payment within six weeks of my final decision.
30. I recommended the Council presents a copy of my final decision to the next meeting of the Children's Services Scrutiny Panel.
31. The Council should provide us with evidence it has complied with the above actions.
32. The Council accepted my recommendations.

Final decision

33. I have completed my investigation as the Council accepts my recommendations.

Investigator's decision on behalf of the Ombudsman