

Report

on an investigation into
complaint no 08 022 022 against
Leeds City Council

July 2011

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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.

This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Council.

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.

Report summary

Subject

Mrs X complains that the Council failed to act properly as her foster son's corporate parent. She believes that if the Council had acted properly the boy (Y) would not have become involved in an incident at his Special School when he was 13 and, even if he had, would have been protected from the consequences of receiving a Final Warning for a criminal offence.

The incident happened at the end of a school lunch break when four members of staff were supervising eight children including Y. Instead of obeying an instruction to return to the School building Y and two other boys chased after a girl who had been interrupting their play. The four members of staff went back into the building with the other children. The boys 'de-kegged' the girl – a local term for removing her trousers.

Y and the other boys were arrested. Y was held at the police station overnight and initially interviewed alone. The next day he was interviewed again with his foster father and the duty solicitor present. A few days later Y accepted a Final Warning for a sexual offence.

Mrs X became concerned about the implications of this for Y's future prospects. She got specialist advice from a solicitor through the Howard League who told Y:

"...we have not seen any positive evidence that you made any admission of sexual intent – in which case a Final Warning could not and should not have been given.

"It is a great pity you were not better advised of the nature of the Final Warning and its consequences at the time. It would seem that you have denied any sexual intent all along and we cannot understand how the Final Warning was administered. As it was, and regrettably, you have to deal with the consequences."

Finding

The Ombudsman found that the Council should have sought legal advice for Y when he was arrested and facing a serious criminal charge. Its failure to ensure that Y was properly advised was maladministration that could have serious consequences for Y's future employment prospects.

She did not find that the incident happened because of failings by the Council. She noted that the four members of the school staff had returned to the building with the four other children they were supervising at the time of the incident but was unable to investigate. The Local Government Ombudsmen only have the power to investigate complaints about schools from pupils or their parents in 14 local authority areas and Leeds is not one of them.

Recommended remedy

The Ombudsman recommended that the Council should try to ensure that a copy of her report is made available as part of any response to a criminal records check of Y, provide him with specialist support, make payment to him and to Mr and Mrs X and take steps to try to avoid other children being affected in the same way.

The complaint

1. Mrs X complains that the Council has failed in its duties as a corporate parent to her foster son, Y in relation to an incident in May 2008 at his school which led to Y being charged with a criminal offence. Mrs X believes that if the Council had fulfilled its responsibilities:
 - a. the incident would never have happened;
 - b. if it had happened Y would have been protected from the consequences.

Legal and Administrative background

2. A local authority is the “corporate parent” of the children in its care. If a child is placed in long-term foster care the local authority retains parental responsibility for the child’s welfare and makes the key decisions about the child’s future. Day-to-day care of the child is devolved to the foster parents. The local authority has a duty to safeguard and promote the welfare of children in its care.

Background

3. Mrs X and her husband have fostered Y since he was a young toddler. He has severe emotional and behavioural problems and Statement of Special Educational Needs (SEN) since 2000 when he was 5 and described as “*a bright and affectionate boy with a good sense of humour*” who had “*severe emotional and behavioural difficulties*”. The Statement of SEN is supposed to define the provision needed to address the impact of his problems on his educational attainment.
4. From year 7, when Y was 11, he went to a special school that specialised in children with emotional and behavioural difficulties.
5. Mrs X believes that Y’s Statement of SEN meant that he should have had one to one support at all times. She argues that, given his behavioural problems, this level of support was particularly necessary at less structured periods such as break times
6. Y’s first Statement of SEN contained six behavioural, emotional and social objectives including conforming to school behavioural norms; learning to comply with requests from adults and refraining from physical and verbal aggression. The provision to address these objectives remained essentially unchanged between Y being 6 and 14 (2001 to 2009). Between 2001 and 2005 the specified provision included “*in class support from a special needs assistant [...] to ensure Y can access the curriculum and to give supervision in unstructured situations*”.

7. In March 2005 the provision in Y's Statement of SEN was amended when he transferred to the special school. In November 2006 his Statement of SEN was amended to specify: "*Y needs a highly structured environment with supervision by staff members at all times. He will also require a set daily routine and firm boundaries.*" The Statement of SEN does not set out what this means in practice and does not say that Y should have one to one support.
8. Mrs X believed that Y's Statement of SEN did mean that he should have one to one support at all times at school. She says that the supervision he had until he moved to the special school amounted to one to one support. She says that since 2005 she has consistently referred to this as part of Y's "entitlement" and that no one corrected her. She says that if she had been told that this was not what Y's Statement of SEN meant, she would have asked for him to be reassessed.

The incident

9. On 9 May 2008, when Y was 13 there was an incident at the end of the school lunch break when four members of staff were supervising eight pupils. The staff wanted the pupils to return to the school buildings for the afternoon session. Instead, Y and two other boys ran off into the school grounds with a girl who had been disrupting their play. The four staff returned to the buildings with the other four pupils to "raise the alarm". Y says that he and the other boys held the girl down and 'dekegged' her i.e. pulled her trousers down. He denies that there was any sexual motive: the girl was "dekegged" because she had been annoying the boys. It seems to be accepted that Y held her down by her arms but did not himself touch her lower body or trousers.
10. Mrs X says that this incident could only happen because Y was not given the level of supervision specified in his Statement of SEN and was not supervised at all at the time.
11. The School called the Police who arrested Y and the other boys and took them to the Police Station. Y was initially interviewed alone and held overnight awaiting a duty solicitor. The next day Y was interviewed with Mr X as his "appropriate adult" and the duty solicitor¹. Y was placed on police bail until June and referred to the Youth Offenders Service.
12. Mr X telephoned the Council before Y's interview but discovered that his usual social worker was away. The Team Manager took his message then emailed a colleague explaining:

'Y is in police custody awaiting interview at 12 re an alleged assault –

*possible sexual – on a girl at school, involving another couple of boys.
Mr and Mrs X are OK and Mr X is acting as appropriate adult.'*

13. The Team Manager was concerned to make sure that there was day care arranged for Y the following Monday when he would not be able to return to school. She emailed Y's social worker and explained the situation. The next day the school told the social worker that the police had advised that Y could not return to the school site and had been excluded for a fortnight. The social worker's notes for that day say that:

"School are aware of the 6 day exclusion guidance and plan to have educational provision in place for Y from Monday 19/5"

14. On 16 May, an officer of the Youth Offending Service visited Y at home and issued him with a Final Warning for sexual touching of a female 13 or over with no penetration. A Final Warning is issued to a person under 18 where they have admitted a crime and where the alternative would be prosecution in court. The Warning remains on the young person's record until s/he is 18 and does not count as a conviction unless s/he reoffends. However, the Police retain details of the warning for 10 years.² Convictions for an offence of a sexual nature have to be disclosed for certain jobs - for example, those that involve working with children and vulnerable adults.³ They will also show up in Criminal Record Bureau checks, even though otherwise "spent". The officer said that she was satisfied with Y's explanation of the events and felt that it had been a prank that had gone wrong and that he had been *"taken along with the occasion"* and was regretful of his actions.
15. As time passed, Mrs X says she became more concerned about Y's Final Warning and that she suffered considerable stress and anxiety. She felt that he was already disadvantaged by a low level of literacy and was concerned that he would find it very difficult to get a job if he had a final warning, particularly one for a sexual assault. She says that Mr X had been in shock at the Police station and the implications of accepting a Final Warning for a sexual offence were not properly explained either to him or to Y.
16. On the suggestion of Y's independent reviewing officer, Mrs X wrote to the Howard League⁴ in March 2009 to see if there was any way in which the final warning could be rescinded. She copied her letter to the Council. Y's social worker volunteered to pursue initially whether or not it would be possible to get copies of Y's police interview tape. This was a matter of urgency as tapes are normally only kept for one year. In fact the Council seems only to have approached the Police in early May.

¹ A qualified solicitor who is "on call" to provide free legal advice to people accused of a crime

² Crime and Disorder Act 1998 S65

³ Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975

⁴ A long-established and well-respected charitable organisation which campaigns for penal reform

17. On 5 May 2009, the Council's Team Leader asked a legal officer for advice. The response included:

"...I am a little unclear as to why nobody was contacted in legal either at the time of the interview or thereafter until this crucial time given the implications for the child at that time."

18. The Team Leader replied:

"You're right, none of us here DID query it at the time – including the [duty] solicitor with Y during his interview and Mr X who acted as appropriate adult. [...] [Y's social worker] did explore it all thoroughly, we thought, and had lengthy discussions with the police and we simply did not think it was dealt with inappropriately.

[...] The lesson for us here for the future is, I think, about us more routinely giving consideration to seeking legal advice in these circumstances – as you know, it is not uncommon for our LAC [Looked after children] to also get involved with the Youth Justice system."

19. By 12 May 2009 the Police had refused to give up the tape saying that it could serve no useful purpose.
20. The Council wrote to Mrs X informing her that there was no mechanism for rescinding a final warning and that the Council had been refused a copy of the interview tapes. Despite this, Mrs X persisted in her representations with the Howard League and it appointed a solicitor to consider the matter on Y's behalf.
21. On 11 February 2010 the solicitor wrote to Y saying that, as Y had consistently denied any sexual intent (whilst admitting the act itself) it was possible to challenge the final warning. The solicitor cautioned that this might not benefit Y as the Crown Prosecution Service might decide, as an alternative, to prosecute him. The solicitor mentioned that Y's denial of sexual intent was borne out by the duty solicitor's notes and from notes taken from listening to the tapes of Y's police interview (to which he had access despite the Council's failure to obtain them).
22. The solicitor went on to write:

"...we have not seen any positive evidence that you made any admission of sexual intent – in which case a Final Warning could not and should not have been given.

"It is a great pity you were not better advised of the nature of the Final Warning and its consequences at the time. It would seem that you have denied any sexual intent all along and we cannot understand how the Final Warning was administered. As it was, and regrettably, you have to deal with the consequences."

Findings

Did maladministration by the Council result in the incident?

23. The wording of Y's Statement of SEN is so imprecise that Mrs X was justified in assuming that, at the least, Y would have very close supervision at all times. However, it did not specify one to one supervision at all times. I cannot find that the Council acted with maladministration in failing to provide that level of supervision. Nor can I say that the incident happened because the Council failed to provide Y with the supervision specified in his Statement of SEN. The Council's duty is to ensure that a child gets the provision specified in his statement but it cannot monitor how the school delivers the provision on a day by day basis. An isolated lapse in specified supervision levels - even if they were clearly defined - would not be maladministration on the part of the Council.
24. There were four members of staff supervising a small group of pupils of whom Y was one. The level of supervision provided and the decision by all four staff to return to the School building with the four children not involved in the incident may well have been pivotal to what occurred. I do not have the power to investigate what happened as Leeds is not one of the 14 areas where parents and pupils can complain to the Local Government Ombudsman about actions taken by a school..⁵

Did the Council act with maladministration after the incident?

25. Once the Council knew about the incident and that Y had been arrested and was facing a serious charge, it should have sought legal advice – as any responsible parent would have done. It provided no support to Mr and Mrs X and relied on the duty solicitor. It failed to ensure that Y, at this time a vulnerable child of 13, was properly advised. These failures were maladministration.
26. In contrast to these failures, the records show that on another occasion the Council involved itself in whether or not Y should be allowed to dye his hair. This contrast raises important questions about the understanding that staff had of the role of "corporate parent" and their judgements about when Council involvement was appropriate.

Injustice

27. If Y had been properly advised and represented he might not now have a Final Warning for a sexual offence on his record. The possibility that things might have been different is a serious injustice to Y who, as a Looked After Child, already

faces a difficult transition to independent adulthood. Y has particular aptitude in sport and the final warning might well pose a barrier to his gaining employment.

Remedy

28. The Council should:

- seek to ensure that a copy of this report is made available as part of any response to a criminal records check on Y. It should report to me, Mrs X, and Y on the steps that it takes and the outcome;
- provide Y with up to 28 days individual, specialist job-seeking support when he is ready to apply for jobs to help him overcome the additional disadvantages that he now faces;
- create a fund of £2,000 to be spent at an appropriate time, in consultation with Y and Mrs X (and not without their express agreement), to help Y make the transition to independent living (this to be in addition to any provision the Council is statutorily obliged to make for Y as a looked after child);
- apologise to Y for its failings and pay him £500 now;
- apologise to Mr and Mrs X for its failings and pay them £1,500 in recognition of their time and trouble in trying to remedy its failures and the stress and anxiety caused;
- ensure that all staff with responsibilities for Looked After Children are aware of their responsibilities to protect the children's interests by intervening on their behalf and when necessary securing proper professional advice; and
- ensure that foster carers are provided with information about what to do should a child in their care become involved with the Police.

Anne Seex
Local Government Ombudsman
Beverley House
17 Shipton Road
York

YO30 5FZ

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⁵ Local Government Act 1975 S26(8) and Schedule 5(5)