

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

**Investigation into a complaint against
Wolverhampton City Council
(reference number: 19 011 134)**

3 June 2021

The Ombudsman's role

For more than 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

Miss B The complainant

Report summary

Children's Services: adoption

The complainant, who we shall refer to as Miss B, complained the Council declined her request to register as a potential adopter.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, the Council should review its adoption recruitment procedure to ensure it adheres to the Department of Education's 2013 statutory guidance on adoption.

The complaint

1. The complainant, who we refer to as Miss B, complained the Council declined her request to register as a potential adopter. Miss B said this stopped her from adopting a child.

Legal and administrative background

The Ombudsman's role and powers

2. 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*)
3. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. The Council commissions a regional adoption agency to deliver adoption services including recruiting adopters so the agency is acting on behalf of the Council. (*Local Government Act 1974, section 25(7), as amended*)
4. 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.

Legislation and Guidance

5. Councils must have regard to the Department for Education's 2013 statutory guidance on adoption when carrying out duties relating to the adoption of children and the recruitment and support of adopters in England.
6. An adoption agency should respond impartially to requests for information about becoming an adopter and provide this within 10 working days through an information session, a visit, pre-planned telephone call or similar arrangement with the potential adopter.
7. Potential adopters need to formally register their interest with an adoption agency to enter stage one of the approval process.
8. The agency should decide within five working days from receipt of a registration of interest form whether to accept this, unless there are exceptional circumstances which mean that longer is needed.
9. The agency may need to arrange a visit or have a meeting or a pre-planned telephone call with the prospective adopter to decide whether to accept their registration of interest.
10. The agency must assess a prospective adopter's ability to parent and meet the needs of a child throughout childhood.
11. Where an agency declines a registration of interest it should provide the prospective adopter with a clear written explanation of the reasons why.
12. Stage one of the procedure starts when the agency accepts the registration of interest to adopt.

Adoption agency procedure

13. The Council commissions a regional adoption agency to deliver adoption services including recruiting adopters.
14. The Council did not provide its or the adoption agency's policies or procedures in response to our enquiries. Below are extracts from the adoption agency's website.

"The first step is to get in touch with us. We'll invite you along to one of our information events where you will have the opportunity to meet the team and have your questions answered."

"A social worker will visit you for an initial assessment. This visit will go into much more detail than the previous phone conversation, finding out information regarding your background, family history, health, home and work life. The most important thing is to be honest. If you're happy to take your next steps in adoption, we will ask you to complete a Registration of Interest form so we can move on to stage one."

How we considered this complaint

15. We produced this report after examining relevant files and documents and discussions with the complainant.
16. Miss B and the Council commented on confidential draft reports. We considered their comments before finalising the report.
17. We met with representatives from the Department for Education.

What we found

What happened

18. This chronology includes key events in this case and does not cover everything that happened.
19. Miss B attended an information event with the adoption agency.
20. Miss B then made an enquiry of the adoption agency. In May 2019, a social worker from the adoption agency visited Miss B at home to complete an initial assessment. Miss B shared the report of an initial adoption home visit completed in 2012 and a fostering assessment from 2015 with the social worker.
21. In its initial assessment the adoption agency considered Miss B's background, support network, employment status, experience with children and attitude to parenting. The report identified Miss B's strengths and vulnerabilities.
22. The adoption agency contacted Miss B in June 2019 to apologise that it had not sent her its outcome letter and initial assessment. It told her it had decided she would not be able to proceed with the assessment process for adoption.
23. The adoption agency confirmed its decision in writing in July 2019. It included a copy of her initial assessment report which explained the reasons for its decision were:
 - Miss B had limited childcare experience with the age of child she wanted to adopt;

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- Miss B had terminated a foster care placement because she could not manage the child's behaviour and the service could not be confident she would be able to manage the complex needs of an adopted child;
 - the last time she registered an interest to adopt, it was recommended she sought more childcare experience with young children, but she had not done so beyond one fostering placement; and
 - Miss B's financial position was not clear.
24. Miss B complained in October 2019, that:
- the social worker who visited her in May 2019 only stayed 45 to 50 minutes and spent most of that time reading reports; and
 - the social worker's manager had delayed responding to her.
25. The Council wrote to Miss B and told her it had not upheld her complaint. It explained the adoption agency's social worker felt she had enough information to make an assessment. The Council included its response to her MP which summarised the reasons it did not accept her registration of interest.
26. Miss B told the Council she was unhappy with its response in November 2019. The adoption agency invited Miss B to a meeting to discuss her complaint which was held in December 2019. The adoption agency explained the factors that led to its decision not to progress Miss B's enquiry to adopt. The agency recommended Miss B gain more experience and develop her insight into the complexities of children who are considered for adoption. The agency explained Miss B could make another enquiry in 12 months. Following the meeting, the Council told Miss B it would investigate her complaint at Stage 2.
27. The Council responded at Stage 2 in January 2020. It said the social worker felt she had enough information to make an assessment and did not uphold this part of Miss B's complaint. The Council accepted there were delays in communicating with her and apologised.
28. Miss B complained to the Ombudsman. We investigated and our draft decision found fault in the process followed by the Council as it should not have done the assessment until she formally registered her interest with the adoption agency.

Council response

29. The agency challenged our provisional finding that it had not followed statutory guidance. It advised its procedure:
- "... is routine and common practice for all adoption services and is fully compliant with the regulatory guidance and the criteria against which Ofsted inspect adoption services ... Department for Education are fully aware and supportive of this approach."*
30. This information was misleading. The agency later admitted the Department for Education had not sanctioned this practice:
- "An initial conversation has taken place (verbally) with the Department for Education who have indicated that they are willing to consider this, albeit, further discussion and consideration is needed."*
31. Although the Council has explained there was no intention to mislead, we remain disappointed the agency misrepresented its communications with the Department for Education in an attempt to absolve itself of fault.

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32. The Council told us that its recruitment procedure is routine and considered best practice for all adoption services, and this has been the case since the introduction of the Department for Education's 2013 statutory guidance on adoption. It provided comments from the Council for Voluntary Adoption Agencies (CVAA) confirming it was common practice for member agencies of CVAA to adopt a similar approach. CVAA considers this practice necessary to identify obvious difficulties at the earliest opportunity thereby reducing distress and preventing applicants undertaking the considerable efforts required to complete a registration of interest with little prospect of success.
 33. After receiving our draft findings, the Council met with the Department for Education to discuss this matter and proposed changes to the statutory guidance. It told us the Department for Education would consider whether the proposed changes could be implemented. The Council said this could result in the Department recommending a consultation exercise be undertaken, but this would be subject to Ministerial approval. It said it was important to understand any changes to regulations or statutory guidance, if agreed, would take time to implement.
 34. We met with the Department for Education. The Department confirmed the Council and other Regional Adoption Agencies had asked it to consider changes to the statutory guidance on adoption to allow the practice currently being followed by the Council. The Department said it considered the request and confirmed the guidance would not be amended.
 35. Since we issued our draft findings, the Council says it has changed its practice. It says it now tells people that any checks it makes prior to them registering their interest will not prevent them from doing so.

Conclusions

36. The adoption agency visited Miss B in May 2019 before she formally registered her interest to adopt. The Council used this visit to assess Miss B as a potential adopter. This was a fault. The agency should not have undertaken an assessment of Miss B until she formally registered her interest with the adoption agency. This caused Miss B an injustice. She lost the opportunity to discuss her interest to adopt within the statutory procedure and believed the assessment had been pre-determined.
37. The agency's website confirms its procedure is to complete an initial assessment before allowing an individual to formally register their interest to adopt. This procedure does not adhere to the Department for Education's 2013 statutory guidance on adoption. The guidance says the initial assessment should take place after someone has formally registered their interest. The agency's procedure gatekeeps who can register their interest to adopt and circumnavigates the statutory time frames for assessment.
38. The Council accepts it was not following statutory guidance. It explained this was because of resource constraints:

“With high levels of enquiries and limited staff time, 5 days is not sufficient (following receipt of ROI) to undertake the initial screening visit effectively (which takes 2 to 3 hours of social work time) then write the report and make a management decision about accepting it or not.”

And concerns about raising the expectations of individuals and the impact on recruitment:

“Initial screening prior to ROI avoids this increased expectation and the consequent sense of disappointment and grievance. Declining high numbers of people during the stage 1 process would give a negative message and contradict the ‘You Can Adopt’ campaign message.”

39. As our 2018 focus report, [‘Under pressure – the impact of the changing environment on local government complaints’](#) states, while we understand the challenges councils face, resource restraints do not justify a council deviating from legislation, statutory guidance, policies and procedures.
40. The Council said inviting individuals to register their interest would raise expectations. Again, this is not a cogent reason for deviating from the statutory guidance. If the adoption agency provided details of the correct procedure on its website and at its information evenings, individuals would know what to expect.
41. The Council also suggested that following the statutory guidance may compromise authorities’ abilities to comply with other critical legal responsibilities and ultimately harm the best interests of children. We have not seen any evidence to support these concerns and it appears to be an attempt to provide post hoc justification for its decision to depart from the requirements set out in the guidance.
42. The Council was at fault for not having due regard to the Department for Education’s 2013 statutory guidance on adoption. The Council maintains its approach reflected best practice and is replicated nationwide. However, the Department for Education confirmed the statutory guidance will not be amended and the Council has since altered its practice.
43. There was a significant difference between what the guidance said should happen when a potential adopter wishes to register their interest and what happened in this Council, and potentially nationwide. That is an untenable situation and reinforces why it is appropriate to issue a report in this case. There is an anomaly between the guidance and practice which needs to be addressed.

Recommended action

44. When a Council arranges for another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. So, although we found fault with the actions of the adoption agency, we made recommendations to the Council. Issuing this report and publicly confirming the Council was at fault, alongside the apology previously given for poor communication will remedy the injustice caused to Miss B.
45. The Council should review its adoption recruitment procedure to ensure it adheres to the Department of Education’s 2013 statutory guidance on adoption.
46. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council must consider the report at its full Council or Cabinet and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Final decision

47. We have completed our investigation into this complaint. There was fault by the Council.