

4 September 2015

Complaint reference:
14 011 559

Complaint against:
Bracknell Forest Council

The Ombudsman's final decision

Summary: The Council failed to follow the proper procedure when deregistering a volunteer from its list of volunteers and give structured feedback before deregistration. The Council apologised and gave an opportunity for the volunteer to make representations to the Council with the prospect of re-instatement. It investigated the volunteer's concerns without fault using its complaints procedure rather than its whistleblowing procedure.

The complaint

1. In summary the complaint is when responding to concerns from a whistle blower the Council failed to:
 - Properly investigate concerns voiced about the management and service standards of the voluntary Appropriate Adult emergency service;
 - Explain reasons for removal of the complainant from the register;
 - Provide copies of the Ofsted reports said to prove the service standards received high ratings or other evidence to support its decision.
2. This left the complainant, whom I shall refer to as Mr B, believing other volunteers will be less likely to whistle blow resulting in poor practice putting vulnerable adults and juveniles at risk.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She 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 an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

How I considered this complaint

4. In considering this complaint I have:
 - Spoken with Mr B;
 - Reviewed the information presented with the complaint;
 - Put to the Council enquiries and studied its response, including the correspondence between Mr B and the Council;

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- Shared with Mr B and the Council my draft decision and reflected on the comments received.

What I found

5. Appropriate Adults are appointed under the Police and Criminal Evidence Act 1984. They offer what the Government Guide for Appropriate Adults says is “...an important safeguard, providing independent support to detainees” under 17 or who are mentally vulnerable when at police stations. The guidance says the Appropriate Adult is not simply an observer but someone who is there to ensure the detainee understands what is happening. And to offer support and advice assisting communication between the detainee, Police and others.
6. The Council’s Emergency Duty Service provides support services including Appropriate Adults to six local authorities.
7. Appropriate Adults sign an Appropriate Adult Agreement which governs the relationship between the volunteer and the Council.
8. Under the Council’s Whistleblowing policy those working for the Council may bring to the Council concerns about actions they believe may be for example:
 - Unlawful or against the Council’s Standing Orders;
 - Falls below established standards;
 - Amounts to impropriety.
9. The procedure says a whistle blower should bring this to their line manager’s attention or if concerned the manager is involved, then to one of three senior officers including the Borough Solicitor.
10. The Council says it will depending on the nature of the concern investigate the matter internally, refer it to the Police, external auditor or commission an independent inquiry. The Borough Solicitor may decide not to investigate and will write to the complainant to say so as soon as “reasonably practicable”. The policy says:

“The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraint, you will receive information about the outcomes of any investigations.”
11. The procedure says if the concerns fall within the scope of specific procedures such as child protection the Council will usually refer them to that procedure.
12. If not satisfied the Council has properly considered the concern the whistleblower may refer the matter to the Ombudsman. The Borough Solicitor keeps a record of the complaints and reports on them to the Council.
13. The Council has a general complaints procedure for considering complaints about Council services. It has discretion to use this procedure or the whistleblowing procedure.

What happened

Mr B’s concerns

14. The Council appointed Mr B to the voluntary role of an Appropriate Adult for the Council’s Social Services Emergency Duty Service (EDS) in 2012. In 2013 Mr B reported concerns about the EDS service management and the impact this may

have on the support given to vulnerable young people. Mr B told the Council he had concerns about:

- Lack of support and feedback and thus supervision of the service;
 - Lack of continuing training;
 - Inconsistency in the standards of the service;
 - Lack of ID cards for Appropriate Adults;
 - Poor data protection practices;
 - Lack of communication and difficulties in communication within the Council's services.
15. As evidence of his concerns Mr B cited the lack of feedback on the cases he handled. Mr B wanted feedback to check he had handled matters properly and effectively or whether he needed to change practice. The lack of feedback made him wonder how the Council supervised the service. Mr B says this lack of feedback continued from 2012 to 2014.
 16. Mr B expressed concerns about data protection procedures saying Appropriate Adults still working for the Council take data forms from Police stations and drop them off at the Council's EDS office putting that sensitive data at risk. Mr B says although addressed by changes in training officers continued to default in 2014.
 17. Mr B cites the inspection of Custody Suites within the Thames Valley by HM Inspectorate of Prisons in 2013 as evidence of his concerns. The report says:
"The efficiency and provision of support provided by appropriate adults was of concern, particularly at night, which increased the length of stay for those who required one".
 18. Mr B says he was one of only three Appropriate Adults used at the time though others are listed they are often not available. He cites other sections in HM Inspector of Prison's report as evidence his concerns are shared by others.
 19. The Council points to Ofsted reports into the councils to whom EDS offer an Appropriate Adult service and says these show the service is rated as good overall. A CQC inspection in 2011 raised no concerns. Mr B says the report is out of date and before he joined the service and raised his concerns.
- Removal from the Appropriate Adult register and investigation**
20. The Council removed Mr B from its register of Appropriate Adults without telling him beforehand. When he discovered his removal he complained about the Council's decision and failure to involve him in the process. Mr B says the Council repeated this procedural error in 2014 because he continued to complain about its service.
 21. The Council investigated Mr B's complaints and issued a report in August 2013. It upheld his complaint the Council had:
 - Not told of him of his delisting from the Appropriate Adults register at the right time;
 - Not given any reasons for the delisting;
 - Not received any complaints about Mr B from clients, or the Police.

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22. The investigation did not uphold Mr B's complaints about the service. The Council said staff followed its data security procedures and only faxed copies of PACE forms to the office.
23. On ID cards the Council says it is not its practice to provide Appropriate Adults with photographic identity cards. However, Mr B says after the investigation in August 2013 the Council told him it intended to issue such cards but failed to do so.
24. The Council's investigation found Mr B had removed confidential records from custody suites and taken them home in breach of the Appropriate Adult agreement. Mr B denies he breached the agreement. The report recommended:
- When someone is removed from the register the reasons for this should be shared with the person at the earliest opportunity;
 - A meeting with Mr B to explain the reasons for his removal;
 - Refresher training on the document security measures for Appropriate Adults with training being complete before someone is used as a volunteer.
25. The Council says officers had taken up with Mr B his failure to properly undertake the volunteer role. However, its own investigation recognised he had not been given proper reasons for the delisting. The Council decided to suspend that deregistration and allow Mr B to make representations so it could decide if it should continue with his services. The Council offered him a meeting with a senior officer not previously involved in the complaint to discuss the matter. The Council did not receive any further representations. It has not re-engaged Mr B as an Appropriate Adult. Mr B says the offer of a meeting was futile because the Council had already decided he was unsuitable.
26. Mr B says he acted in line with the training and guidance given. One example he gave concerned checking that a young person had received a medical assessment as required. In another case he expressed concerns about a young person's possible return to a violent or dangerous situation. Mr B says he must voice concerns based on what the young person said to him. His role of Appropriate Adult is to be independent and offer support so he objected to being told he should not challenge views given by the social worker who had not had the conversation with the client.
27. During the complaint process Mr B raised concerns his copy of the Appropriate Adult agreement appeared different from the one the Council quoted to him. The Council used a new edition of the Agreement.
28. The Council said in response to my enquiries:
- "...in the course of [the Council's] investigations [into Mr B's complaints] and the extensive dialogue with Mr B it became clear to us that he was unsuitable for the role of appropriate adult."

Whistleblowing and the Complaints Procedure

29. The Council's whistle blowing policy says it includes actions "falling below established standards". However the Council told Mr B it would not deal with his concerns under that policy because "...I cannot see you are making allegations about unlawful acts or endangering health and safety, for example..." The Policy does not set out criteria by which officers will decide when it is appropriate to use it.

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30. The Council reviewed the complaint and its handling of it by putting it through its ordinary complaints procedure and putting it to:
- The Chief Officer of the Older People and Long Term Conditions section as a Chief Officer not connected with the issues;
 - The Director of Adult Social Care and;
 - The Chief Executive.
31. Mr B says the Council did not properly review the issues. In his view with each escalation officers merely repeated what junior officers had said.

Reasons for deregistration as an Appropriate Adult

32. The Council says that it is Mr B's behaviour in exceeding his remit as an Appropriate Adult that led the Council to decide to delist him. Staff commented on his behaviour when asked about the concerns he expressed in his complaint. On investigation the Council decided he had not acted in line with the Appropriate Adult Agreement.
33. In its final response to his complaint the Council says Appropriate Adults must act within the protocols. It considers volunteers suggestions for improvement and will make changes where it believes they improve the service. And where it can secure agreement from all six councils to whom EDS provides a service.
34. The Council investigated Mr B's complaint in August 2013 and found fault for which it offered an apology. In July 2014 it again considered the issues and in Mr B's view repeated earlier mistakes. He believes the Council decided to deregister him as a direct result of his complaints about the service. The Council deny that saying feedback from other officers and Mr B's conduct led it to review his suitability.

Analysis

35. My role is to consider how the Council investigated Mr B's concerns about service standards. And how it decided on his fitness to remain as an Appropriate Adult. It is not to comment on the service's standards or Mr B's fitness as an Appropriate Adult.

Which procedure to use

36. The Council's whistleblowing and complaints procedures are both designed to capture information alerting the Council to problems within service areas. They aim to investigate the concerns, decide whether to uphold or dismiss the complaints and what to learn from them. Mr B working as a volunteer who had serious concerns about service levels felt the whistleblowing procedure was the proper process because it specifically refers to practices falling below established standards. And that he says is precisely what his complaint is about.
37. Whistle blowing policies recognise those working within a service may have the knowledge and experience to notice wrongdoing regulatory bodies do not see. That is why the policies encourage people to speak out.
38. The Council may elect to use either procedure. In this case it believed the complaints procedure more appropriate because it views the whistleblowing policy as being for more serious concerns as shown by the examples it gave of unlawful acts. The Council investigated the complaints using the complaints procedure but did not uphold them.

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39. So did the use of the complaints procedure mean the Council considered the issues at a less senior level and risk missing important lessons?
40. The whistleblowing policy is managed by the Borough Solicitor who may dismiss the complaint at an early stage. The complaints procedure resulted in reviews by the Assistant Borough Solicitor, the head of a department not involved in the matter and the Chief Executive. The Council's use of the complaints procedure did not result in less senior officers considering the serious concerns raised by Mr B. While not treated as whistleblowing concerns the issues have been investigated at a high level.

Complaint and de-registration

41. The Council says it did not confuse its investigation into Mr B's concerns and its investigation into whether he should continue as an appropriate adult. However, it did not effectively engage Mr B in the process of deregistration. In so doing it enabled confusion to take hold. Concerns raised by staff especially where they say they are not willing to engage with a volunteer must be investigated and considered. The Council says some of this information surfaced when it investigated Mr B's complaint so the two investigations were running at much the same time.
42. Volunteers help the Council in delivering its services and need to work with full time staff. Mr B should have been made aware of the concerns during feedback sessions and reviews on his performance. I have not seen any record of structured feedback and review sessions with Mr B. The Council's decision should not have come as a shock and would not have done so if handled better. The Council recognises it did not tell Mr B about his deregistration when it should. Mr B did not receive written notice of the reasons for his deregistration. He should. These are faults its investigation identified and for which the Council apologised.
43. The Council then reversed its decision on Mr B's registration allowing him to make representations and to meet with a senior officer not previously connected with the complaint. Mr B decided not to take up this offer. That meant the Council could not re-engage him as a volunteer. The action shows the Council's willingness to consider using Mr B again as an appropriate adult. The Council's offer to consider representations gives an opportunity for a renewal of the role and that is a suitable remedy.

Service Standards

44. Mr B's concerns about poor practice within the service should be considered by the Council separately from whether he is a fit and proper person to fulfil the role of Appropriate Adult. He raised concerns about data protection, security and communication.
45. The Council did not uphold Mr B's concerns about services standards. Using the complaints process senior staff considered the issues and decided not to uphold his concerns. Mr B and the Council disagree with each other's interpretation of the facts and evidence. However, the Council decided Mr B's complaint without fault.
46. It is not my role to decide if the concerns Mr B raised are proven. However given the serious nature of his concerns a record of Mr B's complaint and the Council's decision should be held on file by the Borough Solicitor for inspection by any regulatory body that may call for them. The Council has agreed to do this.

Feedback and improving processes.

47. Volunteers need training and guidance on how Appropriate Adults should interpret Government Guidance that says they are not observers but there to offer independent advice and support to the detainee. How that works in practice for example in challenging views expressed by social workers or others involved in the process should be made clear. The Council already provides training. I recommend the Council ensures it includes how it expects volunteers to apply the government guidance.
48. Although the Council and Mr B disputed the training appropriate to his skills, Mr B welcomed feedback on his role as a volunteer. Without it he could not know if he met the Council's standards. Feedback is useful and should be part of the Council's supervision of volunteers to prevent poor practice. The Council did not share concerns expressed by staff in the form of structured regular feedback with Mr B. It says staff told him about his failure to comply with the protocols but there is no periodic feedback and review. Best practice suggests that if staff had concerns about a volunteer's behaviour the Council should raise those immediately through the volunteer co-ordinator so the volunteer receives feedback and follow up reviews. The failure prevented Mr B from considering if he needed to change his practice. It may also have contributed to his shock at his deregistration.
49. The faults caused personal and professional distress to Mr B.

Recommended and agreed action

In recognition of the impact on Mr B and to make the necessary service improvements arising from the faults I recommend and the Council agrees to:

- Repeat its apology for the faults identified in the Council's treatment of Mr B;
- Within two months of this decision review its guidance and procedures for investigating allegations against an Appropriate Adult ensuring staff know how to report concerns;
- Within two months of this decision reviews its supervision of volunteers and frequency of feedback.
- Retains on file Mr B's original complaint about service failings for sharing with any regulatory inspection should the regulator call for it.

Final decision

50. I uphold the complaint there were faults in the Council's management of Mr B's volunteer activity for which it has offered an apology and a further meeting and consideration of any representations he wished to make. It considered his concerns about the service without fault having exercised its discretion to use the complaints process to do so.

Investigator's decision on behalf of the Ombudsman