

SPSO decision report



Case: 201806908, East Lothian Council
Sector: Local Government
Subject: child services and family support
Decision: upheld, recommendations

Summary

C complained that the council unreasonably removed their child (A) from their care following an incident at A's nursery. C said that the council removed A from their home without a court order and said they did not enter into a voluntary agreement that A would be cared for by their other parent, as had been suggested by the council.

We took independent advice from a social worker with experience with children and families. We found that the council failed to take account of the court order which appeared to be already in place for A and stipulated the arrangements for A's care, when deciding to place A with their other parent, particularly as the council were changing these arrangements. We noted that as a court order appeared to be in place, it was not automatic that parental rights could be exercised by either parent without the consent of the other, as the council had stated. If the arrangement following the nursery incident was not mutually agreed and went against C's wishes (which appeared to be the case), then in order to remove A from C, even if placing them with their other parent, there should have been a legal framework to enable this to happen - such as applying for a child protection order, if the council believed it was unsafe for A to remain in C's care. We considered that the council's actions were unreasonable and were not in A's best interests.

We were also critical of the council for failing to minute the multi-agency welfare meetings to discuss A's care and the changes to this, and of the council's record-keeping. We considered that there was a lack of clarity in respect to the action taken and the legal basis for doing so, including a lack of evidence that this was shared with C in a transparent way. We upheld C's complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to C for failing to take account of the court order for residence that appeared to be in place for A prior to removing A from C and stipulating conditions for their care; and failing to produce minutes of multi-agency meetings held regarding A's care. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information-leaflets

What we said should change to put things right in future:

- A record of multi-agency meetings should be available to ensure that there is a shared understanding of the concerns and the plan for the child and so that the parents and child have an opportunity to have their views recorded. The record should state clear outcomes, which include who is accountable for taking any action forward, in accordance with sections 33 and 34 of the Children and Young People (Scotland) Act 2014, which outlines the requirement in respect of a child's plan.
- In cases of this type, the council should take account of a court order for residence, prior to removing a child from a parent's care and stipulating alternative care arrangements.
- Social work records should clearly evidence the action taken in cases of this type, including any legal

basis for taking that action.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.