

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

**Investigation into a complaint against
Royal Borough of Greenwich
(reference number: 16 005 108)**

7 August 2017

The Ombudsman's role

For 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.

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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.

Key to names used

Ms B - the complainant

C - Ms B's daughter

D - Ms B's grandson

Report summary

Children's services: Family & friends carers

Ms B complains that the Council failed to advise her in March 2011 that she could apply for a residence order allowance for looking after her grandson, D. After Ms B complained to the Council in October 2015, it started a financial assessment in December 2015, but only completed it in June 2016. It has only backdated the allowance to the start of the assessment in December 2015.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council, within three months:

- apologises to Ms B for the failings we have identified;
- pay Ms B as if she had been a family and friends foster carer for D (taking into account her means and D's needs, less any state benefits provided to Ms B for D and any payments the Council made to assist her during this period, such as £800 for carpets) from 14 March 2011 until 2 December 2015;
- pays Ms B £500 for the frustration and time and trouble caused by the Council not carrying out a financial assessment sooner;
- ensure in future if it is involved in the arrangements for a child to be cared for by a private family arrangement that it ensures all parties are aware of the nature of the arrangement and where financial support may come from. It should also ensure it carries out a financial assessment in accordance with its policy when an order is made.

The Council has accepted our recommendations.

Introduction

1. Ms B complains that the Council failed to advise her in March 2011 that she could apply for a Residence Order Allowance for looking after her grandson. After Ms B complained to the Council in October 2015, it started a financial assessment in December 2015, but only completed it in June 2016. It has only backdated the allowance to the start of the assessment in December 2015.

Legal and administrative background

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*)

Family and Friends care

3. The principle in law is that all children, including 'looked after children' should, wherever possible be cared for by their families and friends. Therefore a council may fulfil its legal duty to accommodate a child by placing it with relatives or friends. That relative would be a family and friends foster carer. The local authority would have to undertake certain checks and approvals of their suitability to care for the child and monitor the child's welfare. The family member would then be entitled to receive weekly fostering payments and would receive support from a foster carer.
4. Parents may make informal family care arrangements directly with friends or relatives to care for their children. In such cases the child is not considered to be a looked after child and the Council does not have a duty to provide financial support.
5. Sometimes there is disagreement between councils and family members about whether the local authority has placed a child with the family (and so is in law a 'looked after child') or whether it was an informal family care arrangement. In an important court case in 2007 the judge said:
 - If a local authority plays a major role in making arrangements for the child, the most likely conclusion is that it is exercising its powers and duties to accommodate the child.
 - Informal family care arrangements are usually made direct between individuals.
 - If a local authority intends to merely assist in arranging informal family care rather than accommodating a child itself, the local authority must be explicit with those involved, including giving clear information about who will be financially responsible for the child. If this is not made clear the courts and others are likely to conclude that the local authority is making the placement itself. Only on receipt of such information can a potential foster carer give informed consent to accept the child on an informal family care arrangement.

Residence Order (now called a Child Arrangement Order)

6. An adult may go to court to seek a residence order/child arrangement order which gives them parental responsibility for the child and they can make decisions about the child. It decides where a child should live and shares parental responsibility equally with the birth parents. Any support provided to such carers by councils is discretionary. However the Court said in 2008 that if a child was about to be 'looked after' before a residence order was granted then a council's policy on Residence Order Allowance should take account of the duties it would have been under as well as the means and needs of the family when deciding whether to pay a residence order allowance.

Council policy: Residence Order procedures: Financial Support

7. The Council says its policy is to consider paying an allowance enabling financial assistance to be given to certain people who are granted residence orders, to facilitate the process and to consider the matter at a panel meeting where the general issue of a residence order is discussed.
8. The Council says it will consider paying legal fees where it supports the application and the legal aid scheme is not sufficient. It will also consider an ongoing allowance at a basic or enhanced rate and a one-off grant or special allowance where required.
9. It also says that the allowance is not automatic but is payable in several circumstances, including:

'where the child is likely to be accommodated but a family member agrees to apply for a residence order and so there is no need for a child to be looked after and the assessment indicates that placement with the adult under a residence order would be in the child's best interest'.

How we considered this complaint

10. We have produced this report following the examination of relevant files and documents and interviews with the complainant.
11. We gave the complainant and Council a confidential draft of this report and invited to comment. We took the comments we received into account before the report was finalised.
12. 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 intend to share this report with Ofsted.

Investigation

13. Ms B's daughter, C, has a son D, both of whom were living with Ms B in 2010. In April 2010 the Council carried out an assessment in respect of D following concerns about D's

care by his mother C. The Council then did a risk analysis in May 2010 and concluded that C was not a risk to D because Ms B was a protective factor as the main carer for D.

14. In June 2010 a social worker and a team manager carried out a home visit. They concluded that D was well-provided for socially, emotionally and otherwise by Ms B and there was enough family support from other family members. They offered Ms B respite care which she declined as she had a support network. Ms B says she also told the Council she would need financial support as C was not contributing to D's care. The Council closed the case.
15. In August 2010 Ms B contacted the Council: she was concerned that C had threatened to take D away from the home and was not able to care for him due to mental health problems and drug use. In September 2010 she contacted the Council again to say C had removed D from the home. The Council then carried out another assessment and concluded in November 2010 that:

“Ms B should seek legal advice as a matter of urgency re. Securing her position as D's carer”.
16. Ms B said the Council did not advise her of this view. Instead the social worker sent a letter to C on 10 December 2010 expressing concerns about her ability to care for D. It said it had obtained legal advice and considered it had sufficient evidence to share parental responsibility with C for D. But before issuing care proceedings it said it would welcome a Residence Application by Ms B. It suggested C should seek legal advice about this by 30 December 2010 and gave her a list of solicitors to contact.
17. The Council says there is a case note of a supervision between the social worker and team manager which says it advised Ms B to begin the Residence Order or Special Guardianship Order process. It has not provided the note. Ms B says the Council did not contact her directly or discuss any support it could provide. She contacted a solicitor herself taking the letter the Council had sent to C. She said she had no idea that she might be entitled to financial support.
18. During a home visit by the social worker in January 2011 Ms B raised concerns about C neglecting to pay bills and said that she had been struggling to manage financially. The social worker advised her to contact the Council for assistance if things became dire.
19. The Court granted Ms B a Residence Order for D on 14 March 2011. The Council supported the application and the Court did not request any further reports from the Council.
20. The next record the Council has provided is a note following a home visit to Ms B in October 2012. It summarised the history and said Ms B was a protective factor and was asked to step in and protect D. She was requesting financial support towards purchasing carpets in her property, which currently had no furniture or carpets. D was not sleeping there at that time, but staying with his aunt and Ms B was sleeping on the floor on a mattress. It noted that she was in receipt of income support. The social worker had

approached some charities for assistance with furniture but requested that the Council provide some financial support to provide stability and routine for D.

21. There is no record of a response until March 2013 when it is noted on the case record that Ms B received £800 in October 2013 [this must be an error] to purchase carpets.
22. In April 2013 Ms B sent an email to the Council saying that D was a child in need with health problems and she had not received support over the previous three years. She said she had not been able to afford the heating over the winter and had got into debt through borrowing. She didn't understand why she had not received any financial support as she had been told at the beginning she would receive help. A manager from the Council replied saying that Ms B appeared to be requesting a financial assessment but the Council could not offer any further financial support. It gave no further reasons.
23. In October 2015, after seeking advice from a support group, Ms B complained to the Council about the lack of financial support. The Council replied saying it could not consider complaints that were over one year old and it would only pay a Residence Order Allowance where it was agreed in court at the time. But it offered to do an assessment of D. This took place in December 2015 and eventually in June 2016 the Council paid Ms B a Residence Order Allowance of £126 a week backdated to the date of the assessment on 2 December 2015.
24. Ms B asked the Council to backdate the money further but it declined to do so. Ms B complained to us.
25. In response to my enquiries the Council said it had decided to limit the backdating based on the following factors:
 - D's circumstances will have changed over time and the current payments are subject to review;
 - backdating beyond December 2015 cannot now affect the welfare of D over the historical period;
 - paying a lump sum to D from the Council's limited resources would affect the Council's statutory obligations to promote and safeguard the welfare of children; and,
 - the Council is following legal precedent in limiting the period of backdating. It made specific reference to three court cases : *KS (by her litigation friend) v Bradford MDC [2014] EWHC 11 (Admin)*, *R(SA) v Kent CC [2010] EWHC 848* and *R(CO) v Surrey CC [2014] EWHC 3932*.

Conclusions

26. By November 2010 the Council had concluded that D's mother, C, could not provide him with suitable care or accommodation.
27. The Council was involved in the process leading to Ms B's application for a Residence Order after it had serious concerns about D's welfare and C's ability to meet his needs. It carried out an assessment and suggested to C that Ms B should apply to court to gain

parental responsibility of D. It also said if she did not do so the Council would start care proceedings to get parental responsibility of D. So D fitted the criteria within the Council's policy for financial support:

“where the child is likely to be accommodated but a family member agrees to apply for a residence order and so there is no need for a child to be looked after and the assessment indicates that placement with the adult under a residence order would be in the child's best interest”.

28. In this case:

- D was likely to be accommodated and based on the Council's records it was prepared to start care proceedings;
- the Council asked C to approach a family member, Ms B, to apply for a residence order and,
- there is evidence the Council believed that living with Ms B would be in D's best interest.

29. We consider the Council should have carried out a financial assessment of Ms B at this point and decided if she qualified for financial support. It did not do so and this was fault. The fault was exacerbated by the failure to have any direct contact with Ms B about this issue or offer her any advice and assistance.

30. It did not inform Ms B that if she took D on a private arrangement with C she would not get any financial support from the Council and would need to rely on C for financial support (who it was already noted had not provided financial support for D).

31. There is evidence from Ms B that the Council told her at the outset she would be eligible for support and we have no reason to disbelieve her account that she requested financial support many times between 2011 and 2015. The Council's own records show she told the Council in January 2011 that she was struggling financially and in October 2012 she requested financial assistance (she was in receipt of income support and child benefit). The Council made a one-off payment. These were both missed opportunities to carry out a financial assessment in terms of an on-going payment. D's welfare was clearly a concern as he was not able to stay in the house. In April 2013 she again set out her financial difficulties and the impact these were having on her and D (such as lack of heating) but the Council refused, without any reason, to carry out a financial assessment. This was fault.

32. It was not until October 2015 that the Council finally decided to carry out a financial assessment. Once it did so it paid Ms B a significant allowance of £126 per week but only backdated it to December 2015. The delay in completing this assessment and paying the allowance was also fault.

Backdating

33. While we understand that the Council has limited resources we do not accept this is an adequate reason for not properly making up for the failures in the case over a prolonged four-year period. Part of its duty was to safeguard and promote the welfare of D; in failing to carry out a financial assessment (despite repeated requests) it did not properly carry out this duty in respect of him. Ms B should receive a sum of money in recognition of that failing and to help her make up for any historical impact on D now.
34. In terms of legal precedent cited by the Council, we disagree that either of the first two cases are applicable to Ms B's circumstances. In KS v Bradford MDC the Judge found no evidence that the claimant had requested financial assistance. Whereas Ms B made direct requests on several occasions as detailed in paragraph 31 above.
35. In R(SA) v Kent CC the Judge specifically said the claimant's delay in bringing the judicial review case was the main reason for limiting the backdating. Ms B's case is different: she raised the issue of finance in January 2011 and then made specific request for assistance in October 2012 and April 2013, but the Council refused to help. The Council has not explained why it did not offer to carry out a financial assessment in 2011, 2012 or 2013 in response to Ms B's contact, but then did so after a further request in December 2015. We do not consider Ms B delayed in raising the issue with the Council and we consider it unfair to penalise Ms B for not knowing that an allowance was available when the Council had failed to tell her about it.
36. The third case, R(CO) v Surrey CC, supports the view that *in the context of Judicial Review proceedings* aimed at the failure of a local authority to treat a child as a looked after child, then any backpayments are likely to be ordered only over a period of three months.
37. In recommending a remedy for the injustice caused by maladministration, the Ombudsman's starting point is to seek to put the person affected in the position they would have been in but for the Council's fault. While he has had regard to the decisions of the court he does not consider himself bound by the same legal framework and principles that apply in the context of Judicial Review proceedings.
38. Whilst we are sympathetic to the current resource problems that councils face, we are also absolutely clear that it is neither appropriate nor possible for us to adjust our recommendations based on a wider assessment of the financial pressures on the Council or its services.

Injustice

39. Ms B, at the request of the Council, has taken on the responsibility of caring for her grandson and struggled financially since 2011. She has not been paid, as a family and friends carer, as she should have been and has missed out on an allowance of around £100 per week. This is significant sum which would have benefitted both Ms B and D.

Decision

40. We have completed our investigation. There was significant fault causing significant injustice to Ms B and D. The Council should take the action identified in paragraph 41 to remedy that injustice.

Recommendations

41. We recommended the Council should, within three months:
- apologise to Ms B for the failings we have identified;
 - pay Ms B as if she had been a family and friends foster carer for D (taking into account her means and D's needs, less any state benefits provided to Ms B for D and any payments the Council made to assist her during this period, such as £800 for carpets) from 14 March 2011 until 2 December 2015;
 - pay Ms B £500 for the frustration and time and trouble caused by the Council not carrying out a financial assessment sooner;
 - ensure in future if it is involved in the arrangements for a child to be cared for by a private family arrangement that it ensures all parties are aware of the nature of the arrangement and where financial support may come from. It should also ensure it carries out a financial assessment in accordance with its policy when an order is made.
42. We are pleased to say the Council has agreed to our recommendations. We do acknowledge that the events in this case are historical. We also recognise that over the past seven years the Council's practice has improved considerably, and it is judged by Ofsted as having good services for children.