

The Ombudsman's final decision

Summary: Miss X complains that the Council failed to provide financial support when she agreed to accommodate a child. She says its communication and complaint handling were poor. The Council has agreed it is at fault and has caused injustice. It has agreed a financial remedy and service reviews.

The complaint

1. The complainant, who I refer to here as Miss X, says the Council wrongly characterised her agreement to accommodate a child as a private fostering arrangement. Miss X did not receive financial help with the child's care, putting her family finances under strain, which affected her own four young children. She says the Council's communications and complaints handling have been poor.

What I have investigated

2. I have investigated the Council's actions since Miss X began caring for the child in 2017.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. I spoke to Miss X and to the Council and I considered information provided by both parties. I have shared my draft statement with Miss X and the Council and considered their comments before finalising my decision.

What I found

Private fostering arrangements

7. A private fostering arrangement is one that is made privately (without the involvement of a local authority) for the care of a child under the age of 16 years by someone other than a parent or close relative, in their own home, with the intention that it should last for 28 days or more.
8. A Child Arrangements Order is a legal order under which the court decides either where a child will live or who a child can spend time with and for how long.

What happened

9. Miss X, who has four young children, had a friend, M, whose 15-year old daughter, D, stayed at her home occasionally. Miss X's first language is not English.
10. In May 2017 Miss X's friend went missing, abandoning her children. D went to stay with Miss X while her younger siblings were accommodated by a relative. When the Council made contact with M it asked her to allow the children to remain where they were. The Council's paperwork states M initially agreed to this but also records that M disputed this a month later. In any event, after a month M asked for the children to be returned home. D, who had been happy to stay with Miss X, also asked to return home, but the Council asked her to remain with Miss X temporarily.
11. Despite M's lack of consent, the Council categorised the situation as a private fostering arrangement. In July the Council began discussions about long-term arrangements for all the children. Documents provided by the Council noted that D was not in a private fostering arrangement as M did not consent to it. The documents also said the children's relative was to be advised to seek legal advice, but they made no mention of legal advice for Miss X.
12. Miss X advised the Council she was struggling for money. The Council assisted her to obtain tax credits and benefits for D, which had previously been paid to M. The Council felt D needed legal stability and that Miss X should hold parental responsibility for her. It recommended a Child Arrangement Order be made in respect of D.
13. By the end of 2017 the Council had completed a private fostering assessment of Miss X. The assessment records that Miss X describes herself as "financially struggling". An interim Child Arrangement Order was then made in respect of D. Miss X was not a party to the court proceedings. Before the proceedings concluded the Council advised Miss X to seek legal advice and offered to pay for this but she did not take up the offer.
14. In late 2019 Miss X learned that D's siblings had moved from their relative's care and were now being looked after by a foster carer, who was receiving a fostering allowance. She complained to the Council about the lack of financial support offered to her. She said she planned to apply for a bank loan to pay for furniture for her children and that she was not being listened to or helped by D's social worker.
15. Miss X then approached a Citizen's Advice Bureau (CAB). It helped her draft a formal complaint about lack of financial assistance, which she sent to the Council in February 2020. The Council's response said: "D was already in your care as a private family arrangement prior to the Local Authority issuing care proceedings... you were never assessed or approved as a foster carer and therefore the local

authority would not provide financial support.” It said D’s care was a “private arrangement between yourself and the child’s mother”. It also said if Miss X was suffering from financial hardship it was her responsibility to make that known to D’s social worker at the time.

16. Miss X asked for her complaint to be investigated at Stage 2 of the Children’s Social Care complaints procedure. The Council declined this request on the basis that the outcome she sought was unachievable and that nothing could be achieved by investigating further.
17. Miss X took her complaint to us. She told me D was not living with her prior to the Council’s involvement. She said that she had not been involved in the Child Arrangement Order application and had relied on the social worker’s version of events. She said that she did not understand the legal or financial significance of a private fostering arrangement.
18. From speaking to Miss X it was clear to me that her command of the English language was insufficient for her to grasp legal technicalities. Miss X told me she had not realised that she may be entitled to an allowance to help care for D until 2019. She told me on receiving advice from the CAB she felt the Council had “tricked” her.
19. In response to my enquiries the Council challenged my jurisdiction to investigate on the basis that the key decisions on D’s accommodation had been made in 2017 and 2018, which meant Miss X’s complaint was made too late. It also suggested the Ombudsman had no jurisdiction as the matter had been the subject of court proceedings. It said D was legally represented during the application for the Care Order and that D’s guardian had met D for discussions beforehand and had confirmed that D was being cared for under a private fostering arrangement. The Council also told me in its view Miss X spoke very good English. It could find no evidence an interpreter had been provided at any point.
20. Having considered my representations on these points the Council then reviewed the paperwork, swiftly concluded it was at fault and proposed a remedy.

Analysis

21. It is clear from the paperwork provided by the Council that Miss X only became aware of a potential entitlement to a fostering allowance in autumn 2019. Having waited for a response from the Council to an informal complaint, she then sought advice from a CAB and submitted a formal complaint. When the Council’s processes were exhausted, she complained promptly to us. In my view the complaint was not made late, despite the fact the substantive events occurred in 2017 and 2018.
22. Miss X was not a party to the Court proceedings. In my view the complaint is within jurisdiction, and not affected by the legal proceedings which took place.
23. The paperwork makes clear that D was not accommodated under a private fostering arrangement. D had been cared for by Miss X for a month after which Miss X made clear she did not consent to D remaining there. D herself expressed a clear wish to return to her mother’s care at around the same time but agreed to remain at the Council’s request. Miss X was effectively an unpaid foster carer for D. This is fault by the Council.

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24. The Council did not provide Miss X with an interpreter, when her English was insufficient to grasp the significance of legal arrangements. This is fault by the Council.
 25. The Council did not communicate with Miss X effectively or answer her complaints adequately. If the Council had responded appropriately with a Stage 2 investigation it is possible that the fault and injustice to Miss X would have been identified sooner.
 26. After my discussions with the Council, it swiftly accepted my jurisdiction over the complaint and that it is at fault and has caused injustice to Miss X. It said it “apologised unreservedly” to Miss X for what had happened and was keen to put things right. It met with Miss X to discuss its proposed remedy. This is good practice and meant Miss X has been given certainty over her finances without protracted negotiations.
 27. At the meeting with Miss X, the Council agreed to make a payment of £22,114.86 as back-payment for missed fostering allowances between 2017 and 2020, minus any tax credits received by Miss X. It also agreed a £322 back payment of holiday allowance. Finally, it also proposed post-18 support for D, depending on further discussions with Miss X and D, as well as £500 for Miss X’s time and trouble.
 28. The Council has said it will review all Child Arrangement Orders made since May 2017 to determine if other carers may have experienced detriment and establish whether there are training deficits. It will also review the circumstances in which the Council decided not to proceed with Miss X’s request for her complaint to be considered under Stage 2.

Agreed action

29. The Council has agreed that within one month of my decision it will:
 - a) Pay Miss X £22,114.86 as back-payment missed fostering allowances between 2017 and 2020, minus any tax credits received by Miss X;
 - b) Pay Miss X £322 back-payment for holiday allowance;
 - c) Pay Miss X £500 reflecting the financial strain arising from the Council’s fault and for her time and trouble in bringing the complaint;
 - d) Review all Child Arrangement Orders made since May 2017; and
 - e) Review its decisions not to proceed with complaint escalation requests since May 2017.

Final decision

30. I have completed my investigation with a finding of fault by the Council for which it has suggested financial remedies and service reviews.

Investigator’s final decision on behalf of the Ombudsman