A faint, light grey silhouette of a family consisting of two adults and two children, walking together. The silhouettes are positioned behind the main text.

Family values: Council services to family and friends who care for others' children

Focus report: learning lessons from complaints



“Family and friends carers provide a vital support system for children who can no longer live with their parents. We find they are being treated unfairly and not receiving the support to which they are entitled.”

Dr Jane Martin
Local Government Ombudsman

The role of the Ombudsman

For nearly 40 years the Ombudsman has independently and impartially investigated complaints about councils and other bodies within our jurisdiction. Our services are free of charge.

If we find something wrong, we can ask the council to take action to put it right. What we ask the council to do will depend on the particular complaint, how serious the fault was and how the complainant was affected.

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 do not happen again.

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To protect identities, real names are not used in this report.

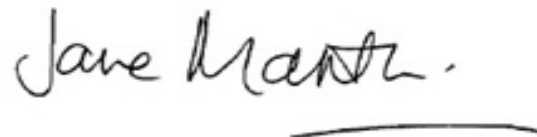
Foreword

Around 145,000 children in England are being looked after by people who are not their parents. Many of these children are not cared for by professional foster carers, but by members of their extended family or friends. This report is about these 'family and friends carers', who provide such a vital support system for children who can no longer live with their parents, but who we find are being treated unfairly and not receiving the support to which they are entitled.

The LGO routinely investigates concerns about local authority children's services. There has been a 53% increase in the number of complaints since 2009. We have published this report because we want to highlight a particular problem, which appears to be affecting a number of families, where family members agree to care for a child without receiving proper advice and assistance. Sometimes these arrangements can also be flawed because the council has failed to properly assess the suitability of an arrangement, which can put children at increased risk.

The cases in this report demonstrate the importance of children and their families, some of whom are very vulnerable and at risk, being treated fairly so that all children have the best start in life and the best possible support to make their own way and contribute effectively as adults. The LGO conducts independent investigations and assesses each case that comes to us on its own merits. Where we find fault causing injustice we will seek a remedy for those affected. In one recent case brought to us, as a result of our investigation, we estimate 340 families will have their allowances re-evaluated and restored to them by one local authority.

But often practical action to review policy and practice is the best way to provide redress, not only for those affected but also for children in the future. As an important first step, local authorities need to ensure that they publish and implement fair and effective policies for family and friends carers, as required by statutory guidance. I hope that this focus report and the key questions we have posed for scrutiny of this function will assist local authorities across the country to meet the needs of children and the families who support them.



Dr Jane Martin
Local Government Ombudsman
November 2013

Introduction

“ It is estimated that there are around 145,000 children in England being cared for full-time by friends and relatives....it is important that these family and friends carers have fair and quick access to support from councils. ”

Councils must safeguard and promote the welfare of children in need in their area generally. In doing so, they should, as much as possible, promote the upbringing of those children by their own families. Councils have various powers and duties under the Children Act 1989 to provide a range of support to a 'child in need'.

Councils must provide accommodation to children in their area in certain circumstances.¹ Once accommodated, the child acquires 'looked after child' status and councils must provide ongoing support, including allowances to carers.

It is estimated that there are around 145,000² children in England being cared for full-time by friends and relatives. Around 7,000 of those live with approved family and friends foster carers as 'looked after' children. The remaining children are cared for through informal arrangements, sometimes with support from the local authority if the child is deemed to be 'in need'.

The situation of children being cared for by friends and family is on the rise. The number of children in England cared for in family and friends care relationships increased by 260% from 1991 to 2001.³ The data from the 2011 UK Census is still being analysed.

It is important that these family and friends carers have fair and quick access to support from councils. Support includes financial support for the cost of caring for the child and practical support for the carer and the child.

A significant and national problem

Since 2009 the LGO has experienced a 53% increase in the number of complaints received annually about children's services. In 2009-10, we handled 980 complaints but for the same period last year (April 2012 – March 2013) 1,496 complaints were registered in this area.

We have investigated cases in which:

- > councils have treated family and friends carers less favourably than its own foster carers
- > councils have failed to recognise they had a duty to accommodate a child or failed to recognise the child was a 'child in need' of support
- > family carers were given insufficient information to make an informed decision especially around the needs of the child and any financial arrangements, despite councils' involvement with the child and its family, and their concerns about the child's welfare
- > councils have denied the carer the opportunity of making an informed decision about caring for a child or got their agreement to an informal family care arrangement under duress
- > councils have failed to check the suitability of a family or friends carer and that has placed the child at increased risk of harm.

A study was published by The Family Rights Group in May 2013 into the support, need and legal status in family and friends care. In preparing the study, the Family Rights Group interviewed carers, professional, and children's services staff in at least 54 councils.⁴ It found:

- > many family and friends carers experience considerable stress in caring for children and feel isolated and unsupported
- > the support for those with Special Guardianship Orders or Residence Orders is discretionary and so inferior to those who are formally recognised as family and friends foster carers
- > many professionals say councils actively resist the use of family and friends foster care in order to keep down the number of 'looked after' children, and are therefore placing cost savings before the child's best interests
- > family and friends carers often lack the information and advice needed to make an informed choice.

When children go to live with family or friends instead of their parents they are often disadvantaged and vulnerable. They commonly come into this situation as a result of an emergency. Often the children have had to deal with emotionally difficult circumstances such as the serious illness or the death of a parent, or their parents' care has been inadequate or abusive.

The majority of family carers are grandparents, older siblings, or aunts and uncles. They may have their own family, work commitments, health or financial problems before taking on the care of their relative's children. Their house may not be big enough or suitable for the child or children they have been asked to accept. Sometimes family and friends have stepped in to care for a child out of goodwill because

they believe a council is failing to carry out its duty to accommodate the child and are worried about the possible impact on the child.

In the case of young children, often the carer has had to give up work at short notice to care for the child which in turn leads to financial problems for the family. Any extra strain on such a placement could lead to it breaking down and to the child moving onto professional foster carers or being at risk of neglect or harm.

Friends and family carers - the legal position

Defining a looked after child

Every council with responsibility for children's services must provide accommodation to children within their area who need it if there is no one with parental responsibility for the child, or the child has been lost or abandoned, or the person who has been caring for them is prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care.⁵ The child would be classed as a 'looked after child' under the terms of the Children Act 1989 .

Defining a child in need

The law says a child in need is a child under 18 who is disabled or who needs services from the council to achieve or maintain a reasonable standard of health and development, or to prevent any harm.⁶ Any support provided by councils should be based on the needs of the child.

The vast majority of children living with their extended families or friends, rather than their parents, are in informal arrangements.

These families may ask councils for financial or practical support to help them care for the child if the child is 'in need'. The support may include regular payments or one off payments for things like school uniforms. Councils may also provide practical support such as signposting to support groups or health services. Councils should assess the needs of the child and their policies should explain how and when they would provide help and support to such children in need and their families.

Family and friends care

The principle in law is that all children, including 'looked after children', should wherever possible be cared for by their families and friends.⁷ Therefore a council may fulfil its legal duty to accommodate a child by placing it with relatives or friends. That relative would be considered to 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.⁸ The family member caring for the child would then be entitled to receive weekly fostering payments to help care for the child at the same rate as an authority foster carer and would receive support from a social worker. These arrangements only apply to the specific child/children placed and does not entitle them to become general foster carers.

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'. They may not receive any financial support from the council as the parent is still expected to financially support the child.

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 judgment against the London Borough of Southwark in 2007⁹ the judge said the following:

- > 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.

Fostering allowance

The Government announced a national minimum allowance for foster carers in 2006. In 2011 it said this should be the minimum rate a foster carer should be able to expect from councils. The Government publishes new rates each year. The allowance is to cover the costs in looking after any fostered child. Additional allowances may be paid if a child has additional needs. Councils often make additional payments for birthday and holiday allowances for a 'looked after' child.

A recent judgement¹⁰ ruled that family and friends foster carers should not be restricted to receiving the basic fostering allowance. If a non-related council foster carer would

also have been entitled to receive additional allowances (for example where the child has some disability requiring additional support) those family and friends foster carers should also receive that enhanced rate.

Special Guardianship Allowance and Residence Order Allowance

An adult may go to court to seek a Special Guardianship Order or Residence Order for a child in their care. This would give them parental responsibility for the child and they could make decisions about the child. These two orders do not completely remove the parental responsibility of the birth parents.

A Special Guardianship Order appoints a 'special guardian' to care for the child. It is more secure than the Residence Order and gives the special guardian overriding parental responsibility, with the birth parents retaining only limited parental responsibility.

A Residence Order decides where a child should live and with whom, and parental responsibility is shared equally with the birth parents. Any support provided to these carers by councils is discretionary and the allowances paid can be means-tested. However the Court¹¹ said 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.

Under both these arrangements, if the child had previously been 'looked after' it would usually no longer be so.

The Government has produced guidance about what support services are available to those who have a Special Guardianship Order to enable them to care for the child.¹²

This includes the provision of a Special Guardianship Allowance. This allowance is means tested and councils must give the carer notice of its decision, including the reasons for it.

In 2010 the court said the rate a local authority sets for Special Guardianship Allowance should be in line with its Fostering Allowance.¹³

Statutory guidance

The Government in 2010 issued statutory guidance for family and friends care.¹⁴ This guidance required councils to publish a policy about how it deals with family and friends carers by September 2011. On 28 May 2012 the then Education Minister Tim Laughton wrote to all local authorities to express disappointment that only 55% of councils had published such a policy, many only in draft form. The current Education Minister Edward Timpson wrote again on 10 July 2013 as only two thirds of councils had published a policy.

Where things go wrong

Informal family care arrangements

Family and friends carers often do not understand whether the child they are caring for should have 'looked after' status or whether the care they are providing is considered an informal family care arrangement. Without appropriate information from councils they are unable to make an informed decision when initially agreeing to care for the child.

John and Zoe's story:

Failure to recognise a child should be considered a 'looked after' child

John used to live with Miss Carter and her daughter Zoe. A few months after they split up Miss Carter took her own life. As no one knew who Zoe's father was she became an orphan at the age of six. The council picked her up from school and arranged a foster carer for Zoe. However when John called the council, concerned about Zoe's welfare after hearing Miss Carter had taken her own life, the council brought Zoe to his house that evening so he could care for her and explain what had happened to her mother. He said he thought the arrangement would just be for a few days. However Zoe remained with John and still lives there today many years later.

After her mother's death, as no one had parental responsibility for Zoe, John went to court to get a residence order. He was forced to give up his job because he was struggling to cope with Zoe being emotionally disturbed by what had happened. This in turn meant he lost his car and his home. He kept asking the council for some financial support but it refused, saying his circumstances did not qualify under the limited exceptional reasons it may pay a discretionary residence order allowance. The council told John he was caring for Zoe as part of an informal family care arrangement before he obtained a residence order. He got into significant debt.

Our investigation found that it could not have been an informal arrangement as the arrangement was not made directly between John and Zoe's mother. The council had initially realised it had had a duty to accommodate Zoe when it organised for foster carers to care for her. As a result of our investigation the council accepted it had failed to recognise she was a 'looked after' child and it should have assessed and supported John as a family and friends foster carer. It also accepted that he should have been paid a residence order allowance. The council agreed to backdate the unpaid allowances which totalled around £16,000.

Where things go wrong

Victoria and Jack's story:

Failure to provide sufficient information to make an informed decision about an informal arrangement

Jack lived with his mum who has mental health problems. Since he was a toddler he had suffered emotional abuse from his mother. The council had been worried about Jack's mother's ability to care for him and had placed him on a child protection plan. When he was nine, his mother suffered further mental health problems and began neglecting him. Jack had been living away from his mother for several weeks. When this arrangement broke down at short notice the council called Jack's aunt, Victoria, and asked her to care for him. Victoria agreed and a few days later the council inspected her home and carried out a Criminal Records Bureau (CRB) check of Victoria and her partner.

Victoria asked the council for some financial support to care for Jack but the council told her she did not qualify as the council considered it was an informal family care arrangement between Victoria and Jack's mother. Jack stayed with Victoria for a year.

Our investigation found the council was wrong to say it was an informal arrangement. This is because the arrangement had not been made directly between Jack's mother and Victoria. The council had also played a significant role in arranging for Jack to live with Victoria, including arranging a CRB check.

We found the council had not given Victoria enough information about what support may or may not be on offer to enable her to make an informed decision when agreeing to care for Jack.

The council accepted our findings, apologised to Victoria and paid her the allowances she had missed out on which totalled around £7,000.

Where things go wrong

Suitability of arrangements

The injustice caused where children and carers miss out on the support they should have received cannot be underestimated. It affects some of the most vulnerable children in our society whose start in life has already been tough. If timely checks have not been made about the suitability of the placement, or it is not adequately supported, children can be put at added risk of harm.

Cara's story:

Putting child at risk by failing to adequately assess the placement

When Cara was 15 years old she became homeless after the death of her mother. The council asked her if she knew someone she could stay with as it did not have any emergency foster carers available. Cara suggested Mrs Johnson, the mother of a friend. Although the council was aware Mrs Johnson hardly knew the girl it asked her to take Cara in for a few days. Mrs Johnson agreed. Mrs Johnson had children of her own still living with her, both younger than Cara.

A few days turned into weeks and then months. Cara's social worker visited her regularly at Mrs Johnson's home and felt everyone got on well. Cara did not have her own room and had to share with Mrs Johnson's children or sleep on the floor in the sitting room.

Several months later Mrs Johnson asked the council for some regular financial support for caring for Cara. The council agreed, accepting that with hindsight it had placed Cara with her under its responsibilities under the Children Act. It agreed to pay Mrs Johnson the friends and family foster carer allowance.

As it now considered Cara to be a 'looked after child' a series of statutory meetings began. The fostering social worker began her assessment of Mrs Johnson so her formal approval could be considered by its fostering panel. However, it became clear to the council that if it had carried out the necessary checks for Mrs Johnson's approval at the beginning when asking her to take Cara, she would not have been approved. The council had concerns about its background checks on Mrs Johnson and there were now concerns that Cara was in an inappropriate sexual relationship with Mrs Johnson's former partner.

The council provided alternative accommodation for Cara, who was now over 16 years old, and stopped making its payments to Mrs Johnson. However Cara refused to leave and Mrs Johnson felt unable to make her. The council became increasingly concerned about the welfare of Mrs Johnson's own children and placed them on child protection plans. The council informed Mrs Johnson it would only remove her children from child protection plans if Cara left her home. She refused.

Our investigation was critical of the council's failings and the risk it had placed Cara in, which in turn led to Mrs Johnson's children being put at risk.

Where things go wrong

Less favourable treatment

The law says payments made by councils to foster carers, including any fee or reward element, must not discriminate against those who are family and friends carers.¹⁵ They should receive the same level of fostering allowance that authority foster carers do.

Fiona's story:

Uncovering council's systemic failure to pay correct rates

Fiona agreed to look after her nephew after his parents were unable to care for him. His father was in jail and his mother was prevented from caring for him. Fiona obtained a special guardianship order from the court for her nephew when he was three years old. This gave her parental responsibility for him.

The council agreed to pay her a special guardianship allowance. The rate the council paid was less than the rate it paid its own foster carers. The law says the rate must be the same.

During our investigation not only did we discover the council was failing to pay the special guardianship allowance at the same rate as its fostering allowance but also that the council had failed to pay its own foster carers the Government's national minimum fostering allowance. This affected in excess of 340 carers.

Following our investigation the council not only agreed to increase Fiona's payments, and backdate what she had missed out on, but it also agreed to pay all those carers receiving special guardianship allowance the correct rate, and to pay all its foster carers at least the Government's national minimum fostering allowance rate.

Where things go wrong

Patricia and Isaac's story: **Unfair policy for family and friends carers**

When Isaac was six years old his mother failed to collect him from school. The school called Patricia, his grandmother, to collect him. When Isaac's mother had not returned several days later, the council advised Patricia to get a residence order so she would have parental responsibility for him, be able to make decisions about his welfare and move him to a school nearer to her home. Isaac's mother never came back for him. A few weeks after Isaac went to live with his grandmother the council took his younger sibling into care as the council was concerned about the mother's ability to provide safe and suitable care for his sibling. The court granted a care order and this child also never returned to its mother.

After the court gave Patricia a residence order for Isaac she told the council she was struggling to cope financially. The council refused to pay her any residence order allowance, a discretionary allowance, as Isaac had not been a 'looked after' child before the court granted the residence order. Patricia repeatedly asked the council for help over several years. She told the council she was desperately struggling to cope, to the point that she has been declared bankrupt.

Our investigation found the council's policy failed to have a provision for exceptional circumstances and it failed to consider any exceptional circumstances, which is unlawful and unfair. The council failed to recognise that without the grandmother's care it would have had to take Isaac into its care a few weeks later along with his sibling, so becoming a 'looked after' child.

The council accepted that it was at fault and rewrote its policy which now considers exceptional circumstances. It reconsidered Patricia's circumstances and decided to pay her the residence order allowance that she would have received for the nine years she cared for Isaac had its policy been fair and lawful. Patricia received £45,000.

Putting things right

How we remedy injustice

Where a council is at fault for failing family and friends carers, we will recommend it takes action to put right any injustice suffered. This usually involves an apology to those concerned.

Remedies can include procedural change, for example to simplify or clarify what should happen, or to promote better communication. Where appropriate, we also recommend staff training in existing or new procedures and protocols.

Whilst putting a price on injustice relating to the care of children is difficult, we often recommend that the council pays a financial remedy. The amount we recommend will depend on the facts of each case, but may often be calculated in relation to the level of financial support a carer would have been entitled to, if the council had acted appropriately.

The Ombudsman must consider every case on its own merits.

Promoting good practice

Drawing on our experience, we have identified a number of recommendations based on examples of good practice in councils. The following is not an exhaustive list but sets out some of the actions we would expect councils to take.

- > In accordance with statutory guidance, have a suitable family and friends care policy and follow that policy.
- > Keep good records of decisions about a child's care. Where the council has had involvement with the child's family before that child came to live with a family member or friend, the council should be able to show it has explained to the carer the implications of agreeing to an informal family care arrangement, rather than becoming a family and friends foster carer or seeking a special guardianship order or residence order.
- > When placing a child with a family member, councils should ensure they have considered the child's views and assess whether the placement is suitable to meet the child's needs.
- > Pay the correct rates in accordance with statutory guidance. Pay special guardians the same rate as foster carers and pay family and friends foster carers any additional allowances that it would have paid to professional foster carers based on the needs of the child.
- > Make sure its policy takes into account exceptional circumstances for those carers with special guardianship and residence orders who might receive discretionary allowances.
- > Provide suitable evidence and explanation before departing from any Government guidance about support for family and friends foster carers.
- > Make sure that appropriate and timely checks are made of family and friends carers to prevent the child being placed at additional risk and to ensure that the carers are able to provide suitable care for the child, both emotionally and financially, to try to prevent a breakdown of the new arrangements and to safeguard the child's welfare.

Putting things right

Encouraging local accountability – questions for scrutiny

Councils and all other bodies providing local public services should be accountable to local people. The Local Government Ombudsman was established by Parliament to support this process. We want to share learning from our complaints with locally elected councillors who have the democratic mandate to scrutinise the way local authorities carry out their functions and can hold service providers to account.

Our experiences of the types of complaints that are typically raised about family and friends carers have highlighted a number of key questions that elected members could ask officers locally:

- > Has the council published a clear policy on family and friends carers?
- > Are the rates to carers being paid in accordance with statutory guidance?
- > Are decisions about providing support being made based on the child's needs as opposed to financial constraints?
- > Are timely checks being made with family and friends carers to ensure the suitability of any new arrangement?
- > What complaints have been made about family and friends carers, what are the outcomes and how has the council used them to improve its services?

We would encourage councillors to look at the issues highlighted in this report, as well as the complaints raised locally, to ensure that their local authority family and friends carers policies receives proper and effective scrutiny and that those services are accountable to local people.

Further information

Visit our website at www.lgo.org.uk

If you have a complaint you would like to make about a council you can contact us on:
0300 061 0614.

Endnotes

- 1 Children Act 1989 S20
- 2 Spotlight on Kinship Care - Using Census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century Bristol University April 2011
- 3 Spotlight on Kinship Care - Using Census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century Bristol University April 2011
- 4 Hunt J and Waterhouse S (2013) It's Just Not Fair! Support, need and legal status in family and friends care (FRG/Oxford University Centre for Family Law and Policy)
- 5 Children Act 1989 s.20(1)(c)
- 6 s17(10) Children Act 1989
- 7 Children Act 1989 s.22C
- 8 Planning, Placement and Case Review (England) Regulations 2010 and the Fostering Services (England) Regulations 2011
- 9 *London Borough of Southwark v D* [2007] EWCA 182
- 10 *R (X) v Tower Hamlets LBC* [2013] EWHC 480 (Admin)
- 11 *M (R, on the application of) v Birmingham City Council* [2008] EWHC 1863 (Admin)
- 12 Special Guardianship Guidance 2005
- 13 *Barrett v Kirklees Metropolitan Borough Council* [2010] EWHC 467
- 14 Family and Friends Care: Statutory Guidance for Local Authorities 2010
- 15 *R (L) v. Manchester City Council* [2001] EWHC 707 (Admin), [2002] 1 FLR 42 and *R (on the application of X) v London Borough of Tower Hamlets* [2013] EWHC 480 (Admin)