

Caring for a child on behalf of a family member or friend, at the request of a social worker

This story may have an impact on you or someone you know who is caring for children whose parents are unable to.

The Local Government Ombudsman (LGO), which looks at complaints about councils and some other authorities and organisations, has concluded an investigation into Liverpool City Council's treatment of foster carers and Special Guardians and the payments they receive. This investigation and its findings is likely to have a wider implication for foster carers and family and friend carers across the country.

As a result of this investigation Liverpool City Council has agreed to pay 340 of their foster carers and Special Guardians backdated compensation for underpayments.

How the investigation began

The investigation began when a woman who had been looking after her nephew following concerns of domestic violence in his family complained that the Council had not been paying her the correct level of financial support. She argued that the Council should have accepted her as a family and friends foster carer, and that the care she provided was not, as the council said, 'merely a private arrangement between her and the child's parents'. On this basis, the Council decided that her nephew was not a 'looked after child' for the purposes of the Local Authority. This meant in their view she was not entitled to payments as a family and friends foster carer. In fact, she should have been entitled to the same payments as Local Authority or agency foster carers in Liverpool at the rate set by the Government.

The investigation by the LGO went on to discover that Liverpool City Council was in fact not paying any family and friend foster carers who looked after children between the ages of 0 – 4 years the national minimum Fostering Allowance which is set by the Government each year.

Recent clarifications of the law

Further, a recent case in the Court of Appeal has found that another Local Authority, in London, was acting unlawfully by making lower payments to family foster carers than to unrelated foster carers (*R (on the application of X) v Tower Hamlets London Borough Council* [2013] EWCA Civ 904).

Some months later and with the approval of Liverpool City Council the woman became the child's Special Guardian. This led to the LGO identifying a further problem with payments being made to Special Guardians by Liverpool City Council.

The Council had carried out an assessment of her means and decided that she was entitled to a Special Guardianship Allowance (a separate means tested payment which carers for children under Special Guardianship Orders (SGOs) may be entitled to). However, the Council failed to pay her Special Guardianship Allowance at the same rate as a Fostering Allow

Another recent case in the High Court has made clear that in Special Guardianship support policies, Local Authorities must consider the minimum payment that would be available to a Special Guardian if the Special Guardian was being paid as a foster carer, and use this as the starting point for means testing (*R (TT) v London Borough of Merton [2012] EWHC 2055 (Admin)*).

In the case of the woman carer (now Special Guardian) in Liverpool, she should have been entitled to the same rate of payment as foster carers because of her limited means and receipt of other benefits, but the Council did not apply the means testing as it should have done.

Following the investigation

The LGO has recommended that she receives backdated payments and a higher SGO allowance. As a result of problems identified in the investigation, the Liverpool City Council has agreed to pay 340 of their foster carers and Special Guardians backdated compensation for underpayments.

Furthermore, Liverpool City Council is carrying out a wider review of its practice in relation to SGO allowances.

The LGO has also recommended that other Local Authorities look at their own procedures to ensure that family and friends foster carers and Special Guardians in their areas are not experiencing the same problems that those in Liverpool have experienced.

How Russell-Cooke can help

At Russell-Cooke we believe that all that can be done to support carers in their immensely valuable role should be done. We have the experience and expertise to assist these carers in obtaining support to enable them to care for who are often vulnerable children.

In our experience when parents are unable to care for their children, other family members are often asked to step in. In those circumstances, it is important that the correct advice about what support – financial or otherwise - you may be entitled to as a family and friends foster carer or Special Guardian is given.

If you or someone you know is currently caring for a child as a family and friends foster carer or Special Guardian, one of our children law specialists would be happy to answer any questions and discuss whether we can assist you. Please contact:

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