

SPSO decision report



Case: 201904106, Dumfries and Galloway Council
Sector: Local Government
Subject: Kinship care
Decision: upheld, recommendations

Summary

C, a support and advocacy worker, complained on behalf of their client (A) in relation to the council's decision not to make payment of kinship care allowance in respect of children in A's care. C stated that A was entitled to receive kinship care allowance on the basis that both children, whom A had been caring for following the death of a parent, had initially been looked after by the council given that the children's surviving parent had agreed to transfer responsibility for their care to the council immediately following the other parent's death. A had also secured residency rights in respect of the children by obtaining an order under section 11 of the Children (Scotland) Act 1995, which C stated was to be considered as a kinship care order in terms of the Children and Young People (Scotland) Act 2014.

In response, the council stated that, while the agreement of the children's surviving parent had been sought to transfer their care to the council after the death of the other parent, it had ultimately not been necessary to proceed on this basis given that A had stepped forward to care for the children almost immediately. Accordingly, the children had never been formally looked after. In addition, the council stated that A and the children's extended family had chosen to look after the children themselves on a private basis without the need for further input from the council's social work department. For these reasons, the council considered that A was not entitled to receive kinship care support.

We took independent advice from a social worker. We found that A had stepped forward to care for the children within a matter of hours of the council seeking the children's surviving parent's agreement to transfer their care to the council. We agreed with the council's position that it had ultimately not been necessary for them to proceed further in this regard and, accordingly, the children had never been formally looked after by the council. We further agreed that A and the children's extended family had also decided to look after the children on a private basis without the need for further social work input. However, we considered that A had agreed only to care for the children on a temporary and emergency basis until the wider family had been able to decide on how the children should be cared for. Accordingly, a period of around three weeks had passed between A stepping forward to care for the children and the decision being taken by the family to care for them on a private basis, during which time it was not certain that A would agree to care for the children on a full-time basis.

We also noted that the council had remained actively involved in decisions about the children's welfare during this period. For these reasons, there was evidence to suggest that the children had been at risk of becoming formally looked after and that the council should have treated A as an informal kinship carer during the three week period, providing them with the appropriate financial support. We further noted that, as A had subsequently obtained an order under section 11 of the 1995 Act, it would be open to them to make an application to the council to be assessed as a kinship carer. We considered that the council's case records did not clearly show the justification for decisions that had been made and that there was evidence to suggest that the council had failed to carry out necessary checks prior to placing the children with A, as set out in the council's own policies. We also found that the council had failed to handle C's complaint in accordance with the relevant complaints handling processes in place at the time.

For these reasons, we upheld the complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to A for failing to assess A regarding the need to provide support and financial assistance under section 22 of the Children (Scotland) Act 1995 or section 50 of the Children Act 1975, failing to communicate reasonably with A in respect of the legal basis on which the children were residing with A and thereafter, and failing to handle the complaint made on behalf of A in accordance with the Social Work Model Complaints Handling Procedure. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information-leaflets.
- Calculate the amount of financial assistance that A would have been entitled to receive for the period specified and make payment of this amount to A.
- Advise A how they can make an application to be assessed as a kinship carer. Should it be decided that A is entitled to kinship care assistance, the council should also give consideration to whether this should be backdated, in view of the fact that A was not advised that they could make such an application when C made known A's wish to be considered as a kinship carer.

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

- The council should ensure that the checks set out within their Looked After Children procedures are carried out prior to agreeing to children being cared for by adults with whom they are unfamiliar, unless there is clear evidence why the checks are not required.
- When decisions are made about the long-term living arrangements for children with whom the council's social work department has been involved, the council should ensure that all parties are sufficiently clear as to the legal basis on which those arrangements have been made.

In relation to complaints handling, we recommended:

- Complaints should be handled in line with the Local Authority Model Complaints Handling Procedure, which can be found here: <https://www.spsso.org.uk/the-model-complaints-handling-procedures>.

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.