

**Case 201002157: Midlothian Council**

**Summary of Investigation**

**Category**

Local government: Social Work; assistance to kinship carers

**Overview**

In October 2008, the complainant (Mrs C) decided to assume responsibility for looking after her niece and nephew. Her complaint concerned the refusal by Midlothian Council (the Council) of her request for financial assistance in the form of kinship care allowance. Mrs C's complaint about that decision was considered but dismissed by the Council's Complaints Review Panel.

**Specific complaint and conclusion**

The complaint which has been investigated is that the Council's Complaints Review Panel was not provided with adequate information on the children's situation to reach a decision (*not upheld*).

**Redress and recommendation**

The Ombudsman recommends that the Council:

*Completion date*

- (i) in the light of the circumstances of this case consider whether, when they are acting on behalf of an another social work authority, they provide a clear written statement of the limitations of their role and direct a carer to sources of further information.

21 June 2012

The Council have accepted the recommendation and will act on it accordingly.

## **Main Investigation Report**

### **Introduction**

1. On 20 October 2008, the complainant (Mrs C) was approached by her brother's wife (Ms B) and Ms B's social worker in England as to whether she could provide a place of refuge for Ms B and her two youngest children. Mrs C agreed, and the party of four<sup>1</sup> arrived the next day. Some days later, Ms B returned to England ostensibly to fetch further clothing and belongings, but then indicated by telephone to Mrs C that she had no intention of returning. Mrs C took over the responsibility of looking after her niece and nephew, both of whom had special needs. She was advised by a social worker (Officer 1) from Midlothian Council (the Council) to apply for parental rights and responsibilities under the Children (Scotland) Act 1995 and these were granted in May 2009. The Council re-housed her in a more suitable property in August 2009 and provided respite assistance to Mrs C in her caring role for the children. Mrs C subsequently learned of a recent initiative of the Scottish Government to roll out a national system of kinship care allowance. Mrs C applied, was refused, and pursued a complaint under the social work complaints procedure which led to a hearing of the Complaints Review Panel (CRP) in January 2011. The CRP did not uphold the complaint. Mrs C did not consider that the CRP had been informed of the full circumstances in making their decision.

2. The complaint from Mrs C which I have investigated is that the Council's CRP was not provided with adequate information on the children's situation upon which to reach a decision.

### **Investigation**

3. Mrs C provided me with all the information she had obtained from the two social work services involved, I made enquiries of the Council, interviewed Mrs C and an associate who had assisted her with her complaint to the CRP, and two senior officers in the Council's social work service. Because of matters of child protection and my jurisdiction not extending to the English social work service I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

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<sup>1</sup> Ms B and her two children were accompanied by a Social Work Officer (see paragraph 5).

4. Mrs C formerly lived in a top floor council flat with her adult daughter. Mrs C is the sister of Mr B. Mr B and his partner, Ms B, had three children together. Their younger daughter (Miss B) and son (Master B) were born in 1995 and 1999 respectively in Scotland but moved in July 2005 to England, initially setting up home in Ms B's home town (Town A). A Council social work report records that while the family did come to the attention of care professionals in Town A, there were no immediate concerns regarding the care of the children but they had frequent changes of address. In August 2006, Ms B and the two younger children left Mr B. The older daughter remained with Mr B at that point. Concerns grew particularly concerning Miss B's welfare. As a result of separate allegations made against Mr B by his two daughters, Town A Social Services decided that any further contact Mr B had with his younger children should be supervised. Ms B and her three children left Town A in May 2008 and moved to another nearby town (Town B). In Town B, after Ms B moved in with a new partner whom Town B Social Services had concerns about, Town B Social Services acted to place the names of Miss B and Master B on the Child Protection Register (CPR). The family then moved back to Town A where CPR registration was continued and a transfer conference was held on 12 September 2008.

5. Mrs C stated that she had not seen Miss B and Master B since 2005. On 20 October 2008, she received a telephone call from a social worker from Town A Social Services (Officer A). Officer A, without elaborating, had simply queried whether Mrs C was in a position to accommodate Ms B and her two younger children for an indefinite period. Mrs C said she was. On 21 October 2008, Ms B, Miss B and Master B were accompanied to the Midlothian area by Officer A. Mrs C, says she was then informed that Ms B was due to give evidence in a court case and was fearful of the safety of herself and her children.

6. On 22 October 2008, Officer A visited the Council's Social Work offices and met with the duty officer there. Officer A stated that Ms B and her children were fleeing from a women's refuge in England and that both children had learning difficulties and were on the CPR in Town A. She explained that Ms B wished to be re-housed in the Midlothian area, intended to visit the homeless section, and would make enquiries about registering the children with a local GP and school. Officer A explained that the plan was for a Child Protection Case Conference (CPCC) to take place in Town A as soon as possible.

7. On 27 October 2008 Mrs C telephoned the Council's Social Work offices. She informed them that Ms B wished to return to England for a few days and had requested that Mrs C take care of Miss B and Master B. Mrs C had agreed and had spoken to Officer A to confirm that she would take care of both of the children temporarily. Mrs C was at that time on a week's leave from her full time employment in a supermarket.

8. A Council social worker with a disability specialism (Officer 1) visited Mrs C's home on 27 October where Ms B, Miss B, Master B, Mrs C and her daughter were present. Ms B's proposed temporary return to Town A was discussed. Ms B explained the threats to her and stated that her intention was to stay in Scotland and to obtain housing from the Council's homeless section.

9. On 28 October 2008, in light of Miss B's medical condition (cystic fibrosis), Mrs C telephoned specialist nurses in Edinburgh and was given instruction in managing Miss B's condition including operating her feed machine and administering antibiotics and also contact details of a local charity who might provide support and assistance.

10. Ms B left Mrs C's home on 29 October 2008 to return to Town A and phoned Mrs C on 31 October 2008 after she arrived. When Mrs C phoned Ms B back on 1 November 2008, however, Ms B asked that Miss B and Master B remain with Mrs C permanently as she (Ms B) had no intention of returning to collect them.

11. On 3 November 2008, Officer 1 spoke with Officer A over the telephone. Officer A informed him of a recent discussion with Ms B. Officer A that Ms B had stated to her that she had no intention of staying in Midlothian and that she would return to Scotland to collect the children and bring them back with her to the Town A area. Officer A had advised Ms B that if she planned to fetch the children and return with them to Town A, then Town A's Social Services would start proceedings to remove the children and place them into care.

12. On 5 November 2008, Mrs C visited a local school which supports children with special needs to discuss Miss B and Master B's enrolment. The children commenced at the school on 24 November 2008.

13. Officer 1 carried out another home visit on 10 November 2008. At that visit, Mrs C, who had been given no offer of financial assistance by Town A

Social Services, requested two single beds for Miss B and Master B. Officer 1 explained that the Council would manage the Child Protection Plan but that senior managers had not (at that stage) accepted a case transfer from Town A Social Services. Mrs C advised Officer 1 that she had consulted a solicitor. Later that day, Officer 1 discussed the matter with Child Protection reviewing officers at the Council. The advice he received was that Town A Social Services should fund the request for the two beds. The file note recorded that if the Council were to accept transfer, then Town A Social Services would have to follow due process and have a review CPCC and either de-register the children (as the perceived risk is no longer evident) or make a formal request for transfer to the Council's area. Officer 1 telephoned Officer A shortly thereafter and was advised that a review CPCC was scheduled for 26 November 2008 in Town A and she requested an update from Midlothian. Officer 1 also telephoned the local school, the Council housing department, and Miss B's nurse at the hospital to inform them that he was the allocated social worker. On 11 November 2008, since her then current top floor flat was now unsuitable, Mrs C submitted an application to the Council for a house transfer. Mrs C said that the only financial assistance provided by the Council at this time was £21 each to provide Miss B and Master B with Christmas presents.

14. Officer 1 wrote to Mrs C's solicitor on 18 November 2008 with regard to Mrs C's application for a residence order under section 11 of the Children (Scotland) Act 1995. Officer 1 confirmed that the Council would be supportive of that application.

15. On 24 November 2008, Officer A and Officer 1 prepared separate reports for the review CPCC on 26 November 2008 in Town A. In his report, Officer 1 quoted the guidance he had obtained from the Council's Child Protection reviewing officers (see paragraph 13), namely that the Council should await the outcome of the CPCC in Town A. The Council would then hold a transfer CPCC as soon as possible when it would be expected Town A would relinquish registration upon the outcome of the Council's CPCC. If this happened, the Council's CPCC would consider CPR only and not case transfer since, until Mrs C could obtain parental rights and responsibilities, the case should remain Town A's responsibility. Officer 1 also undertook that if Ms B should return to the Council's area with a view to taking Miss B and Master B, then the Council would apply for a Child Protection Order. Mrs C said that she was invited to attend the CPCC in Town A and had attended.

16. The decision of the Town A review CPCC on 26 November 2008 was that Miss B and Master B continue to be subjects of Children Protection Plans. Eleven recommendations were made. A copy of the decision was sent to the Council on 28 January 2009.

17. A detailed Child and Young Person's assessment was then prepared by Council social workers for a transfer CPCC to be held at the Council's offices on 9 February 2009. The attendance of a representative of Town A Social Services was not considered necessary. The Council's CPCC agreed to the transfer of CPR responsibilities but decided, since Miss B and Master B were not at risk, they should not be registered.

18. Mrs C related at interview the financial stress her decision had entailed. Since her employers had not agreed in October 2008 to extend her leave, she resigned her employment and, in so doing, rendered herself ineligible for unemployment benefit. Meanwhile, Ms B continued to be in receipt of child benefit for Miss B and Master B for several months and it was only through the intercession of the charity recommended to her (see paragraph 9) that she was able to have awards of benefit for the children transferred to her name.

19. An initial writ with regard to an application under section 11 of the Children (Scotland) Act 1995 was prepared by Mrs C's solicitor for the court case calling in May 2009, and on 23 March 2009, the court requested a report from the Council. The Council's report, dated 29 April 2009, referred to the children (Miss B and Master B) living with Mrs C under a 'voluntary agreement'.

20. On 5 May 2009, Mrs C was granted an order for parental rights and responsibilities in respect of Miss B and Master B in terms of section 1, 2 and 11(2)(b) of the Children (Scotland) Act 1995. The extract became available on 20 May 2009. A copy was sent to Officer 1.

21. In the course of that process, Mrs C made application for financial support and this application was processed. In August 2009, Mrs C, her daughter, Miss B and Master B moved to her present address, a modern Council four bedroom terraced house with an additional toilet downstairs and an enclosed garden. Mrs C was by October 2009 receiving, through Direct Payment, 24 hours per week respite care assistance. She used this to employ two respite carers; one undertaking three 24 hour shifts per month and the other one a single 24 hour shift.

22. On 17 March 2010, Mrs C submitted an application for re-assessment of Direct Payment to Midlothian Social Work seeking an additional 12 hours respite per week in line with her intention to restructure the respite to 12 hour shifts. This application was considered at a respite panel on 12 April 2010. The associated financial assessment noted that Mrs C was at that time in receipt of income support, a carer's allowance, child benefit and child tax credits. Master B was in receipt of disability living allowance (DLA) at the low rate for mobility and the high rate for care. Mrs C used the mobility component of the children's DLA to fund a car to facilitate greater opportunity for them to access local resources.

23. On 20 April 2010, Mrs C submitted a complaint against Town A Social Services. In that letter, she stated that she had had to give up a well paid full-time job to look after Miss B and Master B and that she had incurred expenditure in moving home. Mrs C later contacted the office of the Local Government Ombudsman in England. On 25 October 2010, at the stage 2 review, a newly appointed manager for Town A Social Services accepted that that department should have ensured Mrs C did not suffer financial hardship in meeting the needs of Miss B and Master B and apologised for any additional pressure that may have caused Mrs C especially as she had undertaken to care for Miss B and Master B. Mrs C was offered £3450 in full and final settlement to cover debt she had previously incurred prior to 9 February 2009 plus a £500 'time and trouble' payment.

24. Mrs C, having then become aware of the initiative of the Scottish Government to institute a national system of kinship care allowance, also submitted a complaint to the Council on 20 April 2010. Her letter referred to her having instituted enquiries as to whether she was entitled to assistance in the form of kinship care allowance from the Council.

25. Mrs C thereafter had meetings with a Fieldwork Group Manager (Officer 2) of the Council. Officer 2 recalled that she had explained to Mrs C the criteria for eligibility which Mrs C did not meet. She recalled that Mrs C was appreciative of the respite assistance funding that she was then receiving.

26. The Director of Social Work replied to Mrs C on 17 May 2010. He stated that advice had been sought from the Council's Legal Services Manager and that it remained the Council's position that Miss B and Master B were not

formally legally accommodated with Mrs C and that the circumstances did not meet the criteria for payment of kinship care allowance. He stated that involvement with the CPCC was a separate process to those processes associated with a child becoming looked after and accommodated. He also stated that the respite care package was intended to support Mrs C in her caring role. That too was a separate process from how Miss B and Master B came to be looked after by Mrs C.

27. Mrs C further pursued her complaint in an email of 21 August 2010. On 27 August 2010, the Council's Director of Education and Children's Services confirmed that she did not meet the criteria for payment of kinship care allowance by the Council 'as the children were never formally accommodated by [the] Council'.

28. After further email contact, in which Mrs C repeated her request for payment of kinship care allowance, the Chief Executive responded by letter of 1 October 2010. He confirmed that the circumstances in which Miss B and Master B came to live with Mrs C did not meet the criteria for payment of kinship care allowance as agreed by the Council and that it was also the case that Town A had no responsibility for providing payment because the children were with Mrs C as a result of what was a 'voluntary and private arrangement'. He also assured Mrs C that the Council's Children and Families Service would continue to provide funding for a respite care package to support Mrs C in her role as carer for Miss B and Master B and that the staff directly involved would regularly re-assess the children's circumstances and review their care/support plan. The Chief Executive concluded by stating that he appreciated that Mrs C had taken on very significant responsibility in caring for Miss B and Master B and had had to make major sacrifices and significant adjustments in terms of her personal circumstances, but it was not possible for the Council to pay kinship care allowance, and he was unable to respond favourably to her request.

29. On 21 October 2010, Mrs C was advised of her statutory right to refer the matter, under the Social Work (Representations Procedure) (Scotland) Order 1996, to the CRP which would report to the Council's Cabinet. Mrs C submitted her case to the CRP in a letter of 16 November 2010. That letter set out how she had come to look after Miss B and Master B, the additional costs that she had incurred, and urged that she be treated equally and fairly as other carers in Midlothian.



30. The Council's Director of Education and Children's Services prepared the Council's submission for the CRP on 24 November 2010. That report clarified the position of the Council in relation to kinship care/relative care payments and highlighted that these were only payable where a child was actively placed in a family by the social work authority and that the Council's position, that Mrs C was not entitled to kinship care allowance, was in accord with the guidelines issued by the Scottish Government.

31. The CRP was postponed due to bad weather in December 2010 and was rescheduled for 20 January 2011. Mrs C was accompanied to the CRP by a founder member of a self-help group (Mr D) set up to provide practical assistance and advice to relative carers. The Council's Social Work Service were represented at the CRP by Officer 1 and the then Head of the Social Work Service (Officer 3).

32. After hearing Mrs C and Mr D and Officer 3, the CRP concluded that the guidance from Scottish Government on the payment of kinship care allowance was clear and that Mrs C did not qualify for such payments. They recorded their admiration for Mrs C and considered that her case was worthy of support. They made two recommendations for future reference: first, with regard to using clear and simple language in such cases and taking care in explaining the legal interpretation of terminology; and second, ensure that Council staff, when visiting clients on behalf of another local authority, make it clear that they are acting on behalf of that local authority and not on behalf of the Council and confirm that in writing as soon as possible after the visit.

33. The outcome of the CRP was reported to the Council's Cabinet on 1 March 2011. On the same day, Mrs C was advised by the Council's Legal and Secretarial Manager of the Council Cabinet's acceptance of the CRP's recommendations and of her entitlement to take her complaint to the SPSO. The complaint from Mrs C was received by the SPSO on 8 April 2011.

**Complaint: The Council's CRP was not provided with adequate information on the children's situation to reach a decision**

34. Making payments to relatives or kin who take over the care of children (who might otherwise require to be fostered or to enter a children's home) has been recognised as a significant issue for over twenty years. Prior to the last reorganisation of local government in April 1996 some authorities sought to use

general powers available in the Social Work (Scotland) Act to support discretionary payments to relative, kinship or link carers. The major identified benefits were that the children involved would be brought up by relatives whom they knew and who were committed to their wellbeing, was less costly than a care home or fostering, and in the longer term, social problems would be deemed less likely.

35. On 4 December 2007, as part of a strategy introduced under the concordat between the Scottish Government and the Convention of Scottish Local Authorities, the Scottish Government's Children's Minister announced the introduction of a minimum weekly allowance of between £119 and £198 for all carers with the stated intention by 2011 of putting kinship carers on a par with foster carers together with the rolling out of an information and advice service for kinship carers. The sum of £24 million was to be earmarked for the implementation of the strategy over three years, with the allowance due to be introduced from 1 April 2008. In September 2008, national interim guidance on *Assessment and Support for Kinship Carers of Looked After Children* was published. The statutory position changed on 28 September 2009, when *The Looked After Children (Scotland) Regulations 2009* came into force, stipulating what is required in the provision of kinship care arrangements.

36. On 26 February 2008, the Council's then Acting Director, Social Work, had prepared a report for submission to the Council's Cabinet on 18 March 2008 explaining the background to a proposed Kinship Care Policy, seeking agreement to that policy, and seeking to maximise the income levels for kinship carers statutorily involved with the Council to ensure that they received the same level of allowances as that paid to foster carers (after consideration of other income/allowances are taken into account).

37. The report emphasised that the definition of kinship care that had been introduced in the Scottish Government policy announcement *Getting it Right for Every Child in Kinship and Foster Care* defined kinship care as 'a relative or close friend who cares for a child or young person where: 1) the local authority places the child or young person with the relative; or 2) an order by the court or children's hearing requires the child or young person to live with them'. As at February 2008, Midlothian was paying allowances for 81 children. The report recognised that there was a significant number of kinship carers who had taken on the responsibilities without any statutory involvement with social work and, therefore, no financial support. The concordat envisaged supporting Citizens

Advice Scotland to provide financial advice on income maximisation to relevant families. The Cabinet on 18 March 2008 approved the terms of that report.

38. The Council's submission to the CRP (see paragraph 30) set out the background to kinship care allowances announced in December 2007 (see paragraph 35), maintained that officers worked consistently with the guidance, and that the Council's position was not to pay allowances when private arrangements are made.

39. In her submission, Mrs C maintained that Ms B had abandoned Miss B and Master B with her. She maintained that, had she not assumed parental responsibility for Miss B and Master B (and they had required to return to Ms B), Town A Social Services would have taken Miss B and Master B into care.

40. In making her complaint to the SPSO, Mrs C believed that specific relevant information that she obtained subsequent to the CRP as a result of a Freedom of Information request had not been considered by the CRP, particularly, that the CRP had not properly addressed the main issue that Ms B had abandoned Miss B and Master B with Mrs C and that it was not a voluntary arrangement between her and Ms B.

#### *Conclusion*

41. The jurisdiction of the SPSO does not extend to local government in England and I must refrain from commenting in detail on the actions or any omissions of Town A Social Services. I simply note that, following Mrs C's complaint against Town A, shortcomings were acknowledged, an apology was tendered, and an offer of settlement made (see paragraph 23).

42. Mrs C required to make two decisions in October and early November 2008. The first on 21 October 2008 was to respond affirmatively to a request by Officer A to provide temporary shelter to Ms B and her children. The second, more significant decision, after Ms B informed her on 1 November 2008 by telephone from England that she had no intention of returning for her children, was for Mrs C to accept immediate parental responsibility for Miss B and Master B, both of whom have special needs, and to sacrifice her fulltime employment.

43. Mrs C had the opportunity to make a written statement to the CRP and both she and Mr D addressed the CRP as to her challenge of officers' decisions

not to make a kinship care allowance to Mrs C. While Mrs C obtained additional information as a result of her information request, the issue members of the CRP considered was whether officers had erred in not considering Mrs C eligible for kinship care allowance. While their circumstances were difficult, Miss B nor Master B had never been placed in care by the local authority in England or been subject to a court or children's hearing order in Scotland. Since Miss B and Master B did not return with Ms B to England, the threat of placing them in care there was speculative rather than actual. Mrs C is, nevertheless, right to consider that Ms B effectively abandoned Miss B and Master B with her and she was compelled to act as she did in the circumstances. The Council in 2009 (see paragraph 19) described the arrangement as a 'voluntary' one, but that was made in the context of the then legal proceedings. Mrs C voluntarily welcomed Miss B and Master B into her home and then later considered herself morally compelled in the circumstances to keep them. That very commendable action was in the best interests of Miss B and Master B but, in terms of the CRP's consideration, did not render Mrs C eligible in terms of the guidelines for kinship care allowance.

44. While a fuller explanation of the circumstances whereby Mrs C accepted responsibility for Miss B and Master B might have persuaded Mrs C that the CRP had fully considered all the circumstances, the CRP appear to me to have had sufficient information to reach their decisions. The CRP were in admiration for Mrs C's actions but, unfortunately for her, did not consider that officers had erred in not assisting her further through the award of kinship care allowance.

45. While Mrs C may have been aware at the time through the publicity given to the introduction of kinship care allowance in Scotland, I see no evidence that she was misinformed or misled by the Council that she would be eligible for a relative care allowance. Given that the Council were clear that initially they were only assuming responsibility for child protection, I find it unlikely that the Council would have informed Mrs C that she would be eligible and that her decision was based on an assurance that such funding would be forthcoming. The Council were keen that she apply for parental rights and once she obtained these, were able to re-house her in more satisfactory accommodation and to agree respite care assistance to support her in her role as carer for Miss B and Master B. I do not uphold the complaint. However, I am disappointed to find no evidence in the information presented to me which demonstrates that the financial consequences of Mrs C's second decision were fully explored with Mrs C by Town A Social Services or by the Council, albeit the primary

responsibility for that counselling may have lain with Town A Social Services rather than the Council. I have one recommendation to make.

*Recommendation*

46. I recommend that the Council:

*Completion date*

- (i) in the light of the circumstances of this case consider whether, when they are acting on behalf of an another social work authority, they provide a clear written statement of the limitations of their role and direct a carer to sources of further information.

21 June 2012

47. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify him when the recommendation has been implemented.

**Explanation of abbreviations used**

Mrs C	The complainant
Ms B	The wife of Mrs C's brother
Officer 1	A Council social worker with a disability specialism
The Council	Midlothian Council
CRP	The Council's Complaints Review Panel
Mr B	Mrs C's brother
Miss B	Ms B's younger daughter
Master B	Ms B's son
Town A	A town in England where Ms B and her children resided immediately before travelling to Scotland in October 2008
Town A Social Services	Town A's social work services department
Town B	Another town in England
CPR	Child Protection Register
Officer A	The case social worker in Town A
CPCC	Child Protection Case Conference
DLA	Disability Living allowance

Officer 2	The Council's Fieldwork Group Manager
Mr D	A representative of a voluntary group supporting kinship carers
Officer 3	The Head of the Council's Social Work service