

## **The Ombudsman's final decision**

Summary: Mrs B complained that Council Y failed to pay her the correct rate of fostering allowance for Child C when she transferred as a foster carer to a different authority. Council Y accepts it has no records as to why it paid a lower rate for this child and has offered a remedy of £7000. I agree there was fault by Council Y and consider it should pay Mrs B £7000.

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## **The complaint**

1. Mrs B complains that the London Borough of Havering (Council Y) wrongly paid her a lower rate of fostering allowance from 2012 and did not advise her of the reasons why she was only entitled to this level of allowance or why it was not paying her the higher rate (paid by the neighbouring borough of Barking and Dagenham (Council Z). Although she knew a few years ago that Council Z paid a higher rate, she did not realise until 2017 that she should have been receiving the higher rate. She also complains that Council Y declined to consider her complaint at stage two of its complaints procedure.

## **The Ombudsman's role and powers**

2. 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*)
3. 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**

4. I have considered the complaint and the documents provided by the complainant and discussed it with her. I have made enquiries of both Council Y and Z and considered the comments and documents both Councils provided. I have written to Mrs B and the Council with my draft decision and considered their comments.
5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

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## What I found

### Transfer of foster carers protocol

6. These guidelines produced by the fostering network say that where it is agreed that a child's placement will continue with a foster carer, the recruiting service should, as a minimum, continue to pay the foster carer their current rates of allowances and fees in relation to that placement. These rates should continue to apply for the duration of the placement, subject to any annual agreed increases and movement through the age bands.
7. The most recent document is dated 2014 and was updated in 2015. I found an earlier copy from 2012 which contained the same information.

### What happened

8. Mrs B has been a foster carer with Council Y since 2007 and has looked after child C since 2008. In 2011, she decided to transfer as a foster carer to neighbouring Council Z.
9. Both Councils say the protocol for payment of fostering allowances in transfer situations remains with the Council that placed the child; in this case Council Y.
10. Both Council Y and Council Z have provided the same notes of the Transfer of Care Protocol meeting on 16 September 2011. Mrs B was present along with representatives of both Councils. Council Z was in the process of approving her as a foster carer and approved of C remaining with Mrs B. It agreed to supervise the placement.
11. Under the heading 'Financial Arrangement' it says:

*"[Council Y] will maintain the current fostering rate for [C]- this will be reviewed annually, [Mrs B] is in agreement with this.*

*[Council Y] will pay administrative fee to [Council Z] for supervision of the placement in respect of [C]. [Council Z] to invoice."*
12. Council Y has also provided an email it sent to Mrs B on 1 September 2011 stating that Council Z's fostering rates were much higher than its own, but confirming that Council Y would continue to pay her for C at its lower rates.
13. Mrs B says Council Y only allowed her to transfer to Council Z if she agreed to accept a lower rate of allowance from Council Y and signed a letter to that effect. She said she had no choice. Neither Mrs B nor Council Y have been able to provide a copy of this letter.
14. Documentation provided by Council Y from December 2011 notes that C moved to Council Z with Mrs B on 7 December 2011 and that Council Z would pay Mrs B direct plus a 10% supervision fee but it would invoice Council Y for the money.
15. Council Z says that it failed to start paying Mrs B until 7 January 2012. But Council Y also continued to pay Mrs B so she was paid twice. A meeting took place with both Councils and Mrs B on 18 September 2012 to resolve the errors. The notes of this meeting say:

*"At the transfer meeting (unattended by staff present) it was agreed that Council Y would cease payment to Mrs B on 07/12/2011, that Child #1 [a different child in Mrs B's care] would be paid at [Council Z] rates whilst child #2 [C] would be paid at [Council Y] rates +10%".*
16. Council Z agreed to pay the backdated money for the missing period and Mrs B agreed to pay back the double payment to Council Y.

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17. Council Y has provided a letter it sent to Mrs B on 13 July 2013, explaining how she would repay the overpaid money from December 2011 until July 2012. It said in this letter:
- “It was agreed at the Transfer of Carer Protocol meeting on 16 September 2011 that [Council Y] would continue to pay [Mrs B] for this placement. This goes against usual practice which would be for the local authority that the carer is registered with to manage their payments. We will revert to this system.”*
18. Council Z has provided a payment record showing it began paying Mrs B on 7 January 2012 at a rate of £312 per week. It increased this on 17 March 2013 to £351.88 per week and this remained the same until January 2017 when C left Mrs B’s care. He returned to Mrs B in July 2017 and Council Z started to pay £454.50 per week (Council’s Z’s rate). Council Z says it negotiated this rate with Council Y as the lower rate had been causing Mrs B problems.
19. Mrs B complained to Council Y about the failure to pay her the higher rate at an earlier point. Council Y said it had no other records beyond the Transfer Protocol meeting notes and the email to Mrs B confirming that she would be paid at Council Y rates. The notes indicate Mrs B agreed to the arrangements and did not dispute them. She was paid at a higher rate for other children in her care and so was aware of the discrepancy. Council Y declined to investigate the issue at stage two of its procedure.

#### **Council Y’s response to us**

20. Mrs B complained to the Ombudsman. In response to my enquiries Council Y said it could not find any records to explain why it agreed to pay its lower rate rather than Council Z’s higher rate. It had no policy or contract indicating what should happen in a transfer situation. In recognition of the lack of documentation it offered to pay Mrs B £7097.50.
21. It arrived at this figure by paying the difference in rates between Council Y and Council Z from the date Mrs B transferred to Council Z (December 2011) to the date Council Y said that Council Z took responsibility for the payments (July 2013).

#### **Council Z’s response to us**

22. I also made enquiries of Council Z to obtain its view of the situation. It said that although the written agreement in the notes of the transfer protocol meeting (16 September 2011) does not have legal weight, there is nothing to suggest C’s needs could not still be fully met at Council Y’s rate and Council Y was under no obligation to pay Council Z’s higher rate. But it says in general, the rates of the responsible agency for the foster carer (ie Council Z) would usually be recovered from the authority responsible for the child (Council Y).
23. It also said that the rate of pay was not challenged between 2012 and 2017: it was only in July 2017 when C returned to Mrs B’s care after a gap that it was asked to renegotiate a higher rate. It said other children had been placed with Mrs B during this period so it felt she could have queried the rate for C if she felt it no longer met his needs. In its view, the payments have been administered in accordance with the agreement reached in 2011.

#### **Analysis**

24. There is no requirement, either statutory or non-statutory, for Council Y to pay a particular rate of fostering allowance in this transfer situation. Council Y met the

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minimum requirements of the guidelines to pay at least the rate it was currently paying. Council Z has referred to a 'general rule', that the rate of the receiving authority is paid and recovered from the authority responsible for the child. This would appear to be custom and practice. I note this more favourable arrangement was applied to the other child mentioned in the minutes of the meeting from September 2012. I have concluded that Council Y was entitled to reach the agreement it did and Mrs B was aware of it.

25. In the absence of any further evidence as to the reasoning, I cannot reach a conclusion as to whether Mrs B was forced to accept this arrangement. But I have seen no evidence that an alternative was offered or considered. Mrs B's paramount concern would have been for continuity of care for C at that point, so challenging the decision may have been difficult.
26. However, the evidence from September 2012 indicates she was aware of the differential rates as another child was paid at a higher rate. So it would have been possible for her to challenge the lower rates sooner than she did, once the transfer had taken place and all parties were settled.
27. But Council Y cannot provide any rationale or reasons why it agreed to pay its rate for C and higher rates for other children. This created uncertainty for Mrs B as to whether the situation could or should have been different. I agree it was reasonable for Council Y to offer to remedy this by way of a payment.
28. But there is a problem with how it has been calculated: I do not accept that Council Z took over responsibility for managing payments in July 2013. Council Z had been paying Mrs B since January 2012 and invoicing Council Y to recover the money. There was no change to that arrangement in July 2013. I think confusion has arisen on the part of Council Y over the fact it continued to pay Mrs B in error at the same time as Council Z paid Mrs B. However, the double payments stopped in July 2012 and a resolution was agreed in September 2012. Council Y only arranged repayment of the overpayment with Mrs B in July 2013. Responsibility for the payments remained with Council Y because it was responsible for C; but they were administered by Council Z.
29. It could be argued that Council Y has unreasonably introduced an arbitrary stop date for the payments and should pay the difference for the whole period up to January 2017. I do not consider this is reasonable as there was no obligation for Council Y to pay the higher amount at all, Mrs B was aware of differential payments for other children but did not challenge the rate for over five years and there is no evidence that C's needs were not met during this period.
30. Neither do I consider it reasonable to withdraw the offer and pay nothing at all, as the situation is very unclear and has taken some months to even get to this point. Council Y should be able to justify the original basis for the agreement to pay its own rates for C. It's failure to do so is fault.
31. I cannot find fault in Council Z's actions.

### **Agreed action**

32. For the reasons given above, I recommended Council Y pays Mrs B £7,000 (the equivalent of the remedy already offered) in recognition of the uncertainty and frustration she has been caused by this matter.

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## **Final decision**

33. I have completed my investigation on this basis: There was fault by Council Y causing injustice to Mrs B but I consider the remedy offered by Council Y is an appropriate way of putting matters right.

## **Investigator's decision on behalf of the Ombudsman**