

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Birmingham City Council
(reference number: 19 005 305)**

2 November 2020

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

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 don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms X	The complainant
C	Child Ms X cared for

Report summary

Family and friends carers

Ms X complains the Council failed to recognise her and her partner as family and friends carers when a private fostering arrangement for Child C ended.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council:

- apologise to C for not acting sooner to secure her legal status and address the issues with contact, and pay her £1,000 for the uncertainty and distress this caused;
- apologise to Ms X and her partner for failing to assess them as family and friends carers, and pay them £1,000 for the frustration caused by this. This payment also recognises the stress caused by having to secure C's immigration status, and pursuing their complaint;
- pay Ms X and her partner the allowances they would have received as family and friends carers, minus any benefits they received to care for C. Ms X should provide evidence of benefits received before the payment is made. This should cover from April 2017 when C's mother died to May 2019 when C moved to another placement;
- on the production of evidence of costs by Ms X, make a payment to C's trust fund to cover the cost of her application for leave to remain and citizenship;
- add copies of the stage two investigation report and adjudication, the stage three panel report and adjudication, and this decision to C's records for her reference in the future;
- remind social workers that private fostering arrangements are voluntary and subject to the agreement of a person with parental responsibility and the willingness of the private foster carer;
- remind social workers of their responsibility to promote contact between children in private fostering arrangements and their parents;
- review all open private fostering cases to ensure it has documented: the readiness of the carer to continue caring; the expected duration of the placement; the arrangements to support the child financially; and that arrangements for contact are satisfactory; and
- review open cases of unaccompanied children to ensure it is offering the support outlined in the statutory guidance, 'Care of unaccompanied migrant children and child victims of modern slavery,' especially regarding the child's immigration status.
- share the outcome of both reviews with us.

The complaint

1. Ms X complains the Council failed to recognise her and her partner as family and friends carers when a private fostering arrangement for Child C ended. As a result, she says they did not receive the protection of being recognised as family and friends carers. They also did not receive any financial support from the Council to care for C. Ms X is looking for an apology, recognition and payment as family and friends carers for the period they cared for C after her mother died, and an improvement in the Council's procedures.

Legal and administrative background

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
4. 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 report with Ofsted.

Private fostering

5. A private fostering arrangement is made without involving a council. A child is privately fostered if they are cared for by someone other than a parent or close relative for 28 days or more.
6. Private foster carers are responsible for the day-to-day care of a child. Responsibility for safeguarding and promoting the welfare of the child remains with the parent.
7. The Department for Education has published statutory guidance on private fostering, 'Replacement Children Act 1989 Guidance on Private Fostering,' which outlines councils' responsibilities to privately fostered children, their parents and their carers.
8. Councils have a duty to satisfy themselves the welfare of children who are or will be privately fostered is safeguarded and promoted.
9. Councils also have a duty to find out the arrangements for contact between the child and its parents. If arrangements for contact are not satisfactory for the child, councils should discuss this with the private foster carer and birth parent where possible.
10. Councils must check the private foster carer and the parents have agreed financial arrangements for the care and maintenance of the child. They must also ensure the parents and the proposed carer understand and agree the intended duration of the private fostering arrangement. Statutory guidance about family and friends care says the duration of a private fostering arrangement is "subject to the

discretion of a person with parental responsibility and the readiness of the private foster carer.”

11. Councils should visit every privately fostered child at least every six weeks for the first year of the arrangement, then at least every 12 weeks in the following years.

Family and friends carers

12. Section 20 of the Children Act 1989 says councils should provide accommodation to any child in need within their area who needs it, because:
 - there is nobody with parental responsibility to care for them;
 - they have been lost or abandoned; or
 - the person who has been caring for them being prevented from providing suitable accommodation or care.
13. Councils cannot accommodate a child under section 20 if a person holding parental responsibility objects and is willing and able to care for the child or arrange care for the child.
14. Councils need to distinguish between private arrangements made between parents and carers, and arrangements in which the child is accommodated under the Children Act 1989 and so is a looked after child.
15. When a child needs to be accommodated, the law says councils should consider placing them with family or friends first. Family and friends foster carers can receive a fostering allowance and other practical support from the council.
16. The courts have considered whether arrangements for a child to live with a relative or friend are truly a private arrangement. In a key case ([London Borough of Southwark v D \[2007\] EWCA Civ 182](#)), the Court said where a council has taken a major role in arranging for the friend or relative to care for the child, it is likely to have been acting under its duties to provide the child with accommodation.
17. The Court considered a private fostering arrangement might allow a council (otherwise likely to have had to provide accommodation for a child), to ‘side-step’ that duty. For a council to side-step its duty, it must have given the carer enough information to allow them to give their ‘informed consent’ to accepting a child under a private fostering arrangement. To do this the carer must have known, because of what the council told them, that the child’s parent would continue to be financially responsible. Without that informed consent, the council could not side-step its duty.
18. In 2013, we published a focus report, ‘[Family Values: Council services to family and friends who care for others’ children](#)’. The report highlighted common faults in councils’ handling of cases where children were living with family and friends. This included councils failing to recognise they had a duty to accommodate a child and gaining agreement to an informal family and friends care arrangement under duress.

Unaccompanied migrant children

19. Councils have a duty to protect and support unaccompanied migrant children. This includes children who may have begun life in the UK with family and those who may have parents and family members abroad. The Department for Education has published statutory guidance, ‘Care of unaccompanied migrant children and child victims of modern slavery,’ which sets out these responsibilities in more detail.

20. All those involved in the care of unaccompanied children should be able to recognise and understand the particular issues they face. The child may be affected by their experiences, vulnerabilities and immigration status. This may also have an impact on their assessment, care planning and delivery.
21. Social workers should access specialist immigration legal advice and representation for all unaccompanied children to ensure the child can fully present their case for asylum or leave to remain.

How we considered this complaint

22. We produced this report after considering the complaint made by Ms X and the documents she provided; and the Council's comments about the complaint and the documents it provided in response to our enquiries.
23. We gave the complainant and the Council a confidential draft of this report and invited their comments. We took any comments received into account before the report was finalised.

What we found

What happened

2016

24. In September 2016, C's mother approached a local children's centre for support. She had recently been diagnosed with a terminal illness. She had no family in the country to care for her child and was worried about what might happen to her. C's father lived abroad and had little contact with C or her mother. The children's centre made a referral to the Council for support.
25. C was 9. Though she was born in the UK, she was not a British citizen. She had leave to remain in the country until December 2018. According to Ms X and others who knew her, C's mother had shared information which suggested C's father was a dangerous man. Ms X's parents had known C and her mother for several years.
26. The Council assigned a family support worker and arranged a professionals meeting. Ms X attended the meeting. Ms X had been introduced to C and her mother as a potential carer for C by her parents, who had been asked to care for C but felt unable to due to their age. Ms X said she may be able to care for C permanently but needed to discuss this more with her family. She approached a local fostering agency to express her interest in fostering C.
27. A few days later, C's school told the Council that C was being cared for under a private fostering arrangement with somebody else. It was unclear when her mother might be well enough to resume caring for her.
28. The records show the Council decided to carry out a family assessment to "ensure that a clear private care plan is in place to ensure that C's day-to-day needs are met." The Council noted that if the assessment could not identify someone to care for C, it would need to take further action to safeguard and promote C's welfare.
29. A social worker visited C's mother in early October. Ms X was there. The social worker noted Ms X would consider caring for C with the support of children's services but was not sure if she could provide permanent care. The social worker

noted C was not being cared for in a private fostering arrangement because she remained in her mother's care.

30. The Council carried out an assessment, which it completed in December. The assessment noted:
- C had not seen her father since she was a baby but had some recent contact with him over Skype;
 - C's mother was seeking support in making arrangements for C before she died;
 - C's father had been refused permission to enter the UK; and
 - Ms X had agreed to be C's legal guardian when her mother died.
- The assessment recommended the case should be closed to children's social care.
31. A family support worker continued to support C into the new year and her school arranged some therapeutic support for her. Her mother received continuing support from adult social care and the local hospice.

2017

32. C began spending more time with Ms X and her family. In February 2017, Ms X became aware that C's father was named on her birth certificate and so held parental responsibility. Ms X sought legal advice which said she could not be C's legal guardian. At Ms X's request, C's father confirmed to her mother in writing that he supported Ms X and her family caring for C. He cited her mother's ill health and his inability to travel to the UK. However, Ms X became concerned C's father would return to the UK to seek custody and did not want to become involved in such proceedings. She told the Council it would need to find another placement for C.
33. Following a home visit in March, the social worker noted Ms X and her partner had agreed to support C under a private fostering arrangement while the Council made further enquiries. C's mother signed an agreement to allow Ms X to arrange some medical and dental treatment for C and completed a written notice that C was privately fostered. The written notice did not include any decision about the duration of the placement. Social work records at the end of March note, "Carers are happy to care for [C] under a private fostering arrangement for the interim time and would then like to be assessed as connected persons [family and friends carers] in the event that mother passes away."
34. C's mother died in early April.
35. The Council carried out a private fostering assessment in May. The assessment noted:
- Ms X and her partner agreed to be private foster carers while C's mother was alive but did not agree to remain private foster carers long-term;
 - Ms X and her partner wished to care for C as family and friends foster carers with support from the Council;
 - the Council did not propose to seek a care order for C and her father had agreed to the private fostering placement continuing;
 - C's mother had asked her father to care for C and he had said no;
 - C did not wish to live with her father;

- there was nobody in the country with parental responsibility;
 - Ms X and her partner could meet C's needs;
 - a permanent plan for C's long-term care needed to be agreed.
36. The Council advised Ms X to apply for a child arrangement order for C so she could share parental responsibility with C's father. Ms X declined as she did not want to continue caring for C on a private arrangement. She kept this position throughout. The assessment decided the placement was a private fostering arrangement and recommended it continue.
37. In July, C's father raised concerns with the Council about a lack of contact with his daughter. C told her social worker during a home visit that she had not spoken to her father because her carers had changed their telephone number, but she would like to speak to him. The social worker emailed C's father and Ms X, advising them to arrange contact between themselves. C repeated her request for contact in September.
38. In October, the social worker overseeing the private fostering arrangement discussed the case with her manager. Ms X had recently complained about the Council's decision not to seek a care order for C. Ms X said C's father was not in support of her applying for any order and had put forward an alternative carer for assessment. The manager's view was that Ms X should apply for a child arrangement order. They told the social worker to contact C's father to send him information about private fostering and his responsibilities.
39. In December, the Council held a legal planning meeting. It decided C was not at risk of significant harm. The Council decided to support Ms X with an application for a special guardianship order and to commission an assessment of C's father.
40. C's father underwent an assessment, and he expressed a wish for C to live with him and his family abroad.

2018

41. At the start of 2018, Ms X told the Council she could not continue to care for C under the current arrangements. C's father withdrew his agreement to the private fostering arrangement. The Council said it needed to consider whether C could return to her father's care.
42. In February and April, C's father raised concerns about a lack of contact with his daughter. The last telephone contact took place in December, and the carers said they had emailed him in January with no response. The Council told him to seek legal advice.
43. By April the Council still believed that C's case did not meet the threshold to apply for a care order because she was receiving a good standard of care. The Council had decided not to continue an assessment of the person put forward by C's father to care for her because of concerns about them. The Council decided to tell C's father to seek legal advice to return his child to his care.
44. In May, C said she was not sure if she wanted to have contact with her father. By August, she told her social worker she did not want contact with him.
45. Ms X engaged a solicitor to apply for citizenship for C so she could remain in the UK, costing almost £3,000. The money came from a trust fund C's mother had set up for her before she died.
46. By October, C's father had not sought further legal advice. He had agreed to a DNA test to confirm his paternity but Ms X said there was nobody with parental

responsibility to consent to the test. At another legal planning meeting, the Council suggested telling the carers if they did not allow the DNA testing to go ahead, they needed to seek a private court order to keep C in their care. Alternatively, she would be deported when her visa expired the following month. C was 11 years old at the time. The Council noted neither the carers nor C's father were taking responsibility for resolving the matter despite being offered funding to secure independent legal advice.

47. By November, C had not had contact with her father for almost a year. She told her social worker again that she no longer wanted to have contact with him.
48. In December, the Council decided to make an application to make C a ward of court. This would allow the court to share parental responsibility for her and consent to the DNA test taking place. In the same month, Ms X completed the application for C's citizenship, which was granted in March the following year.

2019

49. At a planning meeting Ms X attended in January, the Council noted "[team manager] said that as far as [the Family and Friend Care Team] is concerned this is not a private fostering arrangement as [Ms X and partner] are not in agreement with it and it has not been arranged with a parent either but it was agreed that they should continue their monitoring visits for the time being."
50. In March 2019, C was made a ward of court, enabling the court to make decisions about her welfare. Ms X was not advised of the first court hearing at which this decision was made. The court consented to a DNA test which confirmed C's father's paternity. However, during these proceedings Ms X told the Council it had disclosed personal data about her family to C's father's solicitor. Ms X and her partner felt the risk posed by C's father meant they could no longer safely care for C. The Council applied for an interim care order and C moved into another foster placement in May.
51. Ms X's complaint was investigated at all stages of the children's statutory complaints procedure. In its response following the stage three review panel, the Council said it would consider any request to pay back spending from C's trust fund. In response to our enquiries, the Council said it had not yet received this information from Ms X. The Council did not agree to make any backdated payments for the period Ms X and her family cared for C.
52. In its response to our enquiries, the Council recognised it could have done more to promote contact between C and her father. It also accepts it could have acted sooner to resolve the dispute about C's father's paternity.

Conclusions

53. A private fostering arrangement can only continue if both the private foster carers and a person holding parental responsibility for the child agree to it. Ms X was clear with the Council that her agreement to privately foster C lasted only until C's mother died. The Council later accepted the placement could not be considered private fostering. The placement therefore ceased to be a private fostering arrangement from April 2017.
54. From this point, C was an unaccompanied child. The Council decided C's case did not meet the threshold to act to safeguard her. But C was vulnerable in several ways. This included her age; no one having parental responsibility in the

UK; no further action being taken by her carers or her father to secure her legal status; her traumatic past; and her uncertain immigration status.

55. C's placement with Ms X was at risk of breaking down throughout this period. This was because Ms X no longer agreed to privately foster, and C's father withdrew his own consent to the placement in early 2018. The Council did not consider its legal options to secure C's status in a timely way and this was fault.
56. The Council failed to secure specialist legal advice for C despite knowing her leave to remain was ending. It discussed using the threat of deportation to coerce Ms X into seeking a court order and allowing C to have a DNA test. This was fault and resulted in Ms X having to use significant sums of money from a trust fund left by C's mother to resolve her immigration status.
57. The Council carried out one assessment of C's needs before her mother died. It did not carry out any further assessments despite the significant change in C's circumstances and the uncertainty over her living arrangements which began in February 2017. Given C's mother was still alive then, she could have contributed her views on C's future and arrangements for C's care after her death. This was a missed opportunity to assess C's wellbeing and make informed decisions about meeting her needs and was fault. The situation continued for a further two years with no certainty or long-term plan for C.
58. The Council was aware of difficulties over contact with C's father. It did not act to address this with him or with Ms X, or to look for ways to overcome these difficulties. This was fault and resulted in long periods in which C had no contact with her father despite them both expressing a wish to do so.

Injustice

59. As a result of the Council's actions, C spent over two years in a placement that was legally insecure. She was not recognised as a looked after child and therefore missed out on the additional support and protections that come with this. She lost contact with her only remaining relatives and was at risk of being deported due to her fragile immigration status. She lost significant sums from the trust fund provided by her mother. Despite her vulnerabilities and the significant upheaval in her life following her mother's death, her needs remained unassessed and potentially unmet.
60. The Council's failure to recognise Ms X and her partner as family and friends foster carers means they missed out on the financial and practical support which they would have been entitled to. They have experienced prolonged frustration at the Council's refusal to consider them as anything other than private foster carers. They have also dealt with the stress of meeting C's needs, securing her residence and citizenship, and pursuing their complaint.

Recommendations

61. Within one month of the date of this report, to remedy the injustice caused we recommend the Council:
 - apologise to C for not acting sooner to secure her legal status and address the issues with contact, and pay her £1,000 for the uncertainty and distress this caused;
 - apologise to Ms X and her partner for failing to assess them as family and friends carers, and pay them £1,000 for the frustration caused by this. This

payment also recognises the stress caused by having to secure C's immigration status, and pursuing their complaint;

- pay Ms X and her partner the allowances they would have received as family and friends carers, minus any benefits they received to care for C. Ms X should provide evidence of benefits received before the payment is made. This should cover the period from April 2017 when C's mother died to May 2019 when C moved to another placement;
- on the production of evidence of costs by Ms X, make a payment to C's trust fund to cover the cost of her application for leave to remain and citizenship;
- add copies of the stage two investigation report and adjudication, the stage three panel report and adjudication, and this decision to C's records for her reference in the future;
- remind social workers that private fostering arrangements are voluntary and subject to the agreement of a person with parental responsibility and the willingness of the private foster carer;
- remind social workers of their responsibility to promote contact between children in private fostering arrangements and their parents.

62. Within three months of the date of this report, we recommend the Council:

- review all open private fostering cases to ensure it has documented: the readiness of the carer to continue caring; the expected duration of the placement; the arrangements to support the child financially; and that arrangements for contact are satisfactory;
- review open cases of unaccompanied children to ensure it is offering the support outlined in the statutory guidance, 'Care of unaccompanied migrant children and child victims of modern slavery,' especially regarding the child's immigration status.
- share the outcome of both reviews with us.

63. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

64. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms X and to C. The Council should take the action identified in paragraphs 61 to 63 to remedy that injustice.