

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: AUDIT COMMITTEE

Report of: The Chief Executive of Birmingham Children's Trust

Date of Meeting: 26 January 2021

Subject: Ombudsman Report concerning a complaint about Birmingham Children's Trust

Wards Affected: All

1. Purpose of Report

- a) In December 2006, the Audit Committee endorsed a framework for informing and involving Members of the Council when the Local Government and Social Care Ombudsman issues a report.
- b) The aim of this report is to inform members about the Ombudsman's report, issued on 2 November 2020, concerning the Council's failure to recognise the Complainant and her partner as family and friend carers when a private fostering arrangement for Child C ended.
- c) As the Ombudsman has found fault causing injustice and have made recommendations to remedy the injustice caused, it should be considered by this Committee on behalf of the City Council.

** Where the report refers to "the Council" it means the Council acting via commissioned Child Safeguarding Partner, Birmingham Children's Trust.*

2. Recommendations

That the Audit Committee notes Andy Couldrick, the Chief Executive of the Children's Trust response to the Local Government and Social Care Ombudsman's recommendations.

3. Background Information

- 3.1 A copy of the Local Government and Social Care Ombudsman's report dated 2 November 2020 is appended to this report. All Ombudsman reports are anonymous, so, whilst the events described are real, the names of those involved are not included.
- 3.2 The essence of the complaint is that the Council:
- 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.
 - The Councils failed to recognise the Complainant and her partner as family and friend carers when a private fostering arrangement for Child C ended.

4. The Key Events

- 4.1 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. C was 9 at the time. Though she was born in the UK, she was not a British citizen. She had leave to remain in the country until December 2018.

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.

The Council carried out an assessment, which it completed in December 2016. The assessment recommended the case should be closed to children's social care. A family support worker continued to support C into the new year.

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. 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. 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.

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. 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.”

C’s mother died in early April. 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;

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.

In July, C’s father raised concerns with the Council about a lack of contact with his daughter. 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.

In October, the social worker overseeing the private fostering arrangement discussed the case with her manager. The manager’s view was that Ms X should apply for a child arrangement order.

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. C’s father underwent an assessment, and he expressed a wish for C to live with him and his family abroad.

- 4.2 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.

In February and April, C’s father raised concerns about the lack of contact with his daughter. The Council told him to seek legal advice.

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.

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.

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.

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.

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.

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.

- 4.3 At a planning meeting Ms X attended in January 2019, 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."

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.

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.

5. The Ombudsman's Findings - Fault found causing injustice

- 5.1 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.

- 5.2 From this point, C was an unaccompanied child. The Council decided C's case did not meet the threshold to act to safeguard her. 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.
- 5.3 The Council failed to secure specialist legal advice for C despite knowing her leave to remain was ending. 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.
- 5.4 As a result of the Council's actions, C spent over two years in a placement that was legally insecure.
- 5.5 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.

6. The Ombudsman's Recommendations

- 6.1 Within one month of the date of the final report, to remedy the injustice caused the LGSCO have recommend that the Council carry the following out:
- 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.

6.2 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 the LGSCO.

7. The Council's View

- 7.1 The Council accepted the Ombudsman's recommendations at the draft report stage.
- 7.2 While this case identified a number of practice issues, the pivotal issue concerned the legal status of the placement of the young person with the complainant. In the Trust's responses to the Ombudsman, it was acknowledged that the placement was incorrectly treated as a private fostering arrangement. Steps should have been taken to ensure that there was somebody who could exercise parental responsibility for the young person, given that her mother had passed away in April 2017 and her father was overseas (and unable to return to the country).
- 7.3 Practice regarding private fostering arrangements has evolved significantly since the creation of the Trust in April 2018. A review of private fostering cases was undertaken in December 2018 as part of the preparation for an Ofsted inspection, which found all cases to be lawful and appropriate. However, it is recognised that other children and young people may potentially be in the same or a similar situation to the young person in this case.
- 7.4 In addition to undertaking a review of all current/open private fostering cases (see 10.2 below), steps will be taken to ensure that all future complaints concerning private fostering arrangements are immediately brought to the attention of the Trust's Executive Group. This will ensure there is appropriate senior scrutiny of private fostering complaints, which should in turn minimise the likelihood of any similar complaints in the future.

8. Legal and Resource Implications

The agreed payments will be made from an appropriate budget.

9. Risk Management & Equality Impact Assessment Issues

- 9.1 It is crucial that practice with regard to private fostering arrangements complies with case law (and relevant local/national guidance). The failure to comply invites the possibility of further complaints to the Local Government Ombudsman and the potential for litigation against the Trust. While both of these possibilities present an obvious financial risk, there is also a reputational risk due to negative media coverage associated with a maladministration report.
- 9.2 In addition, this case has identified a young person who should have been – but was not – taken into care. The consequence of this is that the young person did not receive the support and protections which any “looked after child” could reasonably expect to receive. This is also a key risk. As an organisation, the Trust is committed to ensuring the best possible outcomes for children and young people, and that they receive all of the support which they are entitled to.
- 9.3 It is anticipated that the steps that Trust has taken or is in the process of taking will mitigate the risks which have been identified.

10. Compliance Issues

- 10.1 Following the receipt of the Ombudsman’s final report, The Trust has taken prompt action to comply with the recommendations made by the Ombudsman. These actions include:
- Letters of apology have been issued to the complainant and the young person by the Chief Executive of Birmingham Children’s Trust, Andy Couldrick.
 - The compensation payments have been made or are currently being processed.
 - A briefing has been issued to all Heads of Service in relation to the Ombudsman’s investigation. Heads of Service have been directed to remind their respective teams 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;
 - All relevant documents from the complaint file have been added to the young person’s social work file so she may be able to access the details of the complaint in the future.
- 10.2 In addition, the Trust has commenced the following further actions as a result of this complaint:
- A review of all open private fostering cases to ensure that the arrangement is appropriate and all pertinent information relating to the arrangement is clearly documented on the case file;

- A review of all open unaccompanied children cases to ensure that The Trust is offering support in accordance with statutory guidance.

11. Recommendations

That the Audit Committee notes the actions being taken in response to the Local Government and Social Care Ombudsman's report.

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