

Local Government and Social Care Ombudsman (LGSCO) Report – a Briefing to Children's Scrutiny Committee

Report of the Director of Children and Young People's Futures

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

1) Recommendation

1.1 That the Committee be asked to:

- a) Note the Local Government and Social Care Ombudsman Report (Appendix 1) and the recommendations outlined within the report.
- b) Consider if the actions taken following the LGSCO complaint are proportionate to the case.

2) Background / Introduction

2.1 Miss B complained that Devon County Council had wrongly deducted child benefit from her Special Guardianship Allowance (SGA) since January 2022, failed to provide a copy of her grandchild's (C) support plan and failed to share information with Miss B. She also complained the Council had delayed significantly investigating her complaint through the statutory complaints process, taking just over a year to complete stage two of the process. These issues caused Miss B significant distress, frustration, and financial hardship.

3) Main Body / Proposal

3.1 Following investigation, the LGSCO made several recommendations. These were all accepted by the Council and are outlined below, annotated with what action the Council has taken for each recommendation:

3.2 To recognise the injustice caused to Miss B, the LGSCO recommend that within three months of the date of this report, the Council:

- apologises to Miss B;
- recalculates her SGA in accordance with the government guidance and pays her a sum equivalent to the child benefit deductions made since January 2022;

- pays her £300 for the delay to the complaints process; and
 - pays her £300 for the lack of information and support following the Special Guardianship Order
- 3.2.1 The Council has apologised to Miss B and made arrangements for the payment of £300 for the delay in the complaints process and the £300 for the lack of information and support following the Special Guardianship Order to be paid to the complainant.
- 3.2.3 The Council has recalculated Miss B's allowance and the sum equivalent to the child benefit deductions made since January 2022 and made arrangements for the new allowance to be paid to her together with the back payment.
- 3.3 For the 170 guardians receiving means-tested benefits, we recommend that within three months of the date of this report, the Council recalculates their SGA in accordance with the government guidance and pays them a sum equivalent to any child benefit deductions from the date of this report.
- 3.3.1 All 170 special guardians known to be receiving means tested benefits were sent the finance review paperwork in November 2023. To date 52% have completed the finance review forms and returned them to the Council. Their allowances have been recalculated and they will receive the updated allowance with effect from the 1st January 2024. Reminders have been sent to the remaining special guardians by post and by email, followed up with telephone calls, to try and resolve the outstanding reviews.
- 3.4 For the 125 carers about whom the Council holds no information, we recommend that within three months of the date of this report, the Council invites them to provide information to enable it to review their financial circumstances and where appropriate, recalculates their SGA in accordance with the government guidance and backdates the SGA without deductions from the date of this report.
- 3.4.1 The Council has written to the 125 social guardians in respect of whom no financial information is held to request that they complete a financial review. Any of them who are in receipt of means tested benefits will also have their allowances recalculated and the new allowance paid with effect from the 1st January 2024.
- 3.5 LGSCO also recommend that the Council within three months of the date of this report reviews the operation of its complaints service in respect of stage two investigations under the children's complaints process to ensure that statutory timescales are being met.
- 3.5.1 Work is ongoing to improve the timeliness in response to stage 2 complaints in Children's Services and the impact is already evidential via the data we receive from the Customer Relations Team. At the time of the original Stage 2 complaint, there was a significant lack of investigators, meaning a lengthy delay in moving forward to Stage 2. We are no longer in that position but the Customer Relations Manager will

review the situation in line with this recommendation at the appropriate time to assess if any further improvements need to be made.

3.6 LGSCO recommend a review is repeated on a quarterly basis for one year. If it identifies shortcomings the matter should be put before a suitable committee of elected members to consider potential solutions.

3.6.1 This Scrutiny session is the Council's opportunity to consider the report and the service's response. The actions, set out within this report have been taken or are planned to comply with the LGSCO's recommendations.

4) Options / Alternatives

4.1 This paper is for information only so there are not any other options/ alternatives.

5) Consultations / Representations / Technical Data

5.1 This paper is for information only so there are not any consultations/ representations/ technical data.

6) Strategic Plan

6.1 The actions and learning from the recommendations within the report aligns with Devon County Council's strategic plan; to be ambitious for childrens and young people, as well as their families. The issues raised have been taken seriously and they have already changed practice.

7) Financial Considerations

7.1 Within the recommendations in the LGSCO report outlined above there is financial impact.

8) Legal Considerations

8.1 As the Council have accepted the recommendations, there is a legal obligation to fulfil these within 3 months and provide the evidence to the LGSCO.

9) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

9.1 This paper is for information only so there are not any environmental impacts to consider.

10) Equality Considerations

10.1 This paper is for information only so there are not any equality considerations. We will ensure we consider the Equality Act 2010 in all learning from the recommendations.

11) Risk Management Considerations

11.1 The risks are outlined in the LGSCO report and will be taken into consideration in all learning from the recommendations.

12) Summary / Conclusions / Reasons for Recommendations

12.1 The Council have accepted the recommendations in the LGSCO report and will ensure that the learning from these recommendations are embedded into practice.

Steve Liddicott

Head of Children's Health and Wellbeing

Electoral Divisions: All

Cabinet Member for Children's Services: Councillor Andrew Leadbetter

Contact for enquiries:

Name: Steve Liddicott

Telephone: 01392 380364

Address: 130, County Hall, Topsham Road, Exeter, EX24QD

Appendix 1 – LGSCO Report

(Link to view on the LGSCO website if preferred - [23 000 973 - Local Government and Social Care Ombudsman](#))

Overview:

1.1.1 Key to names used

- Miss B The complainant
- C Her grandchild

1.1.2 Summary

Miss B complained that the Council had wrongly deducted child benefit from her Special Guardianship Allowance (SGA) since January 2022, failed to provide a copy of her grandchild's (C) support plan and failed to share information with Miss B. She also complained the Council had delayed significantly investigating her complaint through the statutory complaints process, taking just over a year to complete stage two of the process. These issues caused Miss B significant distress, frustration and financial hardship.

1.1.3 Finding

Fault found causing injustice and recommendations made.

1.1.4 Recommendations

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)

To recognise the injustice caused to Miss B, we recommend that within three months of the date of this report, the Council:

- apologises to Miss B;
- recalculates her SGA in accordance with the government guidance and pays her a sum equivalent to the child benefit deductions made since January 2022;
- pays her £300 for the delay to the complaints process; and
- pays her £300 for the lack of information and support following the Special Guardianship Order.

For the 170 guardians receiving means-tested benefits, we recommend that within three months of the date of this report, the Council recalculates their SGA in accordance with the government guidance and pays them a sum equivalent to any child benefit deductions from the date of this report.

For the 125 carers about whom the Council holds no information, we recommend that within three months of the date of this report, the Council invites them to provide information to enable it to review their financial circumstances and where appropriate, recalculates their SGA in accordance with the government guidance and backdates the SGA without deductions from the date of this report.

We also recommend that the Council within three months of the date of this report reviews the operation of its complaints service in respect of stage two investigations under the children's complaints process to ensure that statutory timescales are being met. We recommend a review is repeated on a quarterly basis for one year. If it identifies shortcomings the matter should be put before a suitable committee of elected members to consider potential solutions.

The Council has accepted the recommendations and should provide us with evidence it has complied with them.

The Investigation

1.1.4.1 The complaint

1. Miss B complained that Devon County Council (the Council) had wrongly deducted child benefit from her Special Guardianship Allowance since January 2022, failed to provide a copy of C's support plan and failed to share information with her. She also complained the Council had delayed significantly investigating her complaint through the statutory complaints procedure, taking just over a year to complete stage two of the process. These issues caused Miss B significant distress, frustration and financial hardship.

1.1.4.2 Legal and administrative background

a) 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 our information sharing agreement, we will share the final report with the Office for Standards in Education, Children's Services and Skills (Ofsted).

b) Special Guardianship Allowances

5. A Special Guardianship Order (SGO) is a court order which places a child or young person with someone who is not their parent and gives this person parental responsibility for the child. The person(s) with whom the child is placed becomes their special guardian.

6. The Government has issued guidance on support services available for special guardians (Special Guardianship Guidance 2017). This includes the provision of a Special Guardianship Allowance (SGA) which is means-tested.

7. Regulations governing SGAs say that councils must give special guardians notice of the decision on a SGA including the reasons for it. (Regulation 16, Special Guardianship Regulations 2005, as amended by the Special Guardianship (Amendment) Regulations 2016) [The Regulations].
8. The Regulations also state that councils must take into account other grants, benefits and allowances available to the special guardian and may deduct an amount from the SGA to take into account any child benefit the guardian receives for the child (Regulation 13).
9. However, the Government also recommends that when a special guardian is receiving income support, councils should pay the applicable maximum payment without assessing their income and without making any deduction for child benefit. (Standardised Means Test Model For Adoption And Special Guardianship Financial Support 2005). This advice from the Government is not a statutory requirement for local authorities but a recommendation to achieve a fair and consistent approach by local authorities.
10. Income support has been gradually replaced by universal credit since 2013 as a minimum income benefit.
11. In 2013 we found that Liverpool City Council (report no 12 006 209) had deducted child benefit from special guardians on income support. We noted that the Government's recommendation was not a statutory requirement but was aimed at achieving a fair and consistent approach by councils. The report said we would want to see how local authorities took account of the Government's advice when deciding whether to deduct child benefit from those on income support.
12. In 2020 we found that the London Borough of Brent ([complaint ref 20 008 652](#)) was at fault for operating a blanket policy of deducting child benefit from all special guardians, including those receiving means-tested benefits. It had failed to take into account government guidance or our recommendations and had not provided any justification for its position.
13. In 2013 we issued a [focus report](#) following the Liverpool case: Family values: Council services to family and friends who care for others' children. This included our view that councils should provide suitable evidence and explanation before departing from any government guidance about support for family and friends foster carers.
14. In 2018 we published an updated focus report: [Firm foundations: complaints about council support and advice for special guardians](#), which restated our view on the non-statutory government guidance.

c) Statutory children's complaints procedure

15. The law sets out a three-stage procedure for councils to follow when looking at complaints about children's social care services. The accompanying statutory guidance, 'Getting the Best from Complaints', explains councils' responsibilities in more detail.

16. The first stage of the procedure is local resolution. Councils have up to 20 working days to respond.

17. If a complainant is not happy with a council's stage one response, they can ask that it is considered at stage two. At this stage of the procedure, councils appoint an investigator and an independent person who is responsible for overseeing the investigation. Councils have up to 13 weeks to complete stage two of the process from the date of request.

18. If a complainant is unhappy with the outcome of the stage two investigation, they can ask for a stage three review by an independent panel. The council must hold the panel within 30 days of the date of request, and then issue a final response within 20 days of the panel hearing.

1.1.4.3 How we considered this complaint

19. We have produced this report having considered the complaint and the documents provided by the complainant, and the Council. We have also considered the guidance on the statutory children's complaints procedure and our [guide for practitioners about the statutory complaints procedure](#) published in March 2021.

20. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

1.1.4.4 What we found

21. Miss B started to look after her grandchild, C, in 2019 under a child arrangement order. She received universal credit (a means-tested benefit for people on low incomes) and a payment from the Council equivalent to its fostering allowance. She does not live in Devon, but C used to live there.

22. In January 2020 the court made a Special Guardianship Order (SGO) and Miss B started to receive the SGA which the Council paid at the same rate as its fostering allowance.

23. Miss B made a stage one complaint in June 2020 about the lack of communication with the Council about C's support plan and other issues. But the Council did not investigate as the complaints service was suspended due to COVID-19.

24. In January 2022 the Council started to deduct Miss B's child benefit payments from the SGA in accordance with the regulations. Miss B said she was not informed of the financial assessment and did not receive any notification of it.

25. In February 2022 Miss B received a copy of the SGO and C's support plan.

d) Stage one complaint

26. In May 2022 Miss B made another stage one complaint about the deduction of child benefit from her SGA even though she was receiving universal credit. The Council appointed a named point of contact for her.

27. The Council responded within a week. It said it was following the Special Guardianship regulations and guidance which said:

“Financial support paid under these Regulations cannot duplicate any other payment available to the special guardian or prospective special guardian and regulation 13 provides that in determining the amount of any financial support, the local authority must take account of any other grant, benefit, allowance or resource which is available to the person in respect of his needs as a result of becoming a special guardian of the child.”

28. It said that the guidance had not been updated since 2017 and there was no guidance about the treatment of child benefit when a special guardian was receiving universal credit. The Council said it was acting in accordance with the law in deducting child benefit from the SGA.

29. In respect of our decisions, it referred to the Liverpool report (see above) but only commented that Miss B was not a foster carer so the points in the report relating to foster allowance rates were not relevant. It also referred to a later decision from around 2016 in which we had said councils were encouraged to use the Government’s standardised means test model for special guardianship support, but its use was not compulsory, and councils were free to adopt any means test they chose. The Council concluded that we supported its approach to child benefit deductions.

e) Stage two complaint

30. Miss B escalated her complaint to stage two of the complaints procedure on 27 May 2022. Miss B contacted the Council in June and again in August chasing a response to her complaint. She then complained to us. On 14 September 2022 the Council appointed an Investigating Officer (IO) and Independent Person (IP) to investigate her complaint. The Council apologised for the delay saying that it was experiencing difficulties in progressing stage two investigations due to a local and national shortage of investigating officers.

31. We issued a decision on 16 September 2022 saying the Council had agreed to complete the stage two investigation within 65 working days (by 16 December 2022).

32. The IO and IP interviewed Miss B on 22 September 2022 and Miss B agreed the following terms of the complaint on 3 October 2022.

- The Council was acting unjustly in deducting child benefit from her SGA which was contrary to our decisions.

- The Council had consistently failed to treat her with due regard as a Special Guardian: it had failed to share information with her, failed to keep her adequately informed during the court proceedings, delayed paying her expenses and failed to provide a copy of C's support plan or a named point of contact.

33. In March 2023 Miss B received the IO and IP reports. The IO did not uphold the first complaint about the child benefit deductions. They noted the government guidance in respect of special guardians receiving income support but said there was no guidance for those receiving universal credit. They said neighbouring councils confirmed they also deducted child benefit from special guardians receiving universal credit.

34. The Council said to the IO that it had carried out a thorough internet search of the statutory regulations and guidance and there was no evidence of changes since 2017. The Council had also looked at our decisions to verify that the Council's policy was compliant. It said it was planning in 2023 to undertake a comprehensive review of financial calculations including the question of deductions from those receiving means-tested benefits and a review of our decisions.

35. The IO noted Miss B's view that universal credit had replaced income support as a minimum income benefit and so the guidance should apply equally to universal credit claimants. But the IO concluded the regulations and statutory guidance had not been updated and so remained in force. They did not uphold the complaint, saying there was no evidence that the Council's policy of deducting child benefit from her SGA was contrary to decisions we made or statutory guidance.

36. The IO upheld the complaint that the Council had not shared information with Miss B or kept her adequately informed during the court proceedings. They said they could not make a finding about delays to expenses payments because the records only showed the date the payments were made, not the dates Miss B requested them.

37. The IO upheld the complaint that the support plan was inadequate, Miss B had not been involved in its production and a copy had not been given to her until she complained. Neither had the Council provided any of the support detailed in the plan. The responsibility for the support plan has now transferred to the council where Miss B lives.

38. The IO partially upheld the complaint about the failure to provide a named point of contact. It noted Miss B had only been provided with one after considerable delay and after she had complained. The IO recommended the Council's Head of Service should make a written apology for the serious failings in the case. They also made two recommendations in terms of service improvements.

f) Complaint to us

39. Miss B complained to us again in April 2023 about the delay in completing the stage two investigation. We made formal enquiries in May 2023 about the delays to the complaints process.

40. The Council sent its adjudication letter to Miss B on 6 June 2023. It agreed with the findings of the IO and IP, apologised to Miss B for the failings and accepted the recommendations.

41. Given the severe delay in the complaint investigation, the Council's blanket policy of deducting child benefit from all special guardians receiving universal credit and its misrepresentation of our position on this issue, we decided to investigate the substantive issues raised in the complaint and not require Miss B to go to stage three of the complaints process.

g) Council responses to our enquiries

42. In June 2023 the Council acknowledged that it had been experiencing significant delays in progressing stage two investigations due to a lack of available investigators. It had been working to identify additional capacity within available investigators and this was having a positive impact. It had no stage two complaints awaiting allocation and of the 32 open stage two investigations, 22 were overdue. It also noted an increase in a lack of engagement from complainants, significant operational pressures affecting staff availability for interviews and significant staff turnover in children's social care which were all impacting on the complaints process.

43. The Council also acknowledged delays in the adjudication process due to a high turnover of senior managers in the service. It said it was continuing to work with the children's senior management team to address all these issues and was appointing permanent senior leaders across the service which would hopefully contribute to the improvements in the complaints process.

44. In September 2023 the Council said it had decided to change its policy with effect from January 2024, to apply the Government means test to financial assessments of special guardians and stop deducting child benefit from the SGA for special guardians receiving means-tested benefits.

45. In October 2023 the Council also confirmed that in its area there were 170 special guardians on means-tested benefits, 92 who were not receiving benefits and 125 where the Council had no information.

1.1.4.5 Conclusions

h) Special Guardianship Allowance

46. We welcome the Council's recent decision to introduce a new means test from 1 January 2024 to all special guardian cases. It has agreed to follow the non-statutory government guidance to stop deducting child benefit from the allowance of those special guardians receiving means-tested benefits.

47. However, we consider our position on this issue has been clear since 2013 when we issued the Liverpool report and has been reinforced by several decisions since, including the Brent case highlighted above. We have said that councils should not operate a blanket policy of deducting child benefit from the allowance of special guardians receiving means-tested benefits. They should consider cases individually and give reasons for departing from the guidance.

48. There is no evidence the Council considered any of the circumstances of special guardians receiving means-tested benefits and applied the policy to all cases without justification. In Miss B's case the Council relied on the regulations alone to justify its decision and did not refer to the guidance or to our relevant decisions. It misrepresented our decisions in this respect, failing to pick out the decisions which did not support its practice and wrongly concluding that its approach was in line with our view. This was fault. Our decisions have been published on our website for many years and if the Council had done a thorough internet search it would have found the decisions clearly stating our position. The initial fault was exacerbated by the inaccurate information being given to the IO during the stage two investigation and repeated in their conclusions.

49. It was only once Miss B had been through stage one and two of the complaints process, complained to us twice and after we had made several rounds of enquiries that the Council agreed to change its policy, 17 months after Miss B first complained to the Council about the issue. This was far too long to accept its practice was wrong and caused Miss B distress, frustration and time and trouble in having to pursue the matter for so long, in addition to financial hardship.

i) Others affected

50. We note that the Council has identified another 170 special guardians who are receiving means-tested benefits and who may have been similarly affected by the deduction of child benefit from their allowances. The Council has identified that it does not have information on a further 125 special guardians who may be affected. We welcome the decision to implement the new policy from 1 January 2024 which will improve the position for these people also.

j) Delay in the complaints process

51. Miss B escalated her complaint to stage two on 27 May 2022. The Council should have completed the investigation by 26 August 2022. Following our decision on 16 September 2022 it should have completed the investigation by 16 December 2022. It did not complete the investigation until 6 June 2023, having issued the reports in March 2023. This was an excessive delay which caused Miss B significant distress, frustration and time and trouble.

52. We welcome the Council's acknowledgement of the fault and its assessment of the reasons for this, which appears to be due to a lack of investigating officers, exacerbated by internal staffing issues and pressures, particularly affecting the adjudication process in this case.

53. It appears the problem has stabilised, but monitoring will be necessary to ensure the problem does not recur.

k) Lack of remedy in the complaints process

54. We welcome the Council's written apology for the elements of the complaint it upheld at stage two but we note there was no evidence the Council considered whether any further remedy was appropriate. In addition to the excessive delay, the Council accepted there were significant failings during an important period of time in the production of the support plan for C, along with poor

communication and lack of a named point of contact. This deprived Miss B of the knowledge and means to challenge the lack of support.

55. We consider that in such circumstances a symbolic payment in addition to the written apology would have been appropriate and in line with our [Guidance on Remedies](#) and it was fault for the Council not to have considered this option.

1.1.4.6 Recommendations

56. 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)

57. We have the power to make recommendations to remedy the injustice experienced by complainants and members of the public affected by fault we identify. (Local Government Act 1974 section 31(2B)). We have set out below the actions the Council should take to remedy the injustice to Miss B and those people who are also caused an injustice by the Council's fault.

58. To recognise the injustice caused to Miss B, we recommend that within three months of the date of this report, the Council:

- apologises to Miss B;
- recalculates her SGA in accordance with the government guidance and pays her a sum equivalent to the child benefit deductions made since January 2022;
- pays her £300 for the delay to the complaints process; and
- pays her £300 for the lack of information and support following the Special Guardianship Order.

59. For the 170 guardians receiving means-tested benefits, we recommend that within three months of the date of this report, the Council recalculates their SGA in accordance with the government guidance and pays them a sum equivalent to any child benefit deductions from the date of this report.

60. For the 125 carers about whom the Council holds no information, we recommend that within three months of the date of this report, the Council invites them to provide information to enable it to review their financial circumstances and where appropriate, recalculates their SGA in accordance with the government guidance and backdates the SGA without deductions from the date of this report.

61. We also recommend that the Council within three months of the date of this report reviews the operation of its complaints service in respect of stage two investigations under the children's complaints process to ensure that statutory timescales are being met. We recommend a review is repeated on a quarterly basis for one year. If it identifies shortcomings the matter should be put before a suitable committee of elected members to consider potential solutions.

62. The Council has accepted these recommendations and should provide us with evidence it has complied with them.

1.1.4.7 Decision

63. We consider this is a proportionate way of putting right the injustice caused to Miss B and we have completed our investigation on this basis.