

The investigation of a complaint
by Mr N
against Bridgend County Borough Council

A report by the
Public Services Ombudsman for Wales
Case: 201503185

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Introduction

This report is issued under section 16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mr N.

Summary

Mr N was a looked after child with Bridgend County Borough Council (“the Council”) and placed with his former foster carers Mr and Mrs A when he was a toddler. The placement lasted many years but broke down in 2014. Mr N subsequently approached the Council to obtain further information about savings that Mr and Mrs A had made on his behalf. Mr N complained that:

- the Council had not managed his savings properly and in accordance with its policy.
- some of his savings were used, without consultation with him, to pay for trips for which he should have received a special allowance.
- the savings he received in January 2015 were substantially less than he believed they should have been.

My investigation related to the actions of the Council and not the foster carers. I found evidence that the Council was inconsistent and contradictory in the way it applied its internal guidance for foster carers in its Fostering Handbook. Some of its guidance it enforced whilst others, like saving for looked after children, it did not. This was despite regulatory guidance that foster carers are expected, amongst other matters, to operate within the guidance set out in the Fostering Handbook.

As a corporate parent for a looked after child, a council has a duty to ensure that there is adequate oversight and monitoring of savings that are made on behalf of the looked after child/ren (“LAC”). However, in Mr N’s case I found the Council’s monitoring of his savings both intermittent and inadequate. I concluded that these administrative failings amounted to maladministration and **upheld** this aspect of Mr N’s complaint.

The Council was unable to provide evidence to show that Mr N was consulted or agreed to the use of his savings to pay for two trips which cost in total £1100. The Council agreed to fund one of the trips at a LAC review meeting in 2014, but later changed its view without notifying the Chair of the review meeting. Once again I found evidence of maladministration and **upheld** this element of Mr N’s complaint.

In relation to the third element of Mr N's complaint, as the Council had failed to keep adequate records or retain his saving books at the end of his fostering placement, it was unclear why Mr N's savings were as low as they were. I determined that the failings that led to this position amounted to maladministration and **upheld** this aspect of Mr N's complaint.

I reached the view that as a result of the Council's maladministration, it could not properly account to Mr N for his savings which caused him an injustice. I calculated a figure for appropriate recompense for Mr N. The Council challenged the figure arrived at, on the grounds that Mr N would have agreed other expenditure from his savings, without evidence that this was the case. I have been minded therefore to give the benefit of the doubt to Mr N, the more vulnerable party.

Mr N's case raises important issues about LAC and their savings at a local, regional and national level. It is therefore my intention to share my report with Welsh Government.

I have made the following recommendations:

- (a) The Council's Chief Executive should apologise in writing to Mr N.
- (b) The Council should make a payment to Mr N of £3,310.
- (c) The Council should make a payment to Mr N of £250 to reflect shortcomings in complaint handling.
- (d) The Council should review this case from a complaint handling perspective and share with my office any lessons learned.
- (e) The Council should share a copy of my report with its Corporate Parent Cabinet Committee and its Chair should provide my office with details of any actions this Committee intends to take as a result of this case.

- (f) The Corporate Parent Cabinet Committee should consider the arrangements it deems most appropriate in respect of long term savings for LAC while encouraging them to save from pocket money. In doing so, the Council should have regard to the following: its duty to act as a corporate parent to give LAC the best possible start in life and other local authority saving schemes.
- (g) The Council should provide my office with its proposals and action plan for reviewing cases of a LAC, who like Mr N, may be similarly affected in this regard.
- (h) The Council should review its current arrangements/requirements in respect of savings and expenditure and the checking, retention and passing on of savings records at the end of a placement with a view to introducing clearer guidance/requirements.
- (i) In collaboration with the Care and Social Services Inspectorate Wales the Council should revise its foster carer agreement to ensure that it is compliant with the requirements of Schedule 5 to the Fostering Services (Wales) Regulations 2003.

The Council agreed to implement all of the recommendations with the exception of recommendation (b), the payment to Mr N. It was prepared to reimburse Mr N for the two trips which were funded from his savings.

It is very disappointing that the Council has to date refused to accept my recommendations in full. If the Council maintains this position and fails to comply with recommendation (b) in full within two months of my report (i.e. by 21 January 2017), I will have to consider whether to issue a further special report against the Council under s22 of the Public Services Ombudsman (Wales) Act 2005. Should this continue to be the decision of the Council following the Corporate Parent Cabinet Committee's consideration of my report, in view of the seriousness of a s22 special report, I have recommended that my report is also shared with all of the elected members of the Council.

The complaint

1. Mr N was seven months old when Bridgend County Borough Council (“the Council”) became legally responsible for his care as a looked after child. Mr N was aged two when he and his brother were placed with his former foster carers Mr and Mrs A. His placement with them lasted many years but unfortunately broke down in 2014. Some months later Mr N approached the Council to obtain clarity about the savings that Mr and Mrs A had made on his behalf. Mr N was dissatisfied with the Council’s subsequent explanations.

2. Mr N has complained to me that:

- the Council did not manage properly, and in accordance with its own policy, the monetary savings made for him when he lived with Mr and Mrs A.
- some of the savings were used, without consultation with him, to pay for trips for which he should have received a special allowance.
- the £270 savings he received in January 2015 were substantially less than he believed they should have been.

Investigation

3. By way of background to this investigation, when Mr N first approached my office the Council was asked to write to Mr N to clarify the position concerning his savings. Having received the Council’s response Mr N approached my office again. An early settlement, concerning payment for the two trips, was initially explored with the Council. However, this was withdrawn and the case put forward for investigation. This was due to concerns that the potential failings went further than the decisions on funding the two trips.

4. The subsequent investigation has focused on the Council’s management of Mr N’s savings. It has not been an investigation into his former foster carers and any references to them have been for the sole purpose of examining the Council’s actions in the context of the complaint.

5. To assist me, comments and copies of relevant documents were obtained from the Council. My investigating officer visited the Council and reviewed its electronic records. The Council also provided its further comments at a meeting with my officers. Pertinent documentation was considered in conjunction with the evidence provided by Mr N. Advice was also obtained from my Professional Adviser, Cheryl Beach, a registered Social Worker with extensive experience in children's services. Whilst my report does not include every detail investigated I am satisfied that nothing of significance has been overlooked.

6. During this investigation, I have had regard to the legislation which sets out my powers and the restrictions that apply. This requires me to consider whether a public body, such as a council, which has acted incompetently or improperly (in other words maladministratively), has caused a complainant personal injustice. In the area of health and social care I can consider how professionals have exercised their professional judgement.

7. To help public bodies in my jurisdiction deliver better services both my predecessor and I have issued guidance on what constitutes good administration and record keeping.¹ A failure by a public body to act in accordance with its own internal guidance may, in certain instances, amount to maladministration.

8. Both Mr N and the Council were given the opportunity to see and comment on a draft of my report before the final version was issued.

Relevant legislation

Corporate Parent

9. Councils are under a statutory duty to act as a corporate parent for each of their looked after children.² Corporate parenting involves being a good parent to the looked after child/ren ("LAC") and acting in a way that any good parent would to ensure everything is done to give that

¹ Principles of Good Administration, Public Services Ombudsman for Wales, 2008 updated in February 2016.

² The Children Act 1989 as amended.

child the best possible start in life. Everyone in a council, including officers, is expected to be a good corporate parent to their LAC. There is national guidance³ on a corporate parent's key responsibilities.

Fostering Handbook

10. There is a statutory⁴ requirement for fostering service providers to produce a written guide about their fostering service. This guide, which is commonly known as the fostering handbook, must in addition to any internal guidance include a summary of existing policy and procedure. National guidance exists on minimum standards applicable to fostering services ("the Minimum Standards").⁵ Areas that these cover include the monitoring of fostering activities and consulting the LAC on all issues likely to affect their daily life and future. Foster carers are expected to operate within **all** (my emphasis) the standards, policies and guidance agreed by the fostering service.⁶

11. The Council's Fostering Handbook ("Handbook") contains guidance to foster carers ("FCs") that they "should" open a bank account for their foster children and save on their behalf. Although the Handbook directs FCs to a section that should specify the amount to be saved from the fostering allowance this figure has been omitted. The Handbook also notes that some or all of the child's allocated pocket money can be saved in their savings account.

Payments and Supervision

12. The Council pays FCs a weekly allowance that covers the cost of caring for a LAC. Until March 2014, it provided extra allowances for clothing, birthdays, Christmas and holidays for the LAC. There was also provision for the Council, on a one off basis, to fund a "once in a school lifetime" school trip if certain criteria were met. The Handbook stated that FCs needed to show how these extra allowances had been spent.

³ If this was my Child, Welsh Government, 2005 updated in 2009.

⁴ Fostering Services (Wales) Regulations, 2003.

⁵ The National Minimum Standards for Fostering Services, Welsh Government, 2003.

⁶ Standard 22.3.

There was provision for the extra holiday allowances to be saved for older LAC who did not wish to go on holiday with their FCs.

13. Fostering service providers have to arrange for a supervising social worker to make regular visits to a FC. In the Council a record of each visit was documented on a supervision visit proforma (“the Proforma”).

14. There were specific sections on the Proforma relating to the extra allowances. The questions related to what had been spent; what the arrangements for spending these allowances were; and whether the carers had any proof of expenditure, for example receipts. The Proforma also contained a fostering allowance and savings section. This dealt with the fostering allowance expenditure; requested information about the savings plan for the LAC and whether it was based on the guidelines set out in the Handbook; and referred to the savings book and the amount of savings made.

The background events

Background

15. In January 2015, Mr N wrote to the Council’s Children Complaints Officer querying the amount of savings he had accrued at his previous foster placement after many years in care. The Officer in her written response confirmed that whilst there was no formal policy governing the amount of pocket money that FCs should save, she understood there was an “unwritten rule” that £5.00 per week would be put aside. This practice had ended when the extra allowances for FCs stopped on 31 March 2014. The Officer noted that the issues Mr N raised fell outside the relevant formal complaint procedure⁷ and she had asked the Group Manager of Children’s Regulatory Services (“the Group Manager”) to look into the matter and respond further.

16. The Group Manager wrote to Mr N. She informed him that his recorded savings in 2012 were approximately £1200. His savings had been used to fund a European school trip in March 2012 which cost

⁷ The Social Services Representations and Complaints Procedure.

£600, and a rugby trip in April 2014 which cost £500. He had been given a savings balance of £270 when he changed fostering placement. The Group Manager noted she had since received £200 from Mr and Mrs A as interest payments they had received when they closed his savings account. She said the bank/building society had kept the savings book as Mr and Mrs A no longer needed it.

17. The Group Manager commented that FCs had no legal obligation to provide savings for LAC and so she was pleased Mr and Mrs A had done so. She later added that the Council had never enforced FCs providing savings for children they cared for. This was because it had never been a requirement but was regarded as good practice.

Mr N's evidence

18. Mr N noted that the Council's responses had not provided him with any new information. Mr N felt the Council should have given information about the monies deposited and withdrawn, since this would have shown how the interest on the account had accrued. Mr N added that the Council had not provided him with any explanation as to why the once in a school lifetime allowance (see paragraph 12) had not been applied to his rugby trip.

19. He questioned whether, based on the Council's response about its savings policy, a LAC could expect not to receive best practice from the Council.

The Council's evidence

20. The Council in its formal response to my office said that its documentary evidence demonstrated there was regular monitoring of Mr N's savings account, including expenditure, and that the savings book was regularly inspected. The Council referred to a supervision visit on 9 September 2013 where it was noted that approximately £350 had been saved for Mr N. The Council added that there was no other specific reference to savings books being checked. The Council said that the annual review that took place on 2 November 2013 did not include any savings details.

21. The Council said that its Handbook was intended to be a guide for FCs. It contained wherever possible all identified council policies and processes which FCs must adhere to. Much of the remaining information was guidance to aid FCs in their role. The Council indicated that there had never been a requirement for a FC to open a bank account for a LAC. Likewise, the Council had not enforced the need for FCs to provide savings for LAC as it was not required by law, the Fostering Services (Wales) Regulations 2003 or within the Minimum Standards (see paragraph 10). The Council re-affirmed that it was seen as good practice only to open a bank account and save for LAC.

22. It added that the amount to be saved from the fostering allowance had never been stated in its Handbook. This was because it was not enforceable. The amount of pocket money was shown as all children in placements were entitled to this and it could not be withheld.

23. The Council was asked whether from a corporate parent perspective it had a policy and procedure in place for monitoring a LAC's savings and inspecting the savings book. The Council said it did not. It added that it did not monitor LAC's savings unless, for example, they were being made via the junior individual savings account ("ISA"). The Council said it had set up an ISA for Mr N in accordance with the Welsh Government's statutory guidance.⁸ The Council confirmed that the savings that Mr and Mrs A had made for him had not been transferred into this account.

24. The Council said it did not have copies of the savings book entries or receipts for expenditure from Mr N's savings account. It said the receipts were seen by the supervising social worker at the supervision visits. It said that Mr N's savings book had not been inspected when his foster placement came to an end, nor had the Council taken his savings book into safe keeping. The Council noted that the placement had broken down very suddenly and it had been hoped that Mr N would be able to return to it. However, it was subsequently determined that he would not be returning and at that point the placement ended.

⁸ Junior Individual Savings Accounts (Junior ISAs) for LAC in Wales, Welsh Government, 2012.

25. The Council was asked whether Mr N had been consulted about the funding of trips. It noted a discussion had taken place with Mrs A and Mr N at a LAC review meeting (a forum to consider, monitor and amend the care plan in place to promote the welfare of the child) on 21 March 2014 (see paragraph 44). The Council said that this meeting provided the documentary evidence that it had sought Mr N's views and discussed with him the impact the rugby trip would have on his savings. (The Council's comments are at odds with the recorded minutes of the meeting which recommended the Council fund the trip.)

26. The Council said that in relation to the European school trip in March 2012 and the rugby trip in April 2014, it was unable to provide photocopies of the relevant withdrawals from the savings book as it did not have this information. It added that the provision of a once in a school lifetime allowance had ceased on 1 April 2014. As a consequence Mr N was not eligible for it. The Council, when asked, could not confirm when payment for Mr N's rugby trip had been made.

27. The Council was asked about the recommendation made at the LAC review meeting that it should fund the cost of the rugby trip. The Council noted that at the time there was either an outdoor pursuits trip available or the rugby trip. The Council added that, as it was a recommendation and not an action point, it was a decision for Mr N's social worker, who supported him going on both trips, but understood that the Council could not fund both. As Mr N had gone on both trips the Council funded the outdoor pursuits trip only. The Council added that Mr and Mrs A had used Mr N's savings to pay for the rugby trip.

28. The Council was unable to provide a record of the management discussion not to fund Mr N's rugby trip. The Council noted that there was no set procedure on how these decisions were made.

29. The Council said that Mr and Mrs A had spent approximately £1000 for Mr N to have a multi-gym which he requested for Christmas as well as paying for a sports related course. (In his response to the draft report Mr N said that he had contributed his pocket money towards the cost. When asked by my investigating officer, both Mr N and his

Advocate highlighted that Mr N had not been consulted or agreed to his savings being used towards the cost of the multi-gym.)

30. The Council said that Mr and Mrs A were careful to evidence everything they spent. The Council indicated that this was usually because they spent well over their allowances. The Council added that the supervising social worker had had sight of these receipts. It said that by confirming satisfaction with the way the extra allowances were being spent this was proof that the supervising social worker had seen the receipts.

31. The Council noted that the Group Manager's visit to Mr and Mrs A's home (where the accrued interest payment was paid), occurred on 22 June 2015. The Council confirmed there was no case record of this visit.

32. Finally, the Council provided details of its updated Proforma. This places much less emphasis on monitoring expenditure and savings, despite the guidance in the Handbook on savings remaining unchanged.

Professional advice

33. My Adviser noted that the fostering handbook is a regulatory requirement. In addition, the Minimum Standards (see paragraph 10), as they relate to the Supervision of Carers (Standard 22), make it clear what steps a supervising social worker is expected to take to ensure that carers understand the need to operate in accordance with the fostering handbook.

34. My Adviser, whilst noting that providing savings was not nationally mandatory during the timeframe of Mr N's complaint, observed that the Council had nevertheless made it a requirement of its FCs that they should open a bank account and save. Whilst the amount to be saved was not specified, in its letter to the complainant the Council had told him that there was an "unwritten rule" that £5.00 per week be saved for each child.

35. My Adviser noted that the Council's position seemed to be that because the requirement to save was guidance rather than policy its FCs were free to choose whether they acted on it. However, as well as being contrary to the Minimum Standards (see paragraph 10), she said that if this interpretation was applied throughout its current Handbook this would mean that FCs could choose not to follow similarly worded guidance relating to child protection and safeguarding issues.

36. My Adviser said that the Council's assertions therefore, that saving for LAC was not a requirement, were contradicted by evidence such as its Handbook, the monitoring expectations laid out in the Proforma and an examination of practice during the relevant period.

37. My Adviser reviewed the records including those of the fostering supervision meetings between March 2009 and August 2014. Most of the supervision meetings were with Mrs A.

38. My Adviser commented on how the Council had monitored the extra allowances given to Mr and Mrs A. She noted that in the earlier records there were no details given about the expenditure that had been incurred. Instead, there were generic comments that the extra allowances had been fully spent on Mr N and his brother or were being used appropriately. In addition, there was no record of the supervising social worker requesting or being provided with receipts for any purchases or holidays bookings as the Council's guidance in its Handbook required.

39. From a savings perspective there was consistent evidence of a failure to properly complete the savings section of the Proforma. There were instances when only the savings book(s) were mentioned with no indication of the amount saved. On other occasions, there were no references to the savings book(s) or the amount saved. Likewise, there was a lack of clarity as to whether the savings books had actually been seen or whether the supervising social worker was merely reporting on what Mrs A had told her. Between 2009 and 2014 my Adviser commented that there was only one record (15 January 2010) where it seemed fairly certain that one of Mr N's savings books had been seen.

40. My Adviser referred to the lack of documented discussion around key issues pertinent to Mr N's savings including matters relating to significant expenditure. For example, on 29 November 2011, there was reference to a plan for Mr N to go on a European school trip but no record of any discussion about how this would be paid for. It later transpired that Mr N's savings had been used (see paragraph 16). On 21 November 2013, Mrs A had reported having bought Mr N a multi-gym, a computer tablet and other things for Christmas. Again, there was no record of a discussion concerning the considerable costs of these presents or how Mr and Mrs A had paid for them.

41. My Adviser noted that the Proforma of 13 March 2013 recorded that "£1000 each saved in one account [for Mr N and his brother] with another £300 each saved in their post office accounts". It was 13 August before savings were referred to again. Although the amount of savings was not documented it was recorded that Mrs A had complained that she and the other carers were unhappy that there had been no increase in the fostering allowance for six years and yet they were still expected to save for their foster children. Mrs A had referred to it only being a recommendation that FCs save for children and young people and that it was not compulsory. My Adviser noted that there was no record of the supervising social worker having discussed, challenged, or agreed with Mrs A.

42. On 9 September the supervising social worker documented Mrs A's comments that she was no longer saving for Mr N "as there is no policy in writing to state that carers have to save for children and young people." The amount of savings was recorded as being £350 approximately. Again, there was nothing recorded of the supervising social worker having discussed this savings issue with Mrs A or having referred her to the guidance on savings included in the Handbook. Additionally, no explanation was recorded about the apparent reduction in Mr N's savings since March 2013.

43. My Adviser noted that every supervision record between 2009 and 2014 listed as an action point that Mr and Mrs A continue to save for him on a monthly basis and this continued even after Mrs A made it clear that she would not be saving for him.

44. My Adviser noted the background events to the rugby trip which was first raised in a supervision meeting in January 2014 when Mrs A said that her husband would be taking Mr N on a rugby trip in the April. A formal LAC review meeting was held on 21 March. An independent reviewing officer (“IRO”) chaired the meeting. At this review meeting the cost of the rugby trip was discussed and it was agreed that the Council would fund the trip in addition to Mrs A’s allowance.

45. My Adviser made it clear that councils must not ignore review recommendations. If there are any concerns about their implementation the IRO must be notified immediately.

46. My Adviser noted there was no record of who rejected the plan for the Council to pay for the trip, why or when and who decided that the trip should be paid for from Mr N’s savings. Similarly, there was no record either of a discussion with Mr N about the Council’s change of mind or that he knew and was asked to agree for his savings to be used to fund the trip.

47. In conclusion, my Adviser noted that Mr N had been in the care of the Council for his entire childhood, bar a few months. The Council expected Mr and Mrs A to put savings aside for him but did not account properly for these savings. She said a proper accounting record would have protected Mr N’s interests. My Adviser noted that the Council had not consulted him before any withdrawals were made, particularly when he was a teenager. It had not addressed Mrs A’s refusal to continue saving for him after September 2013. It also failed to give him both his savings books when he moved to a new placement. My Adviser felt that the absence of any guidance on how LAC’s savings might be spent together with an apparent failure to recognise the importance of consulting LAC on the use of their savings were likely contributory factors in the significant erosion of Mr N’s savings.

The Council’s response to the draft report

48. The Council in its comments to me restated its position that FCs saving for LAC was based on guidance rather than policy. The Council noted that the amount to be saved was absent from the fostering

allowances section of the Handbook. This was because the figures quoted were based on the Welsh Government's national minimum allowances and there was currently no national guidance or set amount for savings. The Council also noted that aside from the need to establish a junior ISA, there was no national policy or guidance in place regarding savings for LAC.

49. The Council drew a distinction between internal guidance in its Handbook involving safeguarding issues (such as children should not be left alone with dogs) which would be enforced, and guidance relating to savings which would not. It noted that a shortage of FCs meant that it would not terminate their services if they chose not to save for their LAC. The Council said it continued to retain its guidance on savings in its Handbook as it wished to encourage FCs to save on behalf of LAC.

50. Addressing Mr N's case specifically, the Council said it took its role and responsibility as a corporate parent for LAC extremely seriously. It pointed to the work of its Corporate Parent Cabinet Committee as evidence of this.

51. The Council reiterated that it had operated within its savings guidance. It said that Mr N had been very happy in his foster placement and had been treated as a fully integrated member of the foster family and not just as a LAC.

52. It said that there had been never been any questions or issues raised concerning the amounts spent on Mr N and other children within the foster home and, in the context of paragraph 38, the supervising social worker had never had reason to question Mrs A about finance including savings. On the issue of record keeping, the Council commented that not every discussion could be fully recorded in detail within a supervision visit and it emphasised again that Mr and Mrs A were long standing FCs for whom expenditure on the children they looked after had never been an issue.

53. The Council said that its Fostering Service and Safeguarding Case Workers were also satisfied that Mr N received over and above the basic allowances provided to FCs as evidenced by his presentation and all his

belongings. The Council concluded that it did not consider that Mr N had been disadvantaged in any way by his LAC status while in its care and it was satisfied it had appropriately discharged its corporate parenting duty towards him.

54. On the issue of complaint handling, the Council explained the sequence of events that led to Mr N's concerns being treated as a "service issue" rather than a formal complaint. It said that if Mr N's concerns had been treated as a formal complaint, the Group Manager would still have been the person who responded to it and, therefore, the outcome would not have been any different. Additionally, the recording and formal reporting mechanisms to senior management were the same for both service level issues and formal complaints under the Social Services Representations and Complaints procedure.

55. The Council acknowledged that its response to Mr N might have appeared "dismissive or unsympathetic". It apologised and said that this had not been its intention. The Council added that the tone of its response was not reflective of how it usually responded to LAC. It said that it took all complaints very seriously and dealt with them courteously and promptly so as to resolve the matter as quickly as possible. It said that in terms of learning lessons it had reviewed the way that it responded to people.

56. The Council set out the ways that it was trying to take forward the savings agenda both at a national level, by trying to obtain a national position/policy on savings for LAC, and at a regional level by engaging with other local authorities and interested parties on the issue.

Analysis and conclusions

57. Mr N's complaint has centred on the Council's failure to adequately enforce and monitor his savings account as a LAC in his former fostering placement. As a result he said his savings were significantly less than he could have expected.

58. I have been greatly assisted by the advice I have received from my Professional Adviser. I have taken her advice into account in reaching my findings in this case. I have set out her advice in some detail in my report so I am able to be relatively brief in what I say.

59. Mr N complained that the Council did not manage properly, and in accordance with its own policy, the savings made for him. Whilst I acknowledge the Council's contention that guidance is not the same as policy, the Council's position appears contradictory and inconsistent. Evidently the word "should" in the guidance sometimes means "must" (for example in safeguarding matters) and sometimes is intended to mean "may" (for example in the context of making savings for the child). The Minimum Standards make clear that FCs are expected to operate within all standards, policies and guidance. If the Council intends that some guidance is mandatory and some is optional that should be made clear, to avoid confusion and uncertainty for FCs and LAC.

60. Whilst guidance is just that, a failure to have due regard to it may amount to maladministration. Whilst a Council can depart from guidance, this should be the result of a clear and documented decision setting out the reason for departing from the guidance. It should not simply be a retrospective explanation of an approach that does not follow the guidance.

61. As I stated at the beginning of my report, my investigation concerns the actions of the Council, rather than those of the FCs, and I make no criticism of the FCs in my report. My findings relate only to the Council's actions. I have therefore looked particularly at the Council's approach to savings for LAC as set out in guidance and in its operations. I have considered the Council's argument that there is no requirement for FCs to save and by implication that the Council cannot be expected to have thorough and robust oversight of savings.

62. Whether or not FCs are obliged to save for LAC, the Council, as corporate parent, has a duty to ensure adequate oversight and monitoring of savings that are made. The Council's Handbook sets out the approach to savings and indicates that FCs should make savings for LAC. In addition the monitoring forms completed by supervising social

workers are clearly intended to include details of savings, indicating that the Council recognises its role in overseeing the savings of LAC.

63. In this case the documented monitoring of savings by the Council was intermittent and inadequate, meaning that there is no proper record of savings and of expenditure from savings. The final level of savings available to Mr N is therefore unexplained. Since the level of savings is substantially less than Mr N expected, this is unsatisfactory. I consider that these administrative failings amount to maladministration. I therefore **uphold** this element of Mr N's complaint.

64. Mr N also complained that some of his savings were used, without consultation with him, for trips for which he should have received a special allowance. The Council agreed at the LAC review meeting of 21 March 2014 (and documented this agreement) that the Council would fund the rugby trip. Evidently the Council changed this decision, without referring this to the Independent Reviewing Officer as it should have done. The trip was funded from Mr N's savings but the Council was unable to show whether or how Mr N was consulted and whether and when he agreed to fund the trip from his savings. This amounts to maladministration and I therefore **uphold** this element of Mr N's complaint.

65. The third element of Mr N's complaint was that the savings he received in January 2015 were substantially lower than they should have been. The Council has failed to keep adequate records itself and has failed to ensure that savings were appropriately managed and accounted for. In the absence of records, statements or receipts, it is unclear why the savings were as low as they are. When the £200 interest payment was made to the Council there was no record showing how that amount had been accrued as the Council had not secured any records or the savings books. These failings amount to maladministration. I therefore **uphold** this element of the complaint.

66. The maladministration I have identified has caused injustice to Mr N. He should have been able to see what savings had been made for him and how they had been used. He was not able to do this because they were not properly accounted for. When deciding how to

remedy that injustice I have had regard to the Council's "unwritten rule" that savings of £5 per week should be made, and allowing for money already paid to Mr N, I have calculated a figure for appropriate financial redress in this case. This is included in my recommendations. Whilst the Council has challenged the calculation on the basis that Mr N agreed other expenditure from his savings, there is no quantifiable evidence of this and I am minded to give the benefit of any doubt to the more vulnerable party, Mr N.

67. My investigation also identified shortcomings in the way that the Council dealt with Mr N's complaint. The Council has acknowledged that its response to Mr N could have appeared "dismissive or unsympathetic" and it has apologised for this. I remain of the view that the Council took too narrow a view when it concluded that Mr N's case was not one that fell within its social services complaints procedure. I continue to have concerns that the way that the Council responded to Mr N's complaint in this instance meant that the voice of a LAC was not properly heard. Mr N's comment, that the Council's response suggested to him that LAC cannot expect the service provided to them to reflect best practice, is of particular concern.

68. Notwithstanding the Council's failings, Mr N's case raises important issues at local, regional and national levels about LAC and their savings. I welcome the fact that the Council has placed this on the agenda for discussion at a national level. I hope that the issues my investigation has raised will lead to positive changes and the development of further national policy on long term savings for LAC, reflecting the need for councils to secure, for LAC, the outcomes every good parent would want for their own children. I will therefore be sharing my report with the Welsh Government.

Recommendations

69. **I recommend that:**

- (a) The Council's Chief Executive should apologise in writing to Mr N for the failings identified.

- (b) The Council should make a payment to Mr N of £3,310.
- (c) The Council should make a payment to Mr N of £250 to reflect the shortcomings in complaint handling.
- (d) The Council should review this case from a complaint handling perspective and share with my office any lessons learned.
- (e) The Council should share a copy of my report with its Corporate Parent Cabinet Committee and its Chair should provide my office with details of any actions this Committee intends to take as a result of this case.
- (f) The Corporate Parent Cabinet Committee should consider the arrangements it deems most appropriate in respect of long term savings for LAC while encouraging them to save from pocket money. In doing so, the Council should have regard to the following: its duty to act as a corporate parent to give LAC the best possible start in life and other local authority saving schemes.
- (g) The Council should provide my office with its proposals and action plan for reviewing cases of LAC, who like Mr N, may be similarly affected in this regard.
- (h) The Council should review its current arrangements/requirements in respect of savings and expenditure and the checking, retention and passing on of savings records at the end of a placement with a view to introducing clearer guidance/requirements.
- (i) In collaboration with the Care and Social Services Inspectorate Wales the Council should revise its foster carer agreement to ensure that it is compliant with the requirements of Schedule 5 to the Fostering Services (Wales) Regulations 2003.

70. The Council should carry out recommendations (a) and (d) within **one month** of my report being finalised, recommendations (b), (c) and (h) within **two months** and recommendations (e) – (g) and (i) within **six months** of my report being finalised. For the avoidance of any doubt these are the “permitted periods” within which I expect the Council to comply with my recommendations for the purposes of section 19 of the Public Services Ombudsman (Wales) Act 2005 (“PSOW Act 2005”).

71. The Council has agreed to implement all of the recommendations with the exception of recommendation (b), the payment to Mr N. It added that the Council was still prepared to reimburse Mr N for the two trips which were funded from his savings.

72. It is very disappointing that the Council has to date refused to accept my recommendations in full. If the Council maintains this position and fails to comply with recommendation (b) in full within two months of my report (i.e. by 21 January 2017), I will have to consider whether to issue a further special report against the Council under s22 of the PSOW Act 2005. Should this continue to be the decision of the Council following the Corporate Parent Cabinet Committee’s consideration of my report, in view of the seriousness of a s22 special report, I recommend that my report is also shared with all of the elected members of the Council.



Nick Bennett
Ombudsman

22 November 2016

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