



The Commission for  
Local Administration in England

# Report

on an investigation into  
complaint no 06B09795 against  
Dudley Metropolitan Borough Council

24 January 2008

The Oaks No2 Westwood Way Westwood Business Park Coventry CV4 8JB

# Investigation into complaint no 06B09795 against Dudley Metropolitan Borough Council

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## Key to names used

Mr Carter                      the complainant

## **Report summary**

### **Subject**

Mr Carter (not his real name for legal reasons) complains that the Council failed to act fairly in that it did not make the same payments to kinship carers (relatives or friends who care for another family's children) as it made to other foster carers. Mr Carter and his wife looked after a relative's child between May 2005 and November 2006.

Kinship carers may have children placed with them by the Council for longer term care before the necessary checks are carried out and they are approved as foster carers. Foster carers are entitled to weekly payments for each child fostered and can claim additional payments for birthdays, Christmas etc. The Council makes weekly payments to kinship carers at the same rate as other foster carers. The Council did not make the additional payments to kinship carers. The Council then changed its policy to make these payments claimable from 1 April 2007.

The Council refused to make back payment of the additional payments to Mr Carter.

The Ombudsman found that the Council was at fault in that it unreasonably discriminated between categories of foster carer in the matter of additional payments. The Council was also at fault in not making back payments of the difference between the support payment made to Mr Carter and the payments it made to foster carers, once it had placed the child with Mr and Mrs Carter and started the process for assessing them as kinship carers.

### **Finding**

Maladministration and injustice, remedy agreed.

### **Recommended remedy**

The Council has paid Mr Carter £2872.39 and is reviewing its kinship care policy.

## **Introduction**

1. I have recently completed my investigation into the complaint by Mr Carter against Dudley Metropolitan Borough Council. I am pleased that the Council has agreed to my recommendations for resolving the complaint and I have decided to make public my decision because I consider there are issues of public interest arising from my investigation. In reaching my decision I have taken account of all that Mr Carter said in his complaint and the later information provided by him in response to my enquiries. I have also taken into account the comments of the Council.

## **Complaint**

2. Mr Carter is a kinship carer. He complained about the Council's refusal to make back payments to him of the additional allowances given to foster carers for a child's birthdays, holidays and Christmas. The Council had changed its policy to make these payments to approved kinship carers, but only from 1 April 2007. Mr Carter further complained about the Council's refusal to pay kinship carers at the foster carer rate before they were approved as carers.

## **The law and the Council's procedures**

3. The Children Act 1989 places duties on councils to promote children's upbringing by their families. This includes placing children who are looked after by the council with their families unless this is inconsistent with their welfare. In this context, family includes wider extended family and close friends. The placement of a looked after child with other members of the family (called kinship carers) for longer term care will be a foster placement and subject to the regulations which govern such placements, including the approval of foster carers. In November 2002 the High Court decided that a council was wrong to pay kinship foster carers less than other foster carers. The council's policy was in breach of the European Convention on Human Rights (*R v Manchester City Council ex parte L and Others and ex parte R and Others* [2002] 1 FLR 43).
4. The Council pays to approved kinship carers a fostering allowance at the same rate as other foster carers. The Council pays in line with the National Foster Carer Association's recommended rates. The Council has a social worker dedicated to supporting kinship carers. Kinship carers also have equal access to an additional needs budget. Additional payments are also made, for example for school uniform, and birthdays and, at the beginning of December, for Christmas. The Council's fostering scheme has three levels of payments and carers can progress from level 1 with training and assessment. This scheme is set out in the Foster Care Handbook, and it is open to all foster carers, including kinship carers.

5. The Council may make payments under section 17 of the Children Act to relatives who look after a child 'in need' but who are not kinship carers in the sense of approved foster carers, though they may subsequently become such. These payments are at a lower level than the rates for approved foster carers. The Council says that a child who is looked after by the Council can only be placed with friends and family for a period of up to six weeks as an immediate placement with the authorisation of the Children's Service Divisional Manager. At the end of that time the placement must be approved as a foster/kinship care placement.
6. Foster carers who are not kinship carers do not have children placed with them unless and until they have been approved as foster carers. This status is achieved after they have applied, been vetted, completed the required training, and been approved as suitable by the fostering panel to work with specified categories of children.

## **What happened**

7. Mr Carter and his wife first took care of a relative's child between December 2002 and July 2003 and again from 7 May 2005 to 10 November 2006. I am only concerned with the second period. Mr and Mrs Carter made their application to be approved as kinship carers in April 2005. The child was then with foster carers. On 4 May 2005 Mr and Mrs Carter signed an authority to allow the Council to make the checks necessary before their application could be approved. Difficulties arose with the foster placement and the Council decided, in the best interests of the child, to place the child with Mr and Mrs Carter before the assessment process was completed.
8. Between the date of placement and the date their application was approved, Mr and Mrs Carter only received a weekly payment under section 17 of the Children Act, substantially less than the rate for approved foster carers. They received no additional payments.
9. I received the complaint from Mr Carter on 5 October 2006. By letter dated 10 October 2006 the Assistant Director of Children's Specialist Services told Mr Carter that the Council had reviewed the payment of additional allowances to kinship carers and that they would now make these payments to those carers from 1 April 2007.

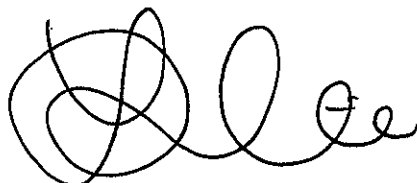
## The Ombudsman's view

10. I recognise that there are circumstances where a child may stay with other family members or friends, for a longer or shorter period, without any involvement by the Children's Services of a council. There may also be a private arrangement for financial support. Where, however, a child is looked after by a council and placed by that council with carers with a view to the child's longer term care, it is contrary to the law and is maladministration to discriminate between categories of foster carers. The Council has recognised this and not only makes the same weekly payments to kinship carers as it does to other foster carers but, following Mr Carter's complaint to it, has agreed to make the same additional payments.
11. Following the complaint to me the Council reconsidered the matter of back payments of the additional allowances and swiftly agreed to make additional payments for birthdays, holidays, and Christmas from the date Mr and Mrs Carter were approved as kinship carers.
12. If a child is placed with approved foster carers they are entitled to all payments under the Council scheme. Once it is clear that placement with family members or friends is to be longer term, and the assessment process has begun, I consider it inequitable that kinship carers should not be paid the full allowance when they are already looking after the child during the assessment process. That may be drawn out, as it was in this case. I consider that the right to kinship care payments ought to begin with the start of the assessment process, providing there was no unreasonable delay in advising prospective kinship carers or in commencing that process.

## Finding

13. I recommended that the Council, in recognition of the failings identified above and the injustice these failings caused to Mr Carter, pay Mr Carter the full foster care allowance and additional payments from the date the approval process began and he and his wife had care of the child. The Council accepted my findings and agreed with my recommendations. I am pleased to note that the Council is reviewing its kinship care policy accordingly.
14. In the early stages of my investigation the Council paid Mr Carter £438.33 for the additional allowances for birthdays etc from the date of approval of the complainant and his wife as kinship carers. Following my further investigation the Council paid Mr Carter a further £2434.06, the difference between the support payments he received and the full approved foster carer rate and additional payments from the commencement of the approval process.

15. I am grateful to the Council for its actions here. But I have gone on to complete my investigation and publish this report because Mr Carter's complaint raises issues of public interest.



J R White  
Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry  
CV4 8JB

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