

The investigation of a complaint against  
Conwy County Borough Council

A report by the  
Public Services Ombudsman for Wales  
Case: 201800208

## **The Complaint**

1. Mr A complained about the provision of direct payments (“DPs”)<sup>1</sup> by Conwy County Borough Council (“the Council”) to enable him to purchase respite care services to support the needs of his adoptive family. Particularly, he complained that the Council had failed to:

- provide DPs at an amount that met his family’s assessed need
- escalate his complaint to stage two of the statutory social services complaint procedure when requested (“the Complaints Procedure”)<sup>2</sup>
- take prompt action to remedy the situation after acknowledging that the amount it had been paying was wrong.

## **Investigation**

2. I obtained comments and copies of relevant documents from the Council and considered those in conjunction with the evidence provided by Mr A. I also obtained advice from one of the Ombudsman’s professional adviser’s, Paula Hendry who is an experienced Social Worker. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.

3. Both Mr A and the Council were given the opportunity to see and comment on a draft of this report before the final version was issued.

## **Relevant legislation, policies and guidance**

4. Local authorities have a statutory duty to assess the needs of adoptive families.<sup>3</sup> Where a child is adopted by a family living outside the local authority area, the placing authority has responsibility for carrying out an assessment of need for adoption support at the time of the placement. Where ongoing financial support is agreed by the placing authority before an adoption order is made, responsibility for providing financial support remains with the placing authority for as long

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<sup>1</sup> Money paid directly to the service user to purchase their own support.

<sup>2</sup> The Social Services Complaints Procedure (Wales) Regulations 2014

<sup>3</sup> The Adoption and Children Act 2002

as eligibility for the support continues. Following the assessment of need, where a local authority proposes to provide adoption support, it must produce an Adoption Support Plan setting out what the adoption support is meant for.

5. Local authorities also have a statutory duty to assess the needs of disabled children and their families. There is an expectation in law and guidance that, where a disabled child is assessed as having substantial needs, those needs will be met through the provision of services. The Welsh Government has issued statutory guidance which sets out the assessment process in detail.<sup>4</sup> Following an assessment, where the local authority has identified eligible needs, it must produce a care plan setting out the nature and extent of services to be provided.

6. Persons assessed as needing support have the right to request DPs to purchase services themselves instead of having the support arranged by the local authority.<sup>5</sup> When making DPs, local authorities are subject to the general duty to safeguard and promote the welfare of children in need, and to promote their upbringing by their families, in the same way as when providing services.

7. The Welsh Government has issued statutory practice guidance (“the DP Guidance”) on how DP schemes are to be administered.<sup>6</sup> Whilst it is up to each local authority to decide on the amount of the DP, it must be equivalent to the local authority’s estimate of the reasonable cost of securing the provision of the service concerned, subject to any contribution from the individual recipient. DPs should be enough to enable the individual to lawfully secure a service of a standard that the local authority considers reasonable to fulfil the needs to which the payments relate. In estimating the reasonable cost of securing the support required, local authorities are directed to include associated costs without which the service could not be provided lawfully. Such costs in an employment situation might include National Insurance (“NI”) and statutory holiday and sick pay. Where unresolved disputes arise

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<sup>4</sup>Framework for the Assessment of Children in Need and their Families – Welsh Government, 2001 now contained in the Code of Practice on the exercise of social services functions in relation to Part 3 (Assessing the needs of individuals) of the Social Services and Well-Being (Wales) Act (2014)

<sup>5</sup> Children Act 1989, s.17A

<sup>6</sup> Welsh Government. Direct Payments Guidance: Community Care, Services for Carer’s and Children’s Services (Direct Payments) (Wales) Guidance 2011, April 2011

about the amount of a DP, the local authority should advise the individual that they can pursue the matter through the Complaints Procedure.

8. From 1 August 2014, complaints about social services must be considered in line with the Complaints Procedure, which has two stages. Stage one, allows for the quick, local resolution of complaints through direct discussion. Stage two, involves a formal investigation by an independent investigator with a full written response being provided. The accompanying Complaints Guidance<sup>7</sup> states that complaints must progress to stage two in cases where the local authority considers that the matter is too serious to be dealt with informally; where the complainant has asked for matters to be progressed immediately to formal investigation, and in cases where the complainant remains dissatisfied at the end of stage one. The Complaints Guidance clearly states that there is no requirement for a complaint to be made in writing.

9. The Ombudsman's statutory guidance for public bodies on the principles for remedy of a complaint,<sup>8</sup> states that the underlying principle is to ensure that, where things have gone wrong, the complainant and anyone else affected, should be restored to the position they would have been in if the maladministration or poor service had not occurred. Public bodies should also consider fully and seriously all forms of remedy such as an apology, an explanation, remedial action or financial compensation.

### **Relevant background information and events**

10. Mr & Mrs A live in the area of the Council and were foster parents with a private fostering agency. During **2006**, they began fostering four siblings under the age of five who were 'looked after children'<sup>9</sup> in the care of another local authority in Wales ("the Placing Authority"). The three older children had severe learning disabilities and required constant supervision. Mr & Mrs A adopted the children in **2009**. The Court ordered that the Placing Authority should continue financial support for the children

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<sup>7</sup> Welsh Government. A guide to handling complaints and representations by local authority social services, August 2014

<sup>8</sup> Public Services Ombudsman for Wales. Principles for remedy, March 2008

<sup>9</sup> A child placed into the care of a local authority either by Social Services or by order of the Court.

until they reached the age of 18, and that this should be at the same rate as the fostering allowances paid previously (“the Adoption Support”). Although required to do so, the Placing Authority did not put an Adoption Support Plan in place setting out what the Adoption Support was meant for.

11. The Council commenced assessments of the family’s needs in June **2012**, and on 4 July the Council’s Matching Needs Panel agreed that it would provide short breaks for all three children for one weekend in every six [there is no record of this meeting within the social work case records]. At that time, the Council did not have a charging policy in place for such services and it did not consider the family’s financial means when assessing their need for services.

12. The family wanted the children to remain together for respite care, but the Council was not able to identify a short break placement from its own network of foster carers that would accommodate all three children together. Initially, Mr A agreed to wait until a placement could be found, but in September, he approached the Council for DPs to purchase his own respite care. The Council delayed reaching a decision regarding the provision of DPs while it made enquiries with the Placing Authority about the Adoption Support already in payment to Mr & Mrs A.

13. In November, Mr A complained about delays by the Council in assessing and making provision for respite care. The complaint was considered at stage two of the complaints procedure in place at that time.<sup>10</sup> The complaint investigation concluded that the Council had unduly delayed reaching a decision over the provision of DPs because extensive enquiries with the Placing Authority, before the assessment process was started in June 2012, had already established that there was no Adoption Support Plan in place setting out what the Adoption Support was meant for. The Independent Investigator was also critical that records of key meetings and decisions were not on file. It was recommended that the Council should agree DPs without delay.

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<sup>10</sup> Welsh Government. Listening and learning: A guide to handling local authority complaints and representations in local authorities in Wales, 2005

14. The Council's Matching Needs Panel met in January **2013** to consider the request again, and it agreed to offer Mr A DPs to purchase his own respite care [there are no records of this meeting within the social work case records]. Mr A was also referred to an external provider ("the Agency") for advice and support with the recruitment of carers and the management of the DPs. In its offer letter to Mr A, the Council said that the Placing Authority had now confirmed that there was no Adoption Support Plan in Place [there are no records of this correspondence within the social work case records]. The letter also explained that the calculation of the DPs had been worked out based on the support hours required, as identified in the care plans, and that it allowed for employer's NI, five weeks of annual leave and one week of sickness cover. The records show that the Council calculated the value of the DP's based on the Short Break Allowance it paid to its foster carers ("the DP Package").

15. Both Mr A and the Agency immediately disputed the amount that had been awarded. In emails to the Council, the Agency said that the DP Package was insufficient to meet Mr A's obligations as an employer leaving him open to employee grievances over pay. The Agency also noted that the Short Break Allowance paid to foster carers was not comparable to the costs of an employment situation.

16. On 20 February, the Council met to discuss Mr A's concerns and decided that the DP Package it had offered would remain unchanged. The decision was taken in the context of discussion around the financial support being paid by the Placing Authority and the Council's intention to meet with its Head of Service to clarify what the financial support was meant for. It was also noted that it was open to the family to "top up" the DPs from their own income. There is no evidence that the intended meeting with the Placing Authority's Head of Service took place.

17. During a meeting with the Council on 21 February, Mr A asked if he could continue to dispute the amount of the DP Package if he signed a DP Agreement with the Council. Mr A was invited to put his concerns in writing if he remained dissatisfied with the amount of the award.

18. Mr A accepted the DP Package on 25 February. The DP Agreement signed by Mr A, stated that he was responsible for fulfilling any statutory obligations to his staff, including contracts of employment and job descriptions. Following a successful recruitment process, the First Respite Carers started work for Mr A on 31 May until their resignation in December **2014**.

19. In January **2015**, the Council started a review of the children's care plans. In a review meeting, both the Agency and Mr A again expressed concerns about the amount of the DP Package. It was decided that the matter would be referred to the next Matching Needs Panel which met on 19 January. The minutes record that the First Respite Carers had resigned because they were finding it difficult to meet the children's needs. A decision was taken to re-assess the children's needs and continued eligibility for services, to clarify the "legality" of the DP Package, and to inform Mr A of his right to raise his concerns through the Complaints Procedure. There is no evidence that any of these actions were carried out.

20. The Second Respite Carers were recruited and started work for Mr A on 27 March. The children were also allocated a new Social Worker who met Mr A for the first time in late July **2016**. During the meeting, Mr A pressed the issue of the DP Package not covering the amount that he was paying to his carers. He also asked to see how the amount of the award and his contribution had been calculated.

21. The records show that, between August and October, the Social Worker made enquiries to gain an understanding of the position. In an internal email on 8 August, the Council's Direct Payment Section said that the DP Package was only put in place to meet an element of the respite care costs because the service users were receiving a substantial amount of funding from the Placing Authority.

22. At Mr A's request, on 3 October, the DP Package was transferred from a self-managed to a managed account, where the Agency took over the payroll.

23. By November, the Social Worker had confirmation that the Placing Authority was paying Adoption Support to Mr & Mrs A. A meeting with the Council's Legal Services was then planned to clarify who was responsible for paying for the respite care as there was concern that there may be a duplication of payment for services. At the same time, Mr A's DP Package was suspended because he had not provided the required financial returns to the Council [there are no records of the meeting with Legal Services or any of the correspondence with the Placing Authority in the social work case records].

24. Mr A emailed the Social Worker again on 10, 20 and 23 January **2017**, and repeated his request for information about the DP Package. Mr A noted that he had been asking for this information since their first meeting, and that his respite arrangements were on the verge of breaking down over issues to do with pay. The Social Worker advised that he would be receiving a letter shortly.

25. On 23 January, Mr A submitted a written complaint to the Council about the amount of the DP Package and the lack of response from the Social Worker. Although Mr A requested that his complaint was considered at stage two of the Complaints Procedure, he agreed that an urgent meeting could be arranged to consider his concerns at stage one.

26. In late January, Mr A received the anticipated letter which was from the Council's Legal Services about the late financial returns. The letter also asked that he provide a copy of the Adoption Support Plan with the Placing Authority. The letter did not address Mr A's concerns about the amount of the DP Package or enclose any of the information he had requested.

27. The stage one complaint meeting took place on 7 February. The Council acknowledged that the use of the Short Break Allowance to calculate the DP Package was "not right". It said that this was a maintenance payment to cover expenses and not wages. The Council agreed to recalculate the DP Package going forward using its hourly rate for two daytime carers and a sleep-in rate for one carer. It also agreed to pay any arrears (including tax and NI) due to Mr A and his respite carers from 1 April 2016, in line with the introduction of the National Living



Wage<sup>11</sup> (“the NLW”) and the Social Services and Well-being (Wales) Act 2014. Mr A confirmed that he had paid additional wages and associated costs from his own income to the Second Respite Carers. Mr A reiterated that his respite arrangements were in danger of breaking down and that matters needed to be resolved quickly to prevent this from happening. The Council also acknowledged that the Social Worker had failed to appreciate the point at which his concerns ought to have been escalated to managers and it apologised for this.

28. The Council revised the DP Package going forward and sent a copy of the new calculations to Mr A by email on 6 March so that he could arrange for the Second Respite Carer’s wages to be adjusted accordingly. It was explained that a sleep-in rate would only be paid for one carer. The revised DP amount was paid into the managed account from 30 March. At the same time, the Council also made a payment of pay as you earn tax (“PAYE tax”) to Her Majesty’s Revenues and Customs (“HMRC”).

29. In July, the Council paid to Mr A, by bank transfer, DP arrears for the period 1 April 2016 to 2 October 2016 of £1,459.38. The new calculations were sent to Mr A by email on 28 July. The email said that the amount was made up of, “An [sic] weekly entitlement of £48.70, less payments made from April 2016 to 2 October 2016 of £24.99 per week...” and that the Agency could assist with calculating any back-pay owed to the carers. The Council also paid DP arrears of £2272.40 into the managed account for the period 3 October 2016 to 29 March 2017. The Council did not provide Mr A with a breakdown of the new calculations for this period.

30. On 20 October, Mr A forwarded to the Council, an email from the Second Respite Carer’s stating that they were “suspending” their services for the foreseeable future for the following reasons; they were still waiting to be paid for work carried out in September, there was no clear contract of employment in place, and the wages were insufficient for the service being provided.

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<sup>11</sup> Amendments to the National Minimum Wage Regulations 2015, introduced a new mandatory national living wage for workers aged 25 and above.

31. On 25 October, Mr A made a second complaint to the Council. He said that the DP arrears to the Second Respite Carers had not been sorted out and that there was never enough money in the managed account to pay their wages. Although Mr A requested that his complaint was considered at stage two of the Complaints Procedure, he again agreed that an urgent meeting could be arranged to consider his concerns.

32. Mr A met with the Council on 9 November. Discussion around the lack of funds in the managed account established that Mr A had been paying a sleep-in rate to both carers in error when the DP Package only allowed for payment to one. It was also established that the Council had been underfunding the managed account due to a misunderstanding over the agreed number of short breaks to be provided for (the Council had paid based on short breaks being provided six times a year when the agreed provision was for one week in every six totalling 8.66 times a year). The Council agreed to sort out the underfunding from April 2017, however it did not clarify whether its error also applied to the calculation of the two arrears payments it made in July. The Council also agreed to consider the suitability of Mr A's adult son and partner as possible respite carers. Although asked, the Council would not agree to pay arrears to Mr A's respite carers for work undertaken before 1 April 2016.

33. The case notes record that, during a home visit on 28 November, Mr A said he no longer wanted to use the Second Respite Carers because they had not been following guidance relating to managing the children's needs and behaviours.

34. Mr A emailed the Council on 30 November and disputed the reasoning behind its refusal to pay the arrears before 1 April 2016. He said he felt like he was still having to fight for everything that he was entitled to and he asked the Council to explain properly why it was not able to backdate the wages. On 9 January **2018**, the Council agreed to consider the matter further, however it asked to see, "evidence of challenge being posed" by his former respite carers before it would agree to do so. Mr A questioned the requirement for this evidence and correspondence on the matter continued while the Council took legal advice and Mr A produced evidence of the wages he had paid.

35. On 12 April, Mr A made his complaint to the Ombudsman.

36. On 19 April, the Council agreed to backdate the wages to the former respite carers for work undertaken between 21 May 2013 and 1 April 2016. However, it did not offer to reimburse Mr A for the additional wages he said he had paid directly to the Second Respite Carers between March 2015 and April 2016. Mr A provided the contact details for the First Respite Carers on 2 May and asked to be advised when they had been paid.

37. The Council wrote to the former respite carers on Mr A's behalf to offer the DP arrears due. On 23 May, the Council paid DP arrears of £9039.59 to the First Respite Carers for work undertaken between 31 May 2013 and 9 January 2015. The Second Respite Carers did not respond.

### **Mr A's evidence**

38. Mr A said that, although he had pointed out to the Council the mistakes it had made before making his written complaint in January 2017, it had failed to listen to him as a service user. Mr A added that it felt to him like he was being treated differently by the Council for some reason. Mr A said that had not wanted the Council to deal with his complaint informally. He only agreed to the meeting because the Council said there was a shortage of independent investigators to carry out a stage two investigation and that there would be a delay.

39. Mr A said that, after the complaint meeting, the Council did not keep its promise to put things right. Mr A acknowledged that the Council had made some DP arrears payments to him but said he had no idea what they were for, or whether they were correct. He added that the Council had taken too long to make the payments, causing further tension between him and the Second Respite Carers. This came to a head when he was unable to pay them in October 2017 because of the lack of funds in the managed account.

40. Mr A explained that he received a distressing visit from an HMRC enforcement officer in July 2018, to collect payment of a substantial sum of unpaid PAYE tax. He thought the Council had agreed to pay any

unpaid taxes and was at a loss to explain what was owed. Mr A also said that, although the Council had agreed to pay some DP arrears directly to his former employees, he did not know whether this had happened.

41. Mr A said that he had lost his respite carers because of issues to do with pay and, in his view, the Council was responsible. He said that the periods when he had been without respite care had put an intolerable strain on his marriage and at the time of making his complaint to the Ombudsman, he had been without respite care for several months. Mr A wanted the Council to be held to account for its failure to protect the family unit and to acknowledge the impact of its actions.

42. When commenting on a draft of this report, Mr A said that the First Respite Carers did not receive a DP arrears payment of £9039.59 from the Council.

### **The Council's evidence**

43. The Council denied that it was responsible for the breakdown of Mr A's relationship with his respite carers. It said that Mr A ended his relationship with the Second Respite Carers because he was unhappy with them and wanted his adult son and his partner to take over the role. The Council also said that it had paid sufficient funds into the managed account to pay the Second Respite Carers and their refusal to undertake further work in October 2017, was down to how the account had been managed by Mr A.

44. The Council said that it did not escalate Mr A's complaint to stage two of the Complaints Procedure because the issues he raised had already been explored through the stage two investigation carried out in late 2012.

45. The Council explained that, due to the historic nature of the complaint and changes in the process for the Matching Needs Panel, it had not been able to locate the minutes of the Matching Needs Panel meetings held in June 2012 and January 2013.

46. The Council explained that it paid the DP arrears for the period from 1 April 2016 to 2 October 2016, directly to Mr A because he was responsible for paying his employee's wages and associated payments, including tax, during that period. However, it wrote directly to the respite carers to make the offer of settlement for the period before April 2016, because they were no longer in Mr A's employment.

47. The Council said that the First Respite Carers had acknowledged that it would be their responsibility to pass on any PAYE tax contribution to HMRC directly. It was not aware that HMRC was pursuing Mr A for unpaid PAYE taxes and would liaise directly with the First Respite Carers to ensure that any outstanding taxes due for the period before April 2016 were paid. The Council confirmed that it did not advise Mr A of the payment it had made to the First Respite Carers.

48. When commenting on a draft of this report, the Council clarified that the DP arrears payment to the First Respite Carers had not processed by its Finance Department because an administrative error.

### **The Social Services Adviser**

49. The Adviser said there was, "...no logic whatsoever..." to support the decision to base the DPs on the Short Break Allowance paid to the Council's foster carers. The Adviser confirmed that a Short Break Allowance was paid to cover the extra costs (such as food and fuel), of having a child to stay for a short period of time. Mr A however, needed a level of DPs to pay the NLW along with any associated costs. There was, "...simply no correlation between these two situations."

50. The Adviser noted the evidence from the Council's Legal Adviser set out within the stage two investigation report which said, "As a child in need their entitlement is a right – they are entitled to what they need... For the purposes of children in need, it is irrelevant that there is not an adoption support package...As it transpires, [the Placing Authority's] Adoption Support plan is a dead end – as there appears never to have been a plan..." The Adviser said that regardless of this evidence, Mr A's

challenge in February 2013 over the amount of the DPs, was rejected by the Council in the context of discussions about the financial support being paid by the Placing Authority.

51. The Adviser said it was evident that queries over whether respite had already been planned and provided for by the Placing Authority persisted well past the point of the stage two investigation. The Adviser acknowledged that the absence of an Adoption Support Plan was an unusual and surprising situation. Nevertheless, in the Adviser's view, the situation should have been accepted and efforts should have concentrated on ensuring that the children's needs were met as 'children in need' within the Council's area. Instead, the issue of the financial support provided by the Placing Authority became an unreasonable preoccupation which, more likely than not, affected its decision making.

### **Analysis and conclusions**

52. Mr A complained that the Council failed to provide DPs at an amount that met his family's assessed need for respite care. Whilst I recognise that it was a matter for the Council to determine the amount of the DPs, in so doing, it was required to estimate the reasonable cost of securing the provision of the respite care. For Mr A to secure the provision of respite care, he was going to have to become an employer. Therefore, the Council ought to have estimated the costs associated with paying a lawful wage. Furthermore, although the Council did not have a charging policy in place, by advising Mr A that he could "top up" the DPs from his own resources, the Council was effectively charging him.

53. Although it was reasonable for the Council to ensure that it was not duplicating services already provided for by the Placing Authority, the legal position in the absence of an Adoption Support Plan was established by the stage two investigation in January 2013. However, the Council continued to be side-tracked by the level of Adoption Support being paid to Mr A, which influenced its decision making around the amount of the DPs, which was contrary to its own charging policy and the law.

54. The Council's failure to estimate the proper costs associated with paying the respite carers a lawful wage, and its advice to Mr A that he could top up the DPs from his own resources was maladministration. Mr A did not receive the DPs he was entitled to and this impacted on his ability to offer his employees a rate of pay that met with his legal obligations.

55. Mr A also said it was down to the Council that he had lost his respite carers over issues to do with pay. There is no independent evidence to support that this was the case for the First Respite Carers. Having considered further the reasons given by Second Respite Carers for "suspending" their services in October 2017, I am also not satisfied that this was entirely down to the Council. Firstly, because Mr A had overpaid the sleep-in rate to both carers, he was partly responsible for the shortfall of funds in the managed account, so that he could not pay their wages in October 2017.<sup>12</sup> Secondly, in accordance with the DP Agreement signed by Mr A on 25 February 2013, the reasons given relating to the contract of employment were a matter for Mr A to have resolved and not the Council. Finally, by July 2017, Mr A had received enough DP arrears from the Council to have settled the dispute over the rate of pay. There is also some evidence that Mr A brought the Second Respite Carer's employment to an end for his own reasons (see paragraph 33). Therefore, I am unable to conclude with any certainty that the Council's maladministration was the direct cause of Mr A's respite care arrangements breaking down. However, I am satisfied that the issue of pay caused some unnecessary tension between Mr A and the Second Respite Carers, from at least July 2016, when he first raised the matter with the Social Worker until July 2017, when the DP arrears were paid. This is an injustice to Mr A, and I **uphold** the complaint.

56. Mr A also complained that, latterly, the Council failed to escalate his complaint to stage two of the Complaints Procedure. The Council's assertion that the matter had already been dealt with during the previous stage two investigation was wrong. This was a new complaint first raised by Mr A in February 2013, and again in January 2015 and again in July 2016. On each occasion there was a missed opportunity for the

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<sup>12</sup> The Council also bore some responsibility for the underfunding of the managed account (see paragraph 33) so that Mr A could not pay the Second Respite Carers in October 2017. It is disappointing that it sought to blame Mr A entirely for mismanaging the account in its comments to me.

Council to have resolved matters at an earlier time. Instead of which, it undertook to make further enquiries with the Placing Authority about the Adoption Support Plan. I acknowledge that the Adoption Support Plan may hold relevant information for the Council to consider when determining needs for care and support following assessment. It is also the case that the absence of an Adoption Support Plan has placed the Council in a difficult position. Nevertheless, this should not have delayed either the provision of services or an appropriate response to Mr A's complaints. Furthermore, if the Council wished to resolve the question of whether the respite had already been planned and provided for, it needed to have done more than repeat the same unproductive enquiries with the Placing Authority. It seems to me that this happened, in part, because of the lack of case recording around the previous enquiries made.

57. I recognise that Mr A agreed in January 2017 for his complaint to be considered at stage one of the Complaints Procedure. In my view however, given the complexity of the matters raised, and the Council's historic failure to resolve Mr A's concerns, arrangements for an independent investigation ought to have been made. Although the Council was quick to acknowledge that its DP calculation was 'not right', its own investigation of Mr A's complaint was superficial and failed to fully identify and explain the maladministration dating from January 2013. Had a more robust investigation been carried out, it seems likely to me that an offer to put right any underfunding of the DP Package from May 2013, would have flowed naturally from the findings, putting Mr A and his respite carers back in the position that they would have been in. Instead, the Council's offer to put matters right from April 2016, was neither fair nor proportionate and Mr A was put to some unnecessary time and trouble in pursuing a more satisfactory resolution. This is an injustice to Mr A, and I **uphold** his complaint.

58. Notwithstanding the above, the Council's attempts to put things right after the complaint meeting in February 2017, were also unsatisfactory. The Council failed to;

- Calculate the new DP package correctly from April 2017, contributing to a shortfall of funds in the managed account.
- Calculate the DP arrears payments correctly.



- Make the DP arrears payments to Mr A within a reasonable time after the meeting in February 2017.
- Provide clear information so that Mr A could understand the DP arrears calculations.
- Communicate information to Mr A about the settlement offers made on his behalf to the First and Second Respite Carers.
- Make the DP arrears payment to the First Respite Carers.
- Take steps to reimburse Mr A for the additional wages he paid directly to the Second Respite Carers between March 2015 and April 2016.

59. In my view, the remedial action taken by the Council was piecemeal and it lacked customer focus. From the information I have seen, I am not satisfied that all the arrears have been paid. Furthermore, the Council has not acknowledged the full extent of the failings in this case or offered a proper apology to Mr A for the impact on him and his family. Accordingly, I **uphold** Mr A's complaint.

## **Recommendations**

60. I **recommend** that within one month of the date of this report, the Council should:

- a) Offer a fulsome apology to Mr A for the failings identified in this report.
- b) Pay £750 to Mr A in recognition of the unnecessary tension caused between him and the Second Respite Carers, the poor handling of his complaint, and his additional time and trouble in pursuing a satisfactory resolution of his concerns.
- c) Make a further settlement offer to the Second Respite Carers by recorded delivery.

- d) Ensure that any outstanding DP arrears are paid in full at the Council's DP hourly rate for each year in question and apply a statutory interest rate of 8% to reimburse and compensate Mr A and his respite carers for being deprived of money that they should have had.
- e) Place a definitive statement of the DP entitlement for each child on their case record with an appropriate named contact in the event of further query.
- f) Provide Mr A with comprehensive and clear information about the DP Package calculations and the payments that have been made from 2013 to date.

61. I further **recommend** that within three months of the date of this report, the Council should:

- g) Make exhaustive enquiries to locate a copy of the Adoption Support Plan including, but not limited to enquiries with the Placing Authority's financial and audit services, with any statutory consultee to the Adoption Support Plan, with the Court that made the Adoption Order and any interested parties acting for the children on the court record. If the Adoption Support Plan is found, provide a copy to the Ombudsman.

62. I am pleased to note that in commenting on the draft of this report, the Council has agreed to implement these recommendations and at the time of writing, recommendation 'c' had already been carried out.



**Haidee James**  
Investigation Officer

31 July 2019

#### **ENDNOTE**

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This document constitutes a report under s.21 of the Public Services Ombudsman (Wales) Act 2005 and is issued under the delegated authority of the Ombudsman.



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