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The investigation of a complaint  
against  
Merthyr Tydfil County Borough Council

A report by the  
Public Services Ombudsman for Wales  
Case: 202106412

## **What we investigated**

1. We investigated a complaint from Mrs A that Merthyr Tydfil County Borough Council (“the Council”) did not implement the recommendation made by a Stage 2 Independent Investigator (“the Stage 2 Investigator”) in relation to the payment of a Special Guardianship allowance, and that its decision to do so was unreasonable. The recommendation was that the Council should pay Mrs A and her husband, Mr A, an amount equating to the sum they would have been paid had a Special Guardianship allowance been provided since the date of their grandson, B’s, arrival with them.

## **What we found**

2. The Ombudsman found that the decision not to implement the Stage 2 Investigator’s recommendation was unreasonable. She **upheld** the complaint.

## **What we considered**

3. I obtained comments and copies of relevant documents from the Council and considered them in conjunction with the evidence provided by Mrs A.

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

## **The law and guidance we have considered**

5. A Special Guardianship Order (“SGO”) is a court order that says a child will live permanently with a person (who is not their parent) until they are 18.

6. The Special Guardianship (Wales) Regulations 2005 (“the 2005 Regulations”) make provision in respect of special guardianships. Part 3 of the 2005 Regulations makes provision for special guardianship support services. It specifies the circumstances in which special guardianship support services, in the form of financial

support, may be paid to a special guardian or prospective special guardian (regulation 4), the assessment procedure for support services (regulation 6), how to decide the amount of financial support (regulation 7) and the notification procedure following assessment (regulation 8).

7. The Special Guardianship: Code of Practice on the exercise of social services functions in relation to Special Guardianship orders, Welsh Government (July 2018) (“the Code”) replaced the statutory guidance issued in April 2006. The Code clarifies the duties set out in the 2005 Regulations and that local authorities must act in accordance with it when exercising their social services functions in respect of Special Guardianship orders.

- Chapter 5 sets out the circumstances in which financial support can be paid to special guardians (which includes when a child subject to an SGO is living with the special guardian and the local authority considers that financial support is necessary to ensure the guardian can continue to look after the child) and the factors that must be considered when determining the amount of any financial support (which includes the financial resources available to the special guardian).
- Chapter 6 sets out the procedure for notifying a special guardian of the outcome of an assessment for support services and the opportunity for making representations.

8. The Council’s Special Guardianship Orders Financial Procedure (March 2015) (“the Council’s SGO Financial Procedure”) states that financial support can only be paid to special guardians in certain circumstances (and essentially replicates the 2005 Regulations) which, relevant to this complaint, are:

- to ensure the special guardian can look after the child or continue to look after a child already living with them, after the SGO has been granted.
- where the Council is satisfied that the child has established a relationship with the special guardian before the SGO is granted.

9. The Social Services Complaints Procedure (Wales) Regulations 2014 (“the Regulations”) introduced a 2-stage process to deal with complaints about local authority social services. At Stage 2, the complaint is investigated by an Independent Investigator whose report will form the basis of the local authority’s response. The report should, amongst other things, make recommendations for resolving the complaint (if shortcomings have been identified). The local authority takes responsibility for determining whether the complaint is upheld and the action to be taken as a consequence.

10. The Public Services Ombudsman (Wales) Act 2019 states that the Ombudsman may investigate complaints from members of the public who claim to have suffered injustice because of alleged maladministration or service failure on the part of the public body. The Ombudsman may not question the merits of a discretionary decision taken by a public body without maladministration. However, when the Ombudsman concludes that a complainant has suffered injustice as a consequence of maladministration or service failure, she may make recommendations to the public body to remedy that injustice. The Ombudsman’s aim is to, as far as possible, put the complainant back in the position they would have been in had the maladministration or service failure not occurred.

11. The Ombudsman’s Principles of Good Administration (“the Principles of Good Administration”). This provides a framework for all public bodies to follow when taking administrative decisions and discharging their functions. Principle 1 (getting it right) includes acting in accordance with the law, guidance and with due regard for the rights of those concerned and taking reasonable decisions, based on all relevant considerations. Principle 3 (being open and accountable) includes the requirement to be clear about the criteria for decision making and give reasons for decisions.

## **What happened**

12. B went to live with Mrs A in June **2014**; this was B’s wish. This was initially a private arrangement prior to an SGO being granted.

13. On 10 November a declaration of financial circumstances form was completed in relation to Mr and Mrs A as prospective special guardians for B.

14. On 2 December the then Manager of the Children with Disabilities Team (“the Manager”) emailed the Principal Manager of the Children with Disabilities Team (“the Principal Manager”) regarding the SGO application in relation to B. The Manager asked if the Council should consider offering financial support as part of the SGO. He noted that no one had requested this but asked “could we simply not offer any financial support?”. The Principal Manager’s response, on 11 December, noted that there was no budget for this, and that it was a private arrangement; B was not a Looked After Child (“LAC” - a child is looked after by a local authority if a court has granted a care order to place a child in care, or a council’s Children’s Services Department has cared for the child for more than 24 hours). She suggested that if Mr and Mrs A were receiving Disability Living Allowance, Child Benefit and possibly Child Tax Credit, there were enough funds coming into the family home and she questioned why the Council would supplement this.

15. On 2 December an assessment of Child’s Needs for Support, Special Guardianship, Residence Order and Private Fostering was completed in relation to B and presented at court as a special guardian support plan. We have not been provided a copy of the assessment; the Stage 2 Investigator referred to the document in her investigation and noted that the financial support section stated that B had chosen to live with Mr and Mrs A, who were currently meeting all his needs.

16. Mr and Mrs A were granted an SGO by the Court in relation to B (who was 11 years old at that time) on 9 January **2015**. The Council had supported their application.

17. The Council’s case notes include a trail of emails on 9 January regarding a payment for Mr and Mrs A which documented the following:

- A Senior Administrative Officer sent a completed application for an SGO allowance to the Principal Manager and noted that B’s Social Worker in the Children and Disabilities Team

("the Social Worker") had requested a one-off payment. It was noted that, if this was ongoing, it would amount to £155.67 a week.

- The Principal Manager responded, stating that the Council would not pay on an ongoing basis, as B was not a LAC and the SGO was a private arrangement.
- The Manager said the family had not requested any financial assistance as part of the SGO and none had been offered. The Manager clarified that all the benefits had come through and no financial issues were raised. The Principal Manager agreed a one-off payment of £250.

18. On 10 March **2020** a member of the SGO Team ("the SGO Support Officer") visited Mr and Mrs A at home. Mrs A said that the Council had never provided them with funding to look after B, she did not know why, and she was not told that she could request a financial assessment. One of the visit actions was for Mrs A to request a financial assessment if required.

19. On 22 July Mrs A formally requested financial support from the Council for B.

20. A financial assessment was completed in August. As a result, Mr and Mrs A received £115.23 per week from the Council, which would be reviewed annually. The payments were backdated to March 2020 when the SGO Support Officer initially contacted the family. Mrs A was noted to have said that she could not understand why financial support was not previously offered, that the Manager and the Social Worker were both aware of their financial difficulties and that they were living on Mr A's overdraft.

### **Stage 1 of the Complaints Process**

21. On 22 December Mrs A's concern about why she had not previously received an SGO allowance was escalated to the Head of Children's Service ("the Head of Service").

22. A virtual meeting was held with the Head of Service on 20 January **2021** to discuss Mrs A's concern. The outcome of the Stage 1 investigation, on 11 March, was that a management note in 2015 concluded Mr and Mrs A were not eligible for payments. This was because B was in the care of Mrs A under a family arrangement and had not been placed in her care by the Council which meant there was no automatic requirement for financial support.

23. The Head of Service confirmed that payments were made from 2020 as the Council became aware of a dispute in respect of Special Guardianship payments. They said that the Council was keen to ensure that B's home situation was supported while this was explored, and an agreement was made for Special Guardianship payments in the short term as a goodwill gesture; this was not an acknowledgement that the Council should be paying Special Guardianship allowance.

### **The Stage 2 Investigation**

24. Mrs A, with the assistance of her local councillor, requested a Stage 2 investigation of her complaint in April 2021 as she was unhappy with the Council's response. Mrs A confirmed her complaint with the Stage 2 Investigator on 26 July 2021:

- a) That Mr and Mrs A were not provided with an SGO allowance in respect of B following the Council's placement of him in their care (this complaint was not upheld).
- b) That the Council's claim it did not place B was incorrect given that Mr and Mrs A were told there was a plan in place for him to go to a residential placement if they did not agree to keep him with them (this complaint was not upheld).
- c) Whereas the Council now claim they were not responsible for B financially, this was not discussed at all when B arrived and the Council's alleged understanding of the situation as not being their placement was not made clear to Mr and Mrs A at that time (this complaint was upheld in part).

d) Staff were fully aware at the time of B's placement with Mr and Mrs A that they would struggle to support him financially and were also aware that they did subsequently struggle. No discussion was held with them about how they were to manage financially, and no support was offered apart from a one-off payment of £250 (this complaint was upheld).

25. Mrs A noted her desired outcomes were an apology for the Council's failure to provide an SGO allowance in respect of B, and payment of SGO allowance from the date of the decision taken by the Council to place B in the care of Mr and Mrs A.

26. The Stage 2 Investigator noted from interviews with relevant personnel that:

- Mrs A indicated that the Council was aware she was struggling financially; she could not recall any mention of finances when the SGO was in court; she did not know that Special Guardianship allowances existed and if she had known, she would have asked to be considered for this.
- The Social Worker recalled/could see from the file that there was a shortfall in the money that Mr and Mrs A needed, but the Principal Manager had turned down a request for financial assistance. Email correspondence between her and the Manager demonstrated that the Manager had told her Mr and Mrs A were claiming disability benefits which were considerable, and that this was a private arrangement. She had not carried out an SGO before so did not know what the usual support was. The Social Worker did not know what the Council's policy was at the time, but recalled that not long after B had moved in with Mrs A, she was saying they needed more money, and a one-off payment was made for £250. This was before B's benefits had been transferred across to Mrs A.
- The Manager did not recall a lot of discussion about finances at the time and said that "policy-wise" it seemed "there was a vacuum at the time and that this decision may have been correct in law but may fall into a more problematic area morally". The Manager did not recall



being told by Mrs A that she was struggling for money. If he had been aware of this, he would have discussed it with them.

- The Head of Service explained that the way in which the Council supported SGO carers had changed significantly since 2018 and that a decision was made at the time that the family were not eligible for financial support. She could not find any policy that indicated the policy position at that time, which she said was “an almost inevitable difficulty with responding to a complaint that dates back so far”. The Head of Service said that one of her tests in reviewing the matter was to consider whether the Council placed B, and she could not find evidence this was the case. She said the matter had been to Court and there had been no challenge to the Council’s position at any time.

27. The Stage 2 Investigator noted information from the Council’s file in the investigation report, which has, where relevant, been included in the background section above, save for the following:

- In January 2015, a Special Guardianship report was completed for Court by the Social Worker. The Stage 2 Investigator noted that, based on the information provided, the financial section noted a weekly shortfall of £230.07; the report noted that “there are no specific financial difficulties”.

28. The Stage 2 Investigator, in summary, said:

- She accepted that the Council’s position was for B to be initially assessed within a family setting and that it was health colleagues who had been looking for residential placements. However, she said that the fact that the family were told there might be an application for a care order or consideration for residential placement was important and relevant.
- She accepted that B was not placed by the Council and was not a LAC but felt that Mr and Mrs A’s decision to apply for permanent care of B with the explicit support of the Council was an alternative to B

becoming a LAC, given the family were told what might otherwise happen.

- There were indications of financial stress on Mr and Mrs A. The Council's financial assessment for Special Guardianship allowance showed that, even with B's benefits, the family's outgoings were more than their income and the family would have been provided with £155.67 per week if they had been found eligible for a Special Guardianship allowance.
- Mr and Mrs A were not found eligible, and several reasons were provided. Firstly, the Council's view that there were enough funds with disability and child benefits was contradicted, in the Stage 2 Investigator's view, by the Council's own financial assessment showing that household expenditure exceeded their income. Secondly, Council staff said Mrs A never requested financial assistance which, she said, put the onus on Mrs A. This implied, in the Stage 2 Investigator's view, that the Council would have helped financially if financial hardship had been known. She said that, early on, the Council's financial assessment clearly indicated likely financial difficulties for Mrs A in caring for B. Thirdly, according to the 2005 Regulations, as the Council had carried out an assessment for support services, it should have notified Mr and Mrs A of the outcome along with the procedure to make representations about the matter.
- The main argument to support the decision not to provide financial support was because B was not a LAC. Whilst B was not a LAC, the 2005 Regulations empowered local authorities to pay Special Guardianship allowances in certain circumstances, including where financial support was necessary to enable a special guardian to continue to look after the child. The 2005 Regulations amounted to a power not a duty.
- She was told that the Council's policy at the time was not to pay financial support where children had not been a LAC, but she was not given that policy. The Stage 2 Investigator could not find anything in law or regulations to say that financial support would only be provided where a child was previously a LAC.

- In terms of eligibility for financial support, the Council's SGO Financial Procedure replicated provisions already in the 2005 Regulations, i.e., that financial support can be paid to special guardians where this is necessary to ensure the special guardian can look after the child.
- The Council's own assessment indicated financial hardship for Mr and Mrs A in caring for B. The Stage 2 Investigator thought that the local authority had a duty to address the need for some form of financial support to ensure stability of the arrangement for B and to ensure his needs were met, which she felt was implicitly recognised by providing the one-off payment in October 2014.
- She accepted that the matter was scrutinised in Court, but that it was now not possible to know whether the financial proposal (or lack of it) was discussed, and if not, why that may have been.

29. The Stage 2 Investigator made the following recommendations:

- The Council should apologise to Mr and Mrs A for the deficits identified in the report regarding the provision of financial support for their care of B.
- The Council should pay Mr and Mrs A an amount equating to the sum they would have been paid had a Special Guardianship allowance been provided since the date of B's arrival with them.

30. The Chief Officer/Statutory Director of Social Services responded to the Stage 2 investigation report on 8 December 2021. She said:

- The practice in respect of supporting SGOs had progressed under the Code (introduced in 2018) - B went to reside with Mr and Mrs A in 2015.
- There were deficits in the overall approach to the issue of financial support and in the failure to address the results of the Council's own

financial assessment. The Council apologised for the lack of clarity in how it communicated its decision-making in respect of financial support in 2015.

- The Council accepted that financial information was considered at the time of granting of the SGO. The family's finances were presented to the Court with a Special Guardianship Care Plan that advised no financial support would be provided. An order was made with no further financial recommendation; Mrs A had sight of this information.
- In cases such as B's, the local authority had a power to offer financial support but not a duty and this was considered by the Principal Manager at that time, who did not agree to a payment.
- The Council accepted there was no clearly recorded discussion between its staff and Mrs A regarding the outcome of the family's financial assessment.
- In considering the recommendation that the Council should pay Mr and Mrs A an amount equating to the sum they would have been paid had a SGO allowance been provided since the date B arrived with them, the Council offered a goodwill gesture payment of £9990.44 (covering the period following the publication of the Code). It did not accept that Mr and Mrs A were entitled to allowances at the time B was initially placed. It said this amount was in addition to £3226.44 already paid and the weekly allowance paid between August 2020 and B turning 18 years old (£115.23 per week).

### **What Mrs A said**

31. Mrs A said that she agreed for B to live with her and Mr A as part of an SGO as she was fearful of losing B, owing to the threat from the Council to place him in a residential care setting. She said they spent thousands of pounds converting the attic space for B. Owing to his autistic needs, Mrs A, who indicated they were a low-income family, said this placed an extra financial burden on the family and that they consistently used their overdraft and borrowed money and a vehicle from Mr A's father.

32. Mrs A said the Council failed to act on the recommendations made by the Stage 2 Investigator where their complaints were upheld. She wanted the Council to implement all the recommendations made by the Stage 2 Investigator.

33. Mrs A said that the stage 2 report recommended that the Council pay Mr and Mrs A an amount equating to the sum they would have been paid had a Special Guardianship allowance been provided since the date of B's arrival. She said the Council was only offering a goodwill gesture as it said that B was not placed into their care. Mrs A said that, whilst this was correct, the Council had threatened B with a residential care setting.

### **What the Council said**

34. In response to this investigation, the Council said:

- It did not accept that a payment should have been made from the time B was placed with Mr and Mrs A.
- The £9990.44 goodwill gesture was to support the family and to acknowledge that the Code had informed the creation of the Council's SGO Assessment Team; had the Team been set up immediately it would have contacted Mrs A sooner. It said this did not mean it would have agreed a financial payment, but this was the basis of why the goodwill payment was backdated to the publication of the Code.
- The goodwill gesture was calculated based upon the sum that would have been provided to Mrs A had an SGO allowance been agreed from the time of the publication of the Code. The sum was based upon Mrs A's financially assessed weekly amount.
- There was no clear discussion on file between Council staff and Mrs A in respect of the family's financial assessment.
- The power to award SGO support payments was a discretionary power of the Council and not a duty. It said there was a note of the decision by the Principal Manager in 2015 that the Council did not have a duty to pay SGO allowances.

- The Council was unable to confirm what information was provided 8 years ago, when the SGO was made.
- The Council said the SGO Court Statement and Court Care Plan documented that no financial support would be provided. Mr and Mrs A would have had the opportunity to assess the support offered and to take legal advice at the time.
- The Council confirmed that the Special Guardianship report did not highlight specific financial difficulties. It said the calculations demonstrated a shortfall between incomings and outgoings. It said the purpose of discretionary SGO support payments would be to soften the additional financial cost of a child residing with them and not to financially support the family fully.
- The Council said the family had been party to several assessments since B was placed and had not raised financial hardship concerns before July 2020.
- It said B was not a LAC before the SGO was granted and that B living with Mrs A was not a local authority decision.

### **The reasons for what we found**

35. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.

36. The Ombudsman's role in investigating Mrs A's complaint was to consider whether the Council's decision not to implement the recommendation made by the Stage 2 Investigator was taken fairly and appropriately. Whilst the Ombudsman may not interfere with the merits of discretionary decisions which are taken properly, when the Ombudsman finds that there has been maladministration by a public body, she may make recommendations to remedy any injustice caused to a complainant as a consequence of that maladministration. A failure to take a decision properly, based on all relevant considerations amounts to maladministration.

37. The Regulations are clear that, whilst the Stage 2 Investigator's report will form the basis of the local authority's response, it was ultimately the local authority's responsibility to decide what action it should take following receipt of the Stage 2 investigation report.

38. The Council was permitted, in accordance with the Regulations, to decide not to follow the Stage 2 Investigator's recommendations. However, in doing so, in accordance with public law principles of decision-making and the Principles of Good Administration, the Council was obliged to exercise its discretion about this properly. It needed to take account of all relevant facts to reach a reasonable decision, and to have clearly documented its rationale for arriving at its decision not to follow the Stage 2 recommendation to pay Mr and Mrs A a back-dated sum.

39. Having reviewed all the evidence available from Mrs A and the Council, including the explanations provided by the Council in response to the Stage 2 investigation and during this investigation, I consider that the Council's decision-making was flawed because it did not properly apply the law, take into consideration the relevant facts, or adequately outline its reasons for its decision. This amounts to maladministration on the Council's part.

40. The Council's response of 8 December 2021 failed to explain why it decided not to follow the Stage 2 recommendation. In responding specifically to the recommendation to pay Mr and Mrs A an amount equating to the sum that would have been paid had a SGO allowance be provided, the Council merely said that "...it did not accept that Mr and Mrs A were entitled to allowances at the stage B was initially placed". It provided no further explanation or rationale for this decision, other than explaining the basis for its goodwill gesture. This lack of clarity was precisely why Mrs A felt the need to complain to the Ombudsman.

41. The Stage 2 Investigator highlighted in the report facts which were relevant to the complaint and required consideration by the Council when it took its decision. There was no evidence on the Council's files or in its

written decision that proper consideration was given to the issues outlined below or that it applied the 2005 Regulations correctly.

- Although it was found that B was not “placed” with Mr and Mrs A, the events leading up to the approval of the SGO were complex. It was clear that the Council supported Mr and Mrs A’s decision to care for B, that this became part of the Council’s care plan, and that Mr and Mrs A were told at one point that if this did not happen or was unsuccessful, care proceedings were a highly likely next step.
- Despite an assessment in November 2014 identifying a financial shortfall, there was no evidence that Mrs A was contacted about this or that there was any discussion about the implications of this. The Council said Mrs A did not request any financial assistance and that she could have raised this when the SGO was going through the court process. This put the responsibility on Mrs A. The Council’s comments suggest that the Council may have helped her had the financial hardship been known - yet the Council did know, because it had completed an assessment of finances and had identified a significant financial shortfall.
- The 2005 Regulations state that, after carrying out an assessment for Special Guardianship support services, the Council must provide information to the person assessed, and set out their right to make representations to the Council about the proposal in writing along with the procedure for them to do so. Mrs A was not informed of her right to make representations. The Council accepts that there is no record of discussion between Council staff and Mrs A regarding the family’s financial assessment. The failure to notify Mrs A of her right to make representations is contrary to the 2005 Regulations.
- I am persuaded by Mrs A’s evidence that she was not told about the existence of an SGO allowance until 2020, given the absence of evidence that the Council discussed this with her.
- Whilst the Council said Mrs A did not raise financial concerns between 2015 and 2020, it is clear from what Mrs A told the Stage 2 Investigator that she had made the Council aware that she



was struggling financially, she did not know that an SGO allowance existed, and had she known, she would have asked to be considered for this.

- The Council misapplied the 2005 Regulations which outline the circumstances when financial support can be paid. These include when the child subject to SGO (or a prospective SGO) lives with a special guardian and the Council considers that financial support is necessary to ensure the guardian can continue to look after the child. The identified financial shortfall should have put the Council on notice regarding the family's financial situation and it should have considered whether to utilise its powers under the 2005 Regulations to consider financial support. It failed to do so.
- Neither the 2005 Regulations nor the Code state that money is only payable to a LAC. The 2005 Regulations state that financial support can be paid in certain circumstances including when the child subject to an SGO (or prospective SGO) lives with a special guardian as was the case with Mr and Mrs A and B. The Principal Manager twice referred to this as a reason for refusing financial support when approached by other officers. The Council also confirmed this both to the Stage 2 Investigator and in its comments during this investigation. To consider that only children who qualify as a LAC are eligible for consideration for financial support flies in the face of the Regulations and the Code. It amounts, in my view, to the Council misapplying the law and therefore fettering its discretion in terms of financial support consideration.
- The Principal Manager's decision on 9 January 2015, not to agree to ongoing support, indicated that eligibility for financial support was not met, but the rationale for the decision was misplaced because it was based on the view that SGO payments could only be made to a LAC. Although this decision appears to amount to an assessment of support needs, there was no indication that Mrs A was given notice in writing of the decision or opportunity to challenge it (as per regulation 8 requirements). As the Council had made the decision not to pay an

SGO allowance at that time, it should have advised Mrs A of the decision which would have afforded her the opportunity to make representations to the Council about that.

- The Council explained its rationale for the goodwill gesture but said that this did not mean it would have agreed a financial payment in 2015. Whilst the publication of the Code in 2018 clarified local authorities' responsibilities under the 2005 Regulations and made the duties and discretionary elements clearer, the substance of the Code is the same as the 2005 Regulations; the Code clarified the position in law which already existed. No reasonable rationale for using the publication of the Code as a cut-off point when considering its "goodwill payment" was set out. It is also perplexing, given that the Council said it did not accept that Mrs A was entitled to an allowance from the time B was initially placed with her, that it has made a substantial financial offer of £9990.44 as a "goodwill gesture". Mrs A highlighted at that time that they were short of money and the Council's own assessment in November 2014 highlighted a financial shortcoming of £155.67. Despite this, the Council failed to consider whether it should provide financial support, which was contrary to the expectations of the 2005 Regulations.

## **Injustice**

42. If the Ombudsman finds that there has been maladministration by a public body, she may make recommendations to remedy any injustice caused to a complainant as a consequence of that maladministration.

43. It is a matter for the Ombudsman to determine what, if any, injustice has been caused to Mrs A as a result of the Council's maladministration. In reaching my view, I note that Mrs A confirmed that they were a low-income family, who agreed to an SGO to prevent B being placed in residential care and to avoid losing him. This resulted in them spending thousands of pounds to convert the attic for B, and consistently using their overdraft and borrowing money from family to make up any financial shortfall. In addition, the Council's own financial assessment identified a financial shortfall, supporting what Mrs A has said.

44. Had the matter been considered properly, and had the Council met its obligations under the 2005 Regulations, Mrs A would have had the opportunity to challenge the decisions made in 2014/2015 about financial assistance; this was her right under the 2005 Regulations which she was denied. She was also unaware that she could seek financial support or assistance at any time.

45. There was clearly a need for financial assistance as identified by the £155.67 shortfall. In the absence of any financial assessment until August 2020, there is no evidence that the financial situation subsequently improved in this period. Although it is not possible to say with absolute certainty what would have happened had the Council not acted with maladministration and considered this matter properly, in view of the relevant considerations which are highlighted above, I consider that it is more likely than not that Mrs A would have received this weekly payment at least from the time the SGO was granted. This is a significant injustice. As the Ombudsman's aim is to, as far as possible, put the complainant back in the position they would have been in had the maladministration not occurred, it is right to ask the Council to make a payment to remedy this injustice.

46. Furthermore, the identified financial shortfall, which the Council has acknowledged, did not result in further assessment. The Manager's suggestion to consider financial support in 2015 was refused by the Principal Manager primarily on the basis that B was not a LAC. This was not a relevant consideration for the Council to take into account. The 2005 Regulations are clear that the financial resources of the Special Guardian or a prospective special guardian should be considered when determining the amount of financial support; clearly an identified shortfall was relevant. The view that the provisions only applied to a LAC was incorrect and resulted in a failure to properly consider the matter. This was a significant injustice to Mrs A as the Council acted contrary to the requirements of the 2005 Regulations. Its position that the provisions only applied to a LAC is concerning, as this might have impacted others in a similar position.

47. I am satisfied that the maladministration caused Mrs A significant injustice and the Council's decision not to implement the Stage 2 Investigator's recommendation was unreasonable. I **uphold** this complaint.

### **What the Council should do to put things right**

48. In deciding what recommendations to make, I am mindful of the fact that, since the time Mr and Mrs A were granted a SGO in respect of B, the Code has been implemented which gives clear guidance to local authorities on their duties under relevant legislation and regulations in relation to special guardians. In addition, the Council has, since the time of the implementation of the Code, set up a dedicated SGO Team. This limits the recommendations I propose to make.

49. However, I am concerned that the Council's flawed approach in respect of B as a non-LAC may have been applied to other non "Looked After" children. The Ombudsman has the power to make recommendations in the wider public interest if she identifies potential systemic concerns. I have therefore made an additional recommendation in respect of this.

50. I **recommend** that, within **6 weeks** of the date of this report, the Council should:

- a) Apologise in writing to Mr and Mrs A for the failings identified in this report.

51. I **recommend** that, within **2 months** of the date of this report, the Council should:

- b) Pay Mr and Mrs A the goodwill gesture payment of £9990.44 if it has not already done so.
- c) Calculate the amount of SGO allowance Mr and Mrs A would have been paid from the date the SGO was granted (9 January 2015) to the date of the goodwill gesture (March 2020) and provide its calculation to the Ombudsman.

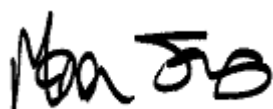
52. I **recommend** that, within **3 months** of the date of this report, the Council should:

- d) Agree to pay a financial redress payment based on the above calculation c) once the calculation has been agreed with the Ombudsman.

53. I **recommend** that, within **8 months** of the date of this report, the Council should:

- e) Carry out an audit of all other non “Looked After” children who lived with Special Guardians from 2015. Where a financial shortfall was identified but financial support was declined because the child was not a LAC, the Council should carry out a fresh assessment in these cases and provide financial redress for the amount the family should have been paid and for this to be backdated to the time a financial shortfall was identified.
- f) Share the outcome of the audit with this office and the Council’s Governance and Audit Committee.

54. I am pleased to note that in commenting on the draft of this report the Council has agreed to implement these recommendations.



**Manon Jones**  
Swyddog Ymchwilio/Investigation Officer

9 November 2023

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This is a report issued under s.27 of the Public Services Ombudsman (Wales) Act 2019 and under the delegated authority of the Ombudsman.

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