

COPY

Our ref: 200900173/CRD

Ask for: Cheryl Davies

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Date: 8 September 2010

✉ Cheryl.Davies@ombudsman-1

PRIVATE AND CONFIDENTIAL

Ms A

[REDACTED]

Ms A

Dear [REDACTED]

Further to our conversation on 6 September 2010 I am writing to you to outline the outcome of our investigation of your complaint against Caerphilly County Borough Council ("the Council").

I have carefully reviewed your complaint in light of the comments made in the letter that we received from you on 13 May 2010. I have made further enquiries of you and the Council, about the reimbursement issue, as a result. I have also amended this letter to reflect the outcome of these enquiries and your related comments. I note that you imply that you did not tell Ms Mavis Seabourne (Family Placement Worker) that you "went bankrupt a few years ago", as stated in her case recording dated 30 March 2006. I recognise that this reference to bankruptcy might have distressed you. I also recognise that you deny this "allegation". However, this denial, though understandably important to you, does not affect my findings. Nor is it sufficient to merit a revision of the compensation payment agreed. My provisional findings, in respect of your complaint, remain, despite your comments and associated amendments, unchanged.

Complaint

You complain about the service provided for you, by the Council, when you were, as one of its registered foster carers, caring for *Child A* and *Child B* [REDACTED] and [REDACTED]. You also indicate that you are dissatisfied with its handling of your complaint about a related issue.

I consider that your complaint has four distinct parts, which concern the following:

1. The decisions taken in respect of ^{child A} [redacted] and ^{child B} [redacted] and the support services provided for you whilst you were caring for them
2. Your reimbursement for damage to your property
3. Your fostering allowance payments, and
4. The Council's complaint handling.

I will now consider each aspect of your complaint in turn.

1. The decisions taken in respect of ^{child A} [redacted] and ^{child B} [redacted] and the support services provided for you whilst you were caring for them.

You say that the Council removed ^{child A} [redacted] and ^{child B} [redacted] from your care during November 2007 and February 2008 respectively. You indicate that you are dissatisfied with the way in which ^{child B} [redacted] placement ended. You also suggest that the Council's decision to remove ^{child A} [redacted] from your care was unreasonable. You complain that the support you received from the Council, in terms of caring for ^{child A} [redacted] and ^{child B} [redacted], was lacking.

The Ombudsman may not investigate, or continue to investigate, a complaint about a properly made decision that a public body or a provider of public services is entitled to take. Essentially, he cannot investigate a complaint simply because the complainant disagrees with a decision; there must be evidence to suggest that the decision was taken improperly or that it was unreasonable. The Council's decision to remove ^{child B} [redacted] from your care is one which it was entitled to take. Consequently, we could not question it unless we are concerned that the Council did not follow the relevant decision-making process correctly or that its decision was perverse. I am not satisfied, given the emergency nature of ^{child A} [redacted] initial placement, the circumstances surrounding ^{child A} [redacted] placement departure on 30 November 2007 and the concerns expressed about your caring ability, that the Council's decision to remove ^{child B} [redacted] from your care on 6 February 2008 was unreasonable. I am also not persuaded, having considered the minutes of the strategy meetings that took place on 18 December 2007 and 28 January 2008, that the Council's decision-making process was, in terms of our investigation of your complaint, significantly flawed. I understand that Ms Seabourne discussed the purpose and outcome of these strategy meetings with you.

Similarly, I am not satisfied that the Council's decision to end ^{child B's} [redacted] placement on 30 November 2007 was unreasonable because the Council has indicated that you wanted his placement to end at that time. I recognise that you may dispute this. However, I have no way of establishing exactly what either you or Council employees said, about ^{Child B's} [redacted] placement, on 30 November 2007.

I understand that you are dissatisfied with the level of support that you received whilst you were caring for ^{Child A} [redacted] and ^{Child B} [redacted]. I note that you have not made this complaint on their behalf. I acknowledge that you may have found caring for them particularly challenging in the alleged absence of sufficient support from the Council. I also recognise that you *may* believe that their placements with you would not have ended if you had had more support. However, it seems to me that it would be impossible to prove that the provision of more support for you would have led to the maintenance of these placements. Consequently, I cannot conclude that you have suffered any significant injustice as a direct result of the Council's alleged failure to provide an appropriate level of support for you. The Ombudsman cannot uphold a complaint against a public body unless he is satisfied that the complainant, or the aggrieved, has suffered some significant injustice because of the matter complained about.

I do not uphold this aspect of your complaint.

2. Reimbursement for damage to your property

^{Child B} [redacted] You say that [redacted] damaged your property. You complain that the Council has not reimbursed you for the costs incurred as a result.

The Council's response to this issue appeared, based on the information which you initially provided, to be reasonable. Ms Judith Morgans (Customer Services Manager), in her letter to you dated 5 February 2009, stated that the Council might consider "*processing*" a claim related to this property damage, through its Resources Directorate, if you provided evidence to show that your own insurance claim had been refused. You had not, as far as I am aware, given the Council such evidence. I also noted that the Foster Care Handbook ("the Handbook") clearly states that the Council's insurance cover for carers "*will only come into effect*" if a carer has claimed through his/her own insurance and "*that claim has been refused.*"

You provided further information about this part of your complaint in response to my letter of 30 April 2010. This letter contained my provisional findings. You said that you gave Ms Seabourne two receipts totalling £83, for reimbursement purposes, during January/February 2008. You explained that you incurred these costs because you had to replace the curtain rail (£23) and

Child B's
replaster (a) bedroom wall(s) (£60) in [redacted]'s former bedroom. You alleged that [redacted] damaged this curtain rail and his bedroom wall(s) on the day that he left your care, that is 30 November 2007. You explained that you gave Ms Seabourne the receipts cited because your home insurance policy had an excess of £100. You implied that Ms Seabourne had agreed to try to reimburse you for these costs. You reported that Ms Seabourne did reimburse you for the cost, associated with a ring, that you also incurred around this time.

The Council has confirmed that, where the cost of repairing and/or replacing the property damaged is less than a carer's insurance excess, it would consider reimbursing any claim related to this damage in full. It has explained that the carer concerned would need to provide proof of the following before it would consider such a claim:

- That s/he has a minimum level of primary level insurance cover.
- That his/her insurers are aware that s/he is a foster carer for the Council.
- That the young person cared for caused the damage featured in the 'claim'.

However, it has reported that there is no reference to Ms Seabourne submitting a reimbursement claim, on your behalf, within its recordings. It has also noted that these recordings contain no reference to Ms Seabourne discussing such a claim. It has observed that Ms Seabourne stopped working for the Council during 2009. It has reported that it contacted her, by 'phone, to ask whether she could recall receiving these receipts from you during January/February 2008. It has indicated that Ms Seabourne could not recall doing so. I cannot establish, in the absence of further evidence from you, that you gave these receipts to Ms Seabourne. Consequently, I am unable to conclude that the Council failed to reimburse you for damage to your property.

I do not uphold this aspect of your complaint.

Nevertheless, your comments about this reimbursement issue highlight the fact that the Handbook does not explain what carers should do when their property is damaged, by a young person placed with them by the Council, *if* the cost of repairing this damage and/or replacing the damaged property falls below the level of their home insurance excess. I consider that this omission is significant and I have therefore drawn it to the Council's attention.

3. Your fostering allowance payments

You complain that you did not receive any fostering allowance payments for a period of twenty-nine weeks, that is between 6 February 2008 and 21 August 2008. You report that you asked several Council officers about this allowance during this period. You suggest that the Council discriminated against you. You indicate that you are dissatisfied with the Council's decision to pay you an allowance for this period at the same rate as that given to its career carers. You imply that this allowance is lower than that which you were entitled to receive. You tell us that you have suffered "*unnecessary financial hardship*" because of the Council's alleged failings.

I have concluded that the Council did not manage your fostering allowance payments properly. I have reached this view for six reasons. Firstly, the Council has acknowledged that it has no records regarding the terms and conditions under which it engaged former Cymru Foster Care Associates' ('Cymru') carers like you. Secondly, it has not been able to provide a satisfactory explanation for its decision to stop paying you any fostering allowance during February 2008. Thirdly, you did not receive any fostering allowance payments for approximately twenty-nine weeks between 10 February 2008 and 28 August 2008. Fourthly, the Council did not actually pay you for the period between 10 February 2008 and 14 August 2008 until December 2008. Fifthly, the Council has not provided any evidence to demonstrate that it reviewed your fostering allowance payments. The Handbook states that payments for carers who "*are on hold due to an allegation/complaint*" will be "*reviewed on a monthly basis and a decision made by the service manager as to whether the payments will be reduced/continue/cease.*" Finally, the Council has acknowledged that there is no evidence to show that it notified you of its payment decisions in writing. The Handbook indicates that the Council will advise carers, in writing, of any payment decisions made in these circumstances.

I uphold this part of your complaint.

4. The Council's complaint handling

You complain that the Council has not addressed that part of your complaint which concerns the support that it provided for you.

On 9 October 2008 you formally complained to the Council about your fostering allowance payments and the social work support provided for you, ~~_____~~. The Council provided a substantive response to that aspect of your complaint that concerned your fostering allowance on 27 November 2008. It indicated that it was still investigating that part of your complaint which concerned the provision of social work support. On 6 January 2009 you wrote to the Council again and indicated that you were

dissatisfied with its response to the financial aspect of your complaint. You stated that you were "*looking forward*" to receiving the Council's response to the support part of your complaint. On 5 February 2009 the Council provided a further response to the financial aspect of your complaint. It indicated again that it was investigating the support part of your complaint. The Council has not, as far as I am aware, provided you with a full response to this aspect of your complaint.

I uphold this part of your complaint.

Recommendations to the Council

I have recommended that:

1. The Council's Chief Executive should apologise to you for the Council's delay in paying you a fostering allowance and for its failure to respond to that aspect of your complaint which concerned the support provided for you,
2. The Council should pay you an amount equivalent to two weeks payment at the career carer rate for the period between 14 August 2008 (the end of the period covered by your previous payment) and 28 August 2008 (the date on which you were informed, in writing, that the Foster Panel had decided to de-register you as a carer),
3. The Council should pay you £500 to compensate you for the stress and inconvenience you have experienced because of the payment delay, and
4. The Council should consider including a paragraph, which addresses the insurance excess issue, in that part of the Handbook, which deals with insurance claims, when it next revises it.

I am pleased to say that the Council has agreed to comply with all of these recommendations.

I anticipate that this compensation payment will be much smaller than the one you were hoping to achieve by complaining to this office. Consequently, I should explain that the purpose of this payment is to compensate you for the stress and inconvenience you have experienced because of the payment delay. It bears no relationship to the financial losses that you have described. I have limited the compensation payment in this way primarily because I am not convinced that you lost your home, your family caravan and your acceptable credit rating as a direct result of the Council's mismanagement of your fostering allowance payments. I have reached this view because the Council has provided case recordings, made by Ms Seabourne on 30 March

2006 and 21 November 2006, which clearly indicate that you were experiencing significant financial difficulties during this period, that is over a year before the Council stopped your fostering allowance payments. I have also taken into account, when calculating this proposed payment, that the Council did not, as I understand it, recover the overpayment of £261.40 made, in respect of [REDACTED], for the period between 6 and 10 February 2008, from you. *Child A*

Furthermore, I have not been able to establish that the Council should have paid your outstanding fostering allowance at the "specialised" ('out of county'), as opposed to the career carer, rate. This is because the Council has informed us that it has been "unable to find any paperwork or evidence" related to the terms and conditions under which former Cymru carers transferred to the Council during 2001. I recognise that you have provided a copy of a memo, dated 25 July 2001, which relates to these transfer arrangements. Mr Derek Clode (Support Worker – Family Placement Team) indicates, in this memo, that it was initially agreed, when Cymru carers began fostering for the Council, that the Council "would match" the funding that they were receiving from Cymru and the terms and conditions under which they were operating when working for this agency. However, I understand that this was an interim arrangement. In the absence of written evidence, which shows that you were operating under these terms and conditions, when the matters complained about arose, I cannot conclude that the Council's decision to pay you at the career carer rate was unreasonable. Nor can I see that the costs that you incurred between 10 February 2008 and 28 August 2008, because of your foster care commitments, would have been greater than those incurred by the Council's career carers. I understand that you feel that the Council's decision to pay you at the career carer rate was unjust because it had previously paid another carer "in full", that is at the higher Cymru carer rate, pending the outcome of an investigation into allegations made by a child placed with her. However, the Council, in the absence of any written and binding agreement, was entitled to review its payment decisions. The compensation payment agreed is, in our view, reasonable.

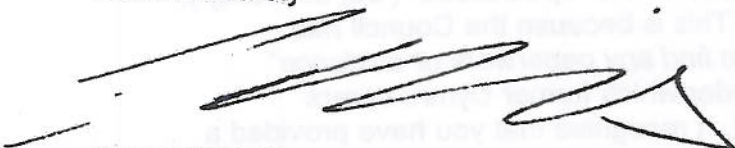
This letter therefore concludes our investigation of your complaint. I am sending a copy of this letter to the Council. The decisions I have reached are based on evidence provided by you and the Council. There is no appeal available against these decisions unless you can provide additional evidence that we have not previously had available to us.

The Ombudsman's office prepares an anonymised summary of every case investigated. The Ombudsman is obliged to report on the work of his office and the summaries can be used in information published by the Ombudsman from time to time, and may be placed on his website. I attach a copy of the summary prepared about your complaint. As you will see, you cannot be identified from the information contained within it.

It is our usual practice to send summaries and reports, concerning social services matters, to the Care and Social Services Inspectorate Wales ('CSSIW'). I have therefore sent a copy of the attached report summary to the CSSIW.

Please let my office know if you want any documents you have provided to be returned to you. We routinely destroy our files 15 months after the case is closed.

Yours sincerely



Cheryl R Davies
Investigator

FOOTNOTE

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