

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Bournemouth, Christchurch and Poole Council
(reference number: 19 014 589)**

12 May 2021

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms X	The complainant
Ms Y	Ms X's partner
Child B	Nephew
Child C	Niece
Ms D	Ms X's sister

Report summary

Children Services

Ms X complained that the Council failed to consider her and her partner, Ms Y, and her sister, Ms D, as family foster carers and therefore they have missed out on appropriate financial and other support from the Council when caring for their nephew and niece.

Finding

Fault causing injustice and recommendations made.

Recommendations

The Council should within three months of the date of this report:

- apologise to Ms X and Ms Y and to Ms D for the faults identified;
- calculate what Ms X and Ms Y should have received in family fostering payments between March and July 2017;
- calculate what Ms D should have received in a family fostering allowance between late October to early December 2017;
- calculate what Ms X and Ms Y should have received in a family fostering allowance from 12 December 2017 to 2 September 2019, when the Council reached its final complaint decision. For all these family fostering payments, the Council is entitled to deduct any benefits the family received which they would not have received if they had been regarded as family foster carers;
- make a payment of £750 to Ms X and to Ms Y and £300 to Ms D for the avoidable distress and time and trouble;
- provide £1,000 for each child to be used in the way Ms X and Ms Y consider appropriate for the lack of statutory support to the children;
- provide legal funding, up to a limit, for Ms X and Ms Y's application for a Special Guardianship Order (SGO). It would be in the children's interests if they now formalise the current arrangement.

The Council, within three months of the date of this report, will:

- produce a written leaflet or booklet which sets out the different permanency options for children, who cannot live with their parents, along with explaining the financial implications of each for the carer. The Council should share this with Stage 2 investigators and complaint review panels;
- tell us how many other cases there are where family members have taken on the responsibility for the care of children when the Council has been actively involved under child protection procedures. This is to check whether there are other family carers, who have been disadvantaged by the same faults identified in this complaint. It would be reasonable for the Council to consider cases from April 2019 because this is when the authorities amalgamated;
- tell us whether, on reviewing these cases, it will also be willing to backdate fostering allowances; and
- exercise discretion to look at historic complaints from families which approach it within 12 months of our final report and who are complaining about events up to five years ago.

The complaint

1. The complainant, who we refer to as Ms X, looks after her young nephew and niece, Child B and Child C. Ms X complained that the Council failed to:
 - properly safeguard the children when they were with their birth parents in 2016 and 2017;
 - recognise that it placed Child B and Child C in the care of Ms X and her partner, Ms Y, in March 2017, and that they did not receive the appropriate financial and other support; and
 - regard Ms X and Ms Y and Ms D as family foster carers from late October 2017. (Ms D has consented to Ms X pursuing a complaint on her behalf.)
2. Because of the Council's faults, Ms X says she and her family have been caused avoidable distress and time and trouble and they have not received the appropriate financial assistance, or support, as family foster carers, as they and the children should have done.
3. At present, Ms X and Ms Y do not have parental responsibility for Child B and Child C. Parental responsibility remains with the birth parents. Even though Ms X and Ms Y do not have parental responsibility, we are satisfied that they have sufficient interest in Child B and Child C to pursue a complaint on their behalf.

The Ombudsman's role and powers

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
6. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
7. We have discretion under 26(D) of the Local Government Act 1974 to investigate matters coming to our attention during an investigation, if we consider that a member of the public, who has not complained, may have suffered an injustice as a result.
8. If we are satisfied with a council's actions or proposed actions, we can complete our investigation. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
9. We are pleased that the Council has now agreed the findings and recommendations. But we consider that the complaint raises issues of public interest and therefore we are issuing this report to help other councils when reaching decisions about a child's status when living with family relatives.

How we considered this complaint

10. The Council carried out an investigation under the *Children Act 1989* statutory complaints procedure at all three stages. We do not normally re-investigate the original complaints unless we consider that the investigation was flawed. Instead, we will look at whether a council properly considered the findings and recommendations of the independent investigation and whether the council has provided a suitable remedy.
11. Some of the events date back to 2017. However, we have decided to exercise our discretion to investigate the complaint even though the complainant has not complained to us within 12 months of when she first realised something had gone wrong. This is because it was not until September 2019 when Ms X received the Council's final response to her complaint.
12. This report has been produced after speaking to Ms X and considering all the information she and the Council provided.
13. We gave Ms X and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.
14. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this report with Ofsted.

What we found

Legal and administrative arrangements:

15. A child is considered a child in need if their development is likely to be impaired if services are not provided.
16. Councils must make enquiries where a child is considered to be suffering or likely to suffer significant harm. It must decide whether protective action is needed under section 47 of the *Children Act 1989*. If it decides the child is at risk of significant harm the council must arrange a child protection conference to consider what needs to happen to protect the child.
17. The statutory guidance - *Working Together to Safeguard Children 2015*- (now updated) provides information about how councils should manage child protection cases. Local Children Safeguarding Boards publish policies about how local agencies work together to protect children, such as the council, health services, and Police.
18. Where councils consider that a child should be removed from their parents, they can seek to obtain an emergency protection order to remove the child immediately. Alternatively, the council can apply to the Family Court for an interim care order. If the Court grants this, it will allow councils to share parental responsibility with the parents.
19. Under both orders, the child becomes known as a 'looked after' child and the council has specific duties to safeguard and promote the child's welfare.
20. Councils also have a duty, under section 20 (s20) of the *Children Act 1989*, to provide accommodation to any child in need in their area who requires it, as a result of:
 - there being no person who has parental responsibility for the child;

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- the child being lost or having been abandoned;
 - the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care.
21. The provision of accommodation under s20 does not remove the parent's parental responsibility and a parent can ask for the child to be returned to their care at any time.
 22. The Police can also remove children, for up to 72 hours, to a safe place under a police protection order, where they consider a child is at risk of harm.

Family and friends foster carers

23. When a child in need requires to be accommodated by a council, the law says the council must first consider placing them with family or friends. The relatives must be suitable and able to provide appropriate care. If the carer becomes a family and friends foster carer, (sometimes referred to as a kinship carer), they are entitled to receive a fostering allowance and other practical support for them and the child from the council. The fostering allowance is provided to cover the cost of caring for the child.
24. Statutory guidance, and case law, says that family and friends foster carers must be paid the same fostering allowance rate as professional, unrelated foster carers (minus any professional fostering fee). The council can also deduct an amount equivalent to child benefit and child tax credit if the carer receives these.
25. As councils are responsible for arranging kinship arrangements, a formal process is followed to assess the suitability of the family member or friend. Councils should regularly visit the family and friends foster carer, draw up a placement plan for the child and hold looked after child reviews overseen by an Independent Reviewing Officer.
26. Kinship carers must comply with fostering regulations.
27. Failure to properly identify a family and friends foster carer can have financial and support implications for the carer and for the child too.

Private or informal family arrangements

28. A private, or informal, family arrangement happens when a close relative has agreed with the parent to take on the care of the child.
29. This informal arrangement can be confirmed in court in a private law order called a Child Arrangement Order. A Child Arrangement Order sets out with whom the child should live, spend time or other contact arrangements and gives the holder of the Order equal parental responsibility for the child with the parents. This Order lasts until the child is 16.
30. Under this arrangement there is no right to any financial support from the council although councils have discretion to provide financial assistance if it is considered necessary.
31. The *Adoption and Children Act 2002* came into force in December 2005. It provided a new legal status, Special Guardianship Orders (SGO), for non-parents who wished to care for children in a long term, secure placement.
32. A SGO granted by a Court gives the special guardian parental responsibility for a child who is not their own. It does not entirely remove the parental responsibility of the birth parent but limits it. Special guardians may be entitled to a financial

allowance from the council, subject to a means test and in accordance with the council's policy. Children, subject to a SGO, are no longer looked after children. The Order lasts until the child is 18.

Private fostering

33. Private fostering is where a child under 16, or under 18 if disabled, is cared for by someone who is not the parent or a close relative. The carer does not obtain parental responsibility. This rests with the parent(s). Parents retain financial responsibility for the child. Councils must be informed of the arrangement and assess the suitability of the placement.

Statutory guidance

34. The SGO *Regulations and Guidance 2005 and 2016* set out the possible support services which can be provided, including counselling, advice, information and financial support. The then Department of Education and Skills (DfES) produced a suggested model means test for adoption and SGO financial support payments.
35. The statutory guidance says councils must have policies explaining how family and friends carers are made aware of the eligibility criteria for financial support and, when means testing applies, how to apply for any such financial help, and how and when decisions are made about eligibility.
36. Where special guardians were previously foster carers, councils can pay them the fostering amount for a two year transitional period to give them time to adjust. The *Regulations* say:

“The purpose of the two year transitional provision is to enable local authorities to maintain payments to foster carers who become special guardians, at the same rate as they received when they were fostering the child. This should give the family time to adjust to their new circumstances”.

Relevant case law

37. In a key case ('the Southwark judgement'), the court said that, where a council has taken a major role in making arrangements for the child to be cared for by the friend or relative, it is likely to have been acting under its Children Act duties to provide the child with accommodation.
38. If the council is just facilitating a private law arrangement, the court said councils must make clear to all parties that those holding parental responsibility for the child would continue to be responsible for the financial arrangements to care for the child. (*London Borough of Southwark v D [2007] EWCA Civ 182*)
39. The court considered a private arrangement might allow a council, (otherwise likely to have had to provide accommodation for a child), to 'side-step' its duty to provide accommodation for a child. Assessing whether an arrangement is a private family or kinship arrangement will be fact specific. However, there are two key questions:
- how much has the council done to get the child placed with the carer?; and
 - has the council made it clear that it is treating the placement as a private family arrangement and that any financial support will come from the parents?
40. In the case, *R (on the application of CO) v Surrey CC*, the court decided the council had placed the child with the grandmother as a kinship carer on the basis that the council had taken steps to initiate the arrangement, and because the child could not continue to live with her mother, who was not providing suitable accommodation.

Our Focus Report on Family Carers

41. In November 2013, we issued a [focus report about family carers](#). We highlighted certain key issues.
- Has the council published a clear policy on family and friends carers?
 - Are the rates to carers being paid in accordance with statutory guidance?
 - Are timely checks being made on family and friend's carers to ensure the suitability of the placement?
42. We made several recommendations to promote good practice. One recommendation is that, where a council has had involvement with the child's family before that child came to live with a family member, the council should be able to show it has explained to the carer the implications of agreeing to an informal family care arrangement, rather than becoming a family and friends foster carer.

What happened: Events of 2016

43. Ms X and Ms Y live in a different council area, Council Z.
44. In May, after the Police had found the children alone twice, an initial child protection case conference decided to place them on a child protection plan under the category of neglect. The Council had a duty to monitor and safeguard them and to review the parents' ability to care for the children.
45. The children remained on a child protection plan, which was regularly reviewed.

Events of 2017

46. In early 2017, at a review child protection case conference, the Council was concerned that the parents were not fully engaging with the child protection plans.
47. The maternal grandmother visited the parents' home many times because of her concern for the children. She spoke to the allocated social worker and told her that she thought both parents were 'taking drugs' and their care of the children was inadequate.
48. The Council's case notes indicate that the social worker shared similar concerns although she considered that there was no direct evidence available of the parents' alleged drug taking. It was noted that the children had been on child protection plans for nine months and that currently the standard of care was not good enough.
49. The social worker says she had wanted to move the case to a 'legal planning meeting' to see if there were grounds to start care proceedings. However, her team manager did not consider this appropriate.
50. The Council considered that a family group conference should be arranged to see what support could be provided. Ms X says that the Council told her, unless the family helped out, the children might go into care. The Council deny that this was said.
51. The case notes indicate that the parents' care of the children continued to deteriorate.
52. The Council obtained the mother's consent to place the children with Ms X and Ms Y. On 6 March, the children moved to their accommodation. The mother agreed this for a six week period to give her and her partner time 'to sort themselves out'. Ms X says that the social worker told her that, after six weeks, they would be assessed as family foster carers.

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53. The social worker carried out basic checks on Ms X and Ms Y and visited the children at their home.
 54. The Council's case notes say that a 'private fostering assessment' would be considered, and Ms X was told that the placement was a private one as the mother had consented to it. The Council says, in its response to our enquiries, that Ms X was told that, if the children remained for longer than six weeks, there would be a 'private fostering assessment' and they would need to apply for benefits as the Council would not financially support the placement.
 55. The subsequent statutory complaint investigation found the Council had failed to arrange the necessary meetings with the family, or seek legal advice, but nonetheless there was not sufficient evidence to say the Council was treating the family as kinship foster carers at this time.
 56. The Council ended the child protection plan on the basis that the children were living safely with Ms X and Ms Y on a permanent basis. Ms X says that they were providing temporary care to allow the parents to sort out their difficulties. They had not told the Council that this was a permanent arrangement.
 57. It is noted in the case notes that the social worker had discussed with Ms X the possibility of a SGO or a child arrangement order.
 58. As the children were placed with relatives, and the Council was satisfied this met the children's needs, the Council planned to close the case. The Council also says that it told Ms X the way to secure the children's placement with them was by way of an SGO or a child arrangement order.
 59. Ms X says that she and Ms Y were unaware of the Council's plan to close the case.

Child B and Child C's return to birth parents

60. In mid-2017 Ms X told the Council that they were returning the children to the parents' care. By this time, the parents had moved to a new property and appeared to Ms X to have made some improvements to their lifestyle. Therefore, she considered that she had no legal right to keep the children and she wanted to give her sister a chance to parent her children.
61. The Council decided that a further assessment was required because of the historical child protection concerns. The case was referred to the child in need/child protection team with a 'red' alert.
62. The Council considered Child B and Child C were children in need. However, the subsequent complaint investigation questioned whether this was in keeping with the Council's duties to safeguard the children given the considerable historical concerns about the parents' care.
63. There was a child in need meeting with the parents. They stated that they did not require support. For the next week, the social worker attempted to see the parents and children at home but there was no response. The Council asked the Police to do a 'welfare' visit. (A welfare visit is where a council is concerned about a child but cannot gain access to the property.)
64. The paternal grandmother raised serious concerns with the wider family about the children, saying that the parents were on drugs and the children were not being cared for and living in an unsafe environment. Ms X says that the family asked a family friend to visit, as he lived close by, and he knew the parents.

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65. Ms X says that he found the parents 'high on drugs' with the children in a dark room saying they had not eaten and clearly frightened. The friend decided that he had to remove the children immediately. Ms X says that Child B and Child C's mother was too incapacitated to consent, or not, to their removal.
 66. The friend took the children to Ms D's house, where the maternal grandmother was also staying.
 67. Ms Y then telephoned the Police and the out of hours social worker to explain what had happened. Ms X says that the out of hours social worker said that the children could not return to the parents' care although the Council disputes this. It says that the family were advised to speak to the allocated social worker about events once she was available.
 68. The Police spoke to the out of hours social worker, who had said that it was proportionate for the children to stay with the maternal family until the allocated social worker could assess the situation.
 69. Ms X spoke to the allocated social worker the next day to tell her that a friend had visited the parents' home late at night and had been so concerned that he had brought the children to stay with Ms D and the maternal grandmother. We cannot see on the case records that the allocated social worker contacted the friend to corroborate such important evidence directly.
 70. On 1 November, the social worker telephoned the parents and suggested a meeting with them and the maternal grandmother. Later that day, there was a meeting. The parents admitted that they had returned to drug taking. Ms X says that the social worker advised the parents to consider leaving the children with their extended family for a year. The Council's case records confirm that this was said.
 71. The case record also shows that the social worker further advised that the parents, assuming that they had their drug use under control, could then contact the Council, if they wished, so that their capacity to care for the children could be reassessed.
 72. A meeting took place at the end of 2017. The parents, Ms X, Ms Y, Ms D, the maternal grandmother, and a school representative, invited by the family, attended. The social worker said the purpose of the meeting was to discuss the concerns about the parents' care and to see what the family proposed. The social worker recorded the concern that the parents had not been truthful about their drug taking.
 73. Ms X says that the family told the social worker that the parents had been told that the children could not return to their care. Therefore, the extended family were making decisions on the grounds that the Council had told the parents that the children could not return to them.
 74. Ms X says that, at this meeting, the social worker asked for details from Ms D so that she could be assessed as a family foster carer. This was corroborated by the school representative.
 75. The social worker later acknowledged that she may not have been as clear in her explanation of the various care options to the extended family, as she should have been, and that the belief that she had said that the children could not go home, may have been the result of her failure to make herself clear.

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76. Ms D wrote to the social worker asking to be assessed as a family foster carer. At this stage, the children were living with her, along with the grandmother. Ms D said that the parents had accepted that they were addicted to drugs.
77. The Council replied, stating that the placement was considered a private arrangement between the parents and the family and that:
- “Children Services have not said that the children could not return to their parents’ care. If the parents’ decision had been that the children return to their care, we would have undertaken an assessment to determine whether it was safe for the children to be in their care at that time”.*
78. The Council said that it did not regard the children as accommodated by it and therefore the parents remained financially responsible. The Council says this was supported by the legal advice it received.
79. In December, Child B and Child C moved from Ms D’s accommodation to live with Ms X and Ms Y. Ms D could no longer provide the full-time care required. The Council did not assess the children, or suitability of the placement, following the move.

Events of 2018

80. Child B and Child C started attending school in Council Z’s area and they have remained living with Ms X and Ms Y since. The Council informed Council Z of the children’s residency in their area.
81. In February, the Council completed an assessment of the parents (when hearing that Child B and Child C were living with Ms X and Ms Y), stating that, based on the lack of engagement with the drug and alcohol services and inconsistent engagement, the Council was concerned that the children would likely suffer significant harm in the parents’ care. The Council indicated it would have to consider starting the child protection process if the children returned to their parents’ care.

Ms X’s complaint to the Council

82. Ms X made a formal complaint to the Council in April 2018. Ms X was dissatisfied with some of the findings in the investigation and the subsequent adjudication decision. Ms X asked for the complaint to be considered by a Complaints Review Panel.

Findings of the Council’s Complaint Review Panel of April 2019

83. The Panel reached the following main findings (we paraphrase).
- It acknowledged the good work at the start of the case. But it considered the later social work practice was of a poor standard and did not safeguard the children. Therefore, the Council failed to meet its statutory duty to safeguard the children while in the care of the parents.
 - On both occasions when the children went to stay with the extended family, the Council had said that they could not stay with the parents. The Panel found that the Council failed to formalise Child B and Child C’s status as children in foster care and failed to ensure the family were financially equipped to support the children.
 - In particular, on the first occasion, the Panel concluded that the parents had been told that, unless the children went to stay with the extended family, they would be taken into care. On the second occasion, the Council told the parents that they were not in a good position to care for the children for 12 months, and

it gained the parents' consent for the children to be placed with Ms X and Ms Y. Moreover, the placement with Ms X and Ms Y was predicated on the promise they would be awarded foster care status.

84. The Panel recommended that the Council reconsidered key aspects of the complaint, in particular the part it played in the placement of the children with their wider family. The Panel concluded:
- "The Panel hoped it would lead to a re-examination of the case in the status of the children and backdated payments"*.
85. In May 2019, the Council's Corporate Director of Children Services stated that:
- "the family's belief that the placement was facilitated and requested by the Council is strongly held and was on the balance of probabilities inferred by the various representatives of the local authority [Council]"*.

The Council's final response

86. On 2 September 2019, the Corporate Director wrote to Ms X and offered:
- £13,783 as a token payment for the financial impact of caring for two additional children;
 - £5,000 for the cost of therapy for the children in accordance with what the Council might pay to its special guardians; and
 - £1,715 towards the legal costs of making a SGO application, with the possibility of additional funding if required.
87. However, when making the financial offer, the Council explained that it did not accept it had been responsible for the placement of Child B and Child C with the family and therefore the Council did not, and would not, regard Ms X and Ms Y as family foster carers.
88. In response to our enquiries, the Council says that there was confusion about the use of the terms: 'family foster carer assessment' and 'private fostering assessment'. It apologised if these terms were not made clear to Ms X and her family. The Council was initially clear that Child B and Child C were not children in care and therefore it was not possible to regard Ms X and Ms Y and Ms D as family foster carers.
89. Ms X says that, because the Council was unwilling to accept it placed the children with the family, the financial offers made by the Council were insufficient and that they were entitled to backdated family foster payments from when the children were placed with them in March and December 2017.
90. In addition, Ms X says that Ms D is entitled to similar payments when she looked after the children between late October to 12 December 2017.
91. Ms X also says the children have missed out on the statutory support and monitoring which should have been available to them as looked after children.

Conclusions

Complaint: the Council failed to properly safeguard the children when with their birth parents in 2016 and 2017

92. We accept the Complaint Review Panel's findings that initially the Council managed the case well. It was clear there were concerns about the parents'

abilities to provide a safe home and child protection procedures were correctly applied.

93. But the child protection plan was not improving the children's circumstances. The Council has accepted that it allowed the child protection plan to drift and that there should have been a legal planning meeting. The Council has now revised its procedures so that after two child protection review conferences, and if there is no improvement, the case will automatically move to a legal planning meeting. It is good practice that the Council has revised its procedures. But it remains the case that the child protection plan was not bringing about improvements in the parental care, and the Council allowed the case to drift. That is fault.
94. In February 2017, the extended family alerted the Council to concerns about the parents' care and alleged drug taking. The Council shared some of those concerns. This resulted in the children moving to Ms X and Ms Y's home. We are satisfied that this was appropriate safeguarding action. The issue of how this placement should have been regarded is dealt with below.
95. In October 2017, the extended family again raised concerns about the care of the children. At this stage, the children were on a child in need plan. But given the historic concerns and, importantly, that the Council was having difficulty in seeing the parents and children (asking the Police to carry out a welfare visit), we consider that the Council should have been more proactive in safeguarding the children. There were a range of legal options which the Council should have considered at this time to protect the children.
96. In addition, the family provided the Council with significant evidence about what the friend had witnessed when he felt compelled to remove the children. It would have been good child protection practice for the Council to have spoken directly to the friend to obtain this evidence for itself. If the Council had had to take legal proceedings, this was clear evidence that the children were being neglected and there was no one exercising parental responsibility safely.
97. Regarding events in February/March 2017 and October 2017, we accept therefore the Panel's findings that there were times when the Council's safeguarding supervision of the children was inadequate. This is fault.

Complaint: the Council failed to recognise that it placed Child B and Child C in the care of Ms X and Ms Y in March 2017 and that they did not receive appropriate financial help and other support

98. We do not consider the Council's final response to Ms X adequately reflects the range of circumstances where a child might become 'looked after', in line with the principles of the Southwark judgment.
99. The issue in this case is the extent of the involvement the Council had, or should have had, when the children moved to Ms X and Ms Y in March 2017.
100. By this stage, the children had been on child protection plans for nine months and the Council was concerned that the parental care remained neglectful. The social worker wanted to move the case to a legal planning meeting to assess whether the threshold criteria was met to start care proceedings. The Council has accepted that there should have been a legal planning meeting. Therefore, there was a lost opportunity for it to assess properly the best way to safeguard the children.
101. The family had also raised concerns about the parents' care and the Council shared some of those concerns. The family was clear that the social worker had

told the parents that the children could not return to their care. There is evidence that the Council did say this, and that the parents' situation was not safe for the children.

102. The Council actively sought the mother's consent to facilitate appropriate alternative care arrangements for the children. Had the alternative family arrangements been a 'private' matter between the family, there would have been no need for the Council to seek the mother's consent for her children to be placed elsewhere. The family could have arranged this without involvement from the Council.
103. Moreover, when the children moved to Ms X and Ms Y, the Council carried out Police checks and visited the children in their new home. The Council had a legal responsibility to do this to ensure that they were in safe care. The Council's actions were appropriate, but they do further indicate that the children's placement with Ms X and Ms Y was not a private arrangement solely between family members. The Council visited the children after the placement which further confirms that it was actively involved.
104. We are therefore satisfied that the Council was not just 'facilitating' a private arrangement. The Council was acting under its child protection duties and it acted proactively to arrange the children's removal from their parents' care to Ms X and Ms Y's care. Further, the Council had indicated that the children would likely come into care if the family did not step in.
105. Therefore, we accept the Panel's findings that the March 2017 placement was not a private family arrangement; the Council played an active part in this arrangement. And, but for Ms X and Ms Y's willingness to look after the children, while the parents 'sorted themselves out', on the balance of probability, the Council would have had to consider taking legal action to remove the children from the parents, if they had not consented to s20 accommodation.
106. Accordingly, we find fault on this complaint.

Complaint: failure to regard Ms X and Ms Y and Ms D as family foster carers from late October 2017

107. The children returned to the parents' care at the end of July 2017. By this stage, the children were no longer on a child protection plan. The Council decided to manage its concerns about the parents' care under a child in need plan. By this stage, the parents had moved to new accommodation and there was some optimism by the family that they had used the earlier period, when the children were not in their care, to 'sort themselves out'.
108. On learning of the children's return to the parents' care, the Council marked the file for an urgent assessment and it became involved again, albeit under a child in need plan.
109. However, some months later, the parents expressed an unwillingness to cooperate with the Council, and it experienced problems when trying to visit the parents and children. A family friend visited and found the children were not in a safe environment (the parents being intoxicated) and were hungry and scared. The friend took them to Ms D and the maternal grandmother. Had the friend called the Police, it is likely they would have removed the children under their powers. The Police would have contacted the Council to place them in care. They would have become 'looked after' by the Council.

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110. The out of hours social worker endorsed what the family had done, saying that the allocated social worker would have to consider the situation. The out of hours social worker did not advise the return of the children to their parents.
 111. The Council then initiated two meetings. The parents admitted to the Council that they had returned to drugs and this admission meant, on the balance of probabilities, the children could not safely return to their care, especially because of what the friend had witnessed.
 112. It is also clear that the Council was advising the parents that the children should be placed elsewhere, and it was looking to the extended family to help.
 113. We are therefore satisfied that the Council was actively involved in October 2017; it played a significant part in the placement of the children with the extended family. Even if it was not directly involved in the emergency removal of the children, we accept the Panel's findings that the Council has not given sufficient thought to Ms D's status as a family foster carer.
 114. The Panel also found that the family's offer to care for the children was predicated on the basis that they would be financially supported by the Council by a fostering allowance. Indeed, Ms D asked for a friend and family assessment as she had been advised to do so.
 115. The children moved to Ms X and Ms Y's care in December 2017. The case notes are clear that the Council had originally suggested to the parents that the children live with their extended family for a year. It is understood that the family made the decision to care for the children on the basis that they could not live with their parents. The placement in December 2017 was a continuation of the initial placement of October 2017 and was on the premise that the Council had advised that the children could not be cared for by the parents.
 116. The Council's case notes also indicate that, but for the extended family, the Council would have needed to provide accommodation under s20 to the children or taken legal proceedings if the parents did not consent to s20.
 117. The Council placed the children with the family and therefore both Ms D and Ms X and Ms Y should have been regarded as family foster carers.
 118. Therefore, we find fault on this complaint.

Injustice

119. As a result of the Council's faults, the extended family did not receive a family fostering allowance which they were entitled to. The faults have also led to the Council's failure to acknowledge the children as 'looked after' children and therefore entitled to statutory support from the Council.
120. However, even if the Council had agreed that the children should have had looked after status, it is likely the Council would not have wanted them to remain as looked after until they reached 18. Instead, it would – on balance - have advocated for Ms X and Ms Y to apply for a SGO from December 2017.
121. Therefore, we consider it is reasonable for there to be a cut off point for support to Ms X and Ms Y as family foster carers. Our view is that this cut off point should be September 2019 when the Council reached its final decision on the complaint. But, as previous family foster carers, Ms X and Ms Y would be entitled to the financial transitional arrangements under the SGO regulations. We have chosen this date because there were earlier opportunities for the complaint process to have determined the family were eligible for a fostering allowance.

How we remedy injustice

122. We gave the Council and Ms X an opportunity to consider our draft findings before we issued this final report. We welcome the Council's willingness to accept our findings and recommendations.
123. Where there has been avoidable distress and time and trouble, we recommend payments between £300 to £1,000 depending on the severity of the injustice, the vulnerability of those affected and whether the injustice is over a prolonged period. However, there is discretion to recommend a higher amount where the injustice is severe and/or prolonged.
124. In this case, the injustice was over an extended period and family members took on a significant responsibility, without all the necessary information, in the best interests of Child B and Child C. Therefore, we consider the payment should be at the higher end of our normal tariff.

Recommended actions

125. The Council should within three months of the date of this report:
- apologise to Ms X and Ms Y and to Ms D for the faults identified;
 - calculate what Ms X and Ms Y should have received in family fostering payments between March and July 2017;
 - calculate what Ms D should have received in a family fostering allowance between late October to early December 2017;
 - calculate what Ms X and Ms Y should have received in a family fostering allowance from 12 December 2017 to 2 September 2019, when the Council reached its final complaint decision. For all these family fostering payments, the Council is entitled to deduct any benefits the family received which they would not have received if they had been regarded as family foster carers;
 - make a payment of £750 to Ms X and to Ms Y and £300 to Ms D for the avoidable distress and time and trouble;
 - provide £1,000 for each child to be used in the way Ms X and Ms Y consider appropriate for the lack of statutory support to the children;
 - provide legal funding, up to a limit, for Ms X and Ms Y's application for a SGO. It would be in the children's interests, if they now formalise the current arrangement.
126. The Council, within three months of the date of this report, will:
- produce a written leaflet or booklet which sets out the different care options for children, who cannot live with their parents, along with explaining the financial implications of each for the carer. The Council should share this with Stage 2 investigators and complaint review panels;
 - tell us how many other cases there are where family members have taken on the responsibility for the care of children when the Council has been actively involved under child protection procedures. This is to check whether there are other family carers, who have been disadvantaged by the same faults identified in this complaint. It would be reasonable for the Council to consider cases from April 2019 because this is when the authorities amalgamated;
 - tell us whether, on reviewing these cases, it would also be willing to backdate fostering allowances; and

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- exercise discretion to look at historic complaints from families which approach it within 12 of our final report and who are complaining about events up to five years ago.
127. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

128. We find fault causing an injustice. We have recommended actions to address this. It is to the Council's credit that it has agreed to our recommendations.