

North Tyneside Council

Report to Cabinet

Date: 14 May 2018

ITEM 6(a)

Title: Report of the Local Government and Social Care Ombudsman (Mrs X)

Portfolio(s): Children Young People and Learning

Cabinet Member(s): Councillor Ian Grayson

Report from Service Area: Law and Governance

Responsible Officer: Vivienne Geary, Head of Law and Governance

Tel: 0191 643 5339

Wards affected: All

PART 1

1.1 Executive Summary:

The Local Government and Social Care Ombudsman (LGSCO) has issued a report finding maladministration causing injustice to Mrs X, the Complainant who is a Special Guardian. The finding relates to the Authority's previous policy in relation to the calculation of Special Guardianship Allowances which was incorrect. Cabinet have previously been made aware of an issue with the payment of Special Guardianship allowances. This matter has been a complex area for local authorities to address. Other Special Guardians in the same position as Mrs X have also been adversely affected and as a result of this the finding of maladministration with injustice has been extended to include those individuals.

The Authority has agreed to carry out the LGSCO recommendations and the LGSCO have welcomed the Authority's positive response to their report.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) note the findings and recommendation of the LGSCO as described in this report and set out in the LGSCO's report at Appendix 1; and
- (2) note the actions taken by the Authority to comply with the recommendations of the LGSCO's report, as set out in 1.5.3 and 1.5.4 of this report.

1.3 Forward Plan:

Twenty eight days' notice of this report has been given and it first appeared on the Forward Plan that was published on 13 April 2018.

1.4 Council Plan and Policy Framework

This report relates to the following priority in the Our North Tyneside Plan:

- Our People will be cared for, protected and supported.

1.5 Information:

1.5.1 Background

The details of this complaint and the findings of the LGSCO investigator are set out in full in Appendix 1.

Mrs X complained in February 2016 that the Authority had paid her an incorrect allowance as the Special Guardian for two of her two grandchildren. Mrs X had become Special Guardian to these two grandchildren in March 2015. She says it wrongly calculated the allowance as a percentage of its fostering allowance. Her representative, Mrs Y, said that the Authority was paying the same incorrect allowance to other Special Guardians.

Mrs X wanted the Authority to recalculate and correctly pay her allowance, to backdate the payment and to apply the same principles to other Special Guardians. Mrs X had previously drawn the Authority's attention to concerns about the calculation methodology in November 2011 when she was a Special Guardian to another grandchild. She cited relevant case law and asked the Authority to review its approach.

A Special Guardianship Order (SGO), granted by a Court, gives the Special Guardian parental responsibility for a child who is not their own. The Guidance says in determining the amount of ongoing financial support an Authority should "*have regard to*" the amount of fostering allowance that would have been payable if the child were fostered. Any means test should use this maximum payment as a basis for calculation.

The question of the amount of Special Guardianship allowance payable is complex and has been subject to consideration by the Courts and also by the LGSCO in recent years. As a result it is now clear that a Special Guardianship allowance should be at least an equivalent rate to the allowance to foster carers (with the deduction of Child Benefit if appropriate).

1.5.2 Findings

The findings of the LGSCO are summarised between paragraphs 34 and 46 in Appendix 1 as follows:

Following Mrs X becoming a Special Guardian to two grandchildren in March 2015, Mrs X complained to the Authority in February 2016 that the Special Guardianship allowance she had been awarded was incorrect. Mrs X proceeded through the Authority's complaint procedure, arguing the calculation was incorrect and asking for correct payments to be made and backdated. Mrs Y supported Mrs X to make this complaint.

The Authority received legal advice on its policy on 26 April 2016 that its policy was not compliant with statutory guidance because it calculated the Special Guardianship allowance as a fixed percentage of its Fostering Allowance. The Authority confirmed to Mrs X on 20 September 2016 that it accepted its policy was not fit for purpose and needed to be reviewed and also confirmed that it was investigating 171 other Special Guardianship allowance cases that could have been affected by the policy. The Authority confirmed that correct payments would be paid to Mrs X, backdated to March 2015, following implementation of the new policy.

The Authority apologised for the time taken to resolve the matter and offered payments of £200 to Mrs X and £200 to Mrs Y who had assisted Mrs X to make her complaint. These payments were to remedy injustice caused by the time and trouble Mrs X and Mrs Y had gone to. The Authority wrote again to Mrs X on 28 September 2016 recalculating her Special Guardianship allowance and offering repayment based on that calculation.

The Authority's former Special Guardianship allowance policy incorrectly provided for the allowance to be calculated as a percentage of the fostering allowance.

Mrs X had originally drawn the Authority's attention to concerns about the calculation methodology in November 2011 when she was a Special Guardian to another grandchild. She cited relevant case law and asked the Authority to review its approach. Although the Authority resolved her case to Mrs X's satisfaction at that point it missed the opportunity to put matters right for others at that time. The LGSCO found this to be a failure by the Authority which represented a significant fault.

The LGSCO published advice in November 2013 to assist local authorities in approaching the question of Special Guardian allowances properly. Unfortunately the Authority did not act until Mrs X complained again in 2016. The revised Special Guardianship policy was introduced in February 2018.

In summary, the LGSCO found that the Authority's policy has been incorrect since 2010 and that fault occurred at that time. The fault escalated in 2011 and 2013 when the Authority failed to act. This LGSCO has found that this fault has caused injustice to Mrs X and other Special Guardians.

The LGSCO have stated they believe the publication of their advice in November 2013 marks a clear landmark at which point the Authority should have adopted and applied a new policy for Special Guardian allowances.

1.5.3 Recommendations

The LGSCO investigator has found maladministration and injustice against the Authority. The LGSCO has made the following recommendation, as set out under paragraphs 47 and 48 of Appendix 1:

The LGSCO recommended that within three months of the date of their report the Authority:

- implements the new policy for Special Guardianship allowances;
- identifies all existing Special Guardians that might be affected by the change and writes to them to explain the new policy;
- calculates and backdates from November 2013, all Special Guardianship allowance payments for which Mrs X is eligible;

- writes to Mrs X to apologise for its delay implementing the new policy and pay her and Mrs Y £200 each to remedy the further time and trouble they have experienced resolving this complaint during the past 12 months;
- identifies all other Special Guardians affected by this fault since November 2013; and
- makes backdated payments to those Special Guardians, calculated using the correct new policy.

1.5.4 Actions taken

As recommended by the LGSCO the Authority have confirmed the following actions:

1. Implement a new policy for Special Guardianship allowances.

This action has been completed in full. A new policy was implemented on 26 February 2018.

2. Identify all existing Special Guardians that might be affected by the change and writes to them to explain the new policy.

All Special Guardians have or are in the process of being written to and provided with a copy of the new policy. They are offered support to understand how the changes might affect them by members of the Fostering Service.

3. Calculate and backdate from November 2013 all Special Guardianship allowance payments for which Mrs X is eligible.

Mrs X has been written to and any further monies which she is owed with reference to the new method of calculation will be paid within the deadline given.

4. A letter written by the Local Authority to Mrs X to apologise for its delay implementing the new policy and pay her and Mrs Y (Advocate) £200 each to remedy the further time and trouble they have experienced resolving this complaint during the past 12 months.

Mrs X and Mrs Y have been written to by the Director of Children's Services apologising for the delay of the Local Authority to resolve the issues they brought to its attention. Both Mrs X and Mrs Y have been given £200 as an acknowledgment of the time and trouble they took to secure remedy.

5. Identify all other Special Guardians affected by this fault since November 2013

The Authority has identified from its records all Special Guardians affected by the fault in its method of calculation since 1 November 2013.

6. Make backdated payments to those Special Guardians, calculated using the correct new policy.

The Authority will make backdated payments to all affected Special Guardians in accordance with the LGSCO recommendations within the given deadline.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

Cabinet is requested to note the findings of the report (Appendix 1), its recommendation and action taken to address the LGSCO's recommendation.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

To comply with the recommendations of the LGSCO.

1.8 Appendices:

Appendix 1: The Ombudsman's final decision report,

1.9 Contact officers:

Jacqui Old, Director of Children's and Adult Services, tel. (0191) 643 7317
Viv Geary, Head of Law and Governance, tel. (0191) 643 5339
Alison Campbell, Senior Business Partner, tel. (0191) 643 7038

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- LGSCO's final decision report (attached at Appendix 1).
- Report to Cabinet dated 11th September 2017 - Calculating Financial Support for Special Guardians

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The Cabinet report in September 2017 concluded that the method of calculation of eligibility for a Special Guardianship Order Allowance had used a percentage of the maximum allowance rather than the full maximum allowance and that applying the amended allowance rates would result in additional cost during 2017/18. Progress has been reported to Cabinet as part of the normal financial management reporting cycle and provision for the cost of backdating the claims once finalised will be included in the financial outturn for 2017/18.

2.2 Legal

The Authority is required to consider the report of the LGSCO and to determine its response to the report. There are no other direct legal implications arising as a result of this report.

2.3 Consultation/community engagement

There are no consultation/community engagement implications arising as a result of this report.

2.4 Human rights

There are no human rights implications arising as a result of this report.

2.5 Equalities and diversity

There are no equality and diversity implications arising as a result of this report.

2.6 Risk management

There are no risk management implications arising as a result of this report.

2.7 Crime and disorder

There are no crime and disorder implications arising as a result of this report.

2.8 Environment and sustainability

There are no environment and sustainability implications arising as a result of this report.

PART 3 - SIGN OFF

- Deputy Chief Executive X
- Head of Service X
- Mayor/Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Head of Corporate Strategy X