

SPSO decision report

Case: 201802500, Dundee City Council
Sector: local government
Subject: child services and family support
Decision: some upheld, recommendations

Summary

Mr C is a kinship carer and he approached the council to apply for kinship care allowance. The council approved his application to the date of application; however, they did not agree to backdate his payment to the date that the Scottish Government introduced a change to the eligibility for kinship care assistance. The council explained they were not required to backdate the payment as the Scottish Government did not legislate on the matter and only issued guidance, therefore they had discretion as to whether to follow that guidance. Mr C complained that the council unreasonably failed to follow national guidance when considering his request to backdate kinship care payments and that they failed to provide the appropriate information about entitlement to kinship care assistance in line with their obligations.

We found that while the council are required to consider the guidance, they do have discretion as to whether they apply it as it is not statutory legislation. We found that the council failed to provide contemporaneous evidence which they based their decision on to not backdate Mr C's application for kinship care assistance. The council only provided retrospective accounts of how those decisions were made. We considered that decisions about whether to follow Scottish Government guidance should be carefully documented and in this case it was not. We upheld this aspect of the complaint on the basis that the council failed to clearly record the rationale for their decision.

However, our investigation found that the council provided appropriate information about entitlement to kinship care assistance in line with their obligations when the Scottish Government introduced changes to the legislation. We did not uphold this aspect of the complaint.

Recommendations

What we said should change to put things right in future:

- The council's policy about whether they should follow Scottish Government guidance on kinship care allowances should be considered for decision at an appropriate senior level, eg at Council Committee or by whichever means the council make such policy decisions.

What we asked the organisation to do in this case:

- Following the review of their policy on whether to follow Scottish Government guidance, the council should reconsider requests for kinship care assistance to be backdated.