

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

**Investigation into a complaint against  
London Borough of Redbridge  
(reference number: 16 004 113)**

**24 August 2017**

## The Ombudsman's role

For 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.

# Investigation into complaint number 16 004 113 against London Borough of Redbridge

## Contents

Report summary.....	1
Introduction .....	2
Legal and administrative background .....	2
How we considered this complaint.....	3
Investigation .....	3
Conclusions.....	9
Decision .....	11
Recommendations .....	11

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

Mr and Mrs X - the complainants

S – Mr and Mrs X's son

## Report summary

### Special Educational Needs

The Council failed to ensure Mr and Mrs X's son, S, received the support required by his Statement of Special Educational Needs (Statement). In total, since 2008 the Council's failings meant S missed out on 23 months of support. This caused him a significant disadvantage.

Mr and Mrs X have complained to the Council four times about this and three times to us. This is the second public report we have issued about the Council's failure to provide the special educational support S needs. For the complaint which we did not deal with, Mr and Mrs X had to endure a lengthy complaint procedure before their complaints were upheld by the Council.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice caused, we recommend the Council, within three months of the date of this report:

- pay Mr and Mrs X an additional £500, to the £500 it has already offered, to acknowledge the distress and uncertainty caused by its actions which they continue to experience despite earlier complaints having been upheld;
- pay Mr and Mrs X £800 for them to spend on a family break to acknowledge the cumulative injustice its faults have caused S;
- review its procedures to ensure when a child transfers to another school, their Statement or Education, Health and Care Plan is amended and the appropriate procedures are followed to ensure the Council is compliant with the Code. The Council should provide evidence it has done this;
- review its procedures to ensure it has provisions in place to ensure Multi-Agency Resource Panel decisions are communicated to families and carers with reasons why the decision was made. The Council should provide evidence it has done this; and
- provide us with evidence of the training it says it has carried out with:
  - i. staff in procuring and contracting because this contributed to the initial error in not providing S with 1:1 support;
  - ii. the special educational needs team on communication, working with parents and statutory plans, procedures and annual review processes; and
  - iii. the new Multi-Agency Resource Panel members and supporting staff.

## Introduction

1. Mr and Mrs X complain the Council failed to ensure their son, S, received the support required by his Statement when he moved to a residential school in September 2015. They say this has caused him a significant disadvantage. It has also caused them additional frustration as they have complained to us about a similar fault twice before in 2008 and 2010, and we upheld their complaints. Mr and Mrs X also complained about the Council's failure to ensure S received the support in his Statement prior to his move to a residential school in 2015. The Council upheld this complaint.

## Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, 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**)
3. A child with special educational needs may have a Statement. Since September 2014 some children have an Education, Health and Care Plan instead of a Statement. However in this case the child has a Statement. The Statement sets out the child's needs and what arrangements should be made to meet them. We cannot change a Statement if a parent disagrees with a council's decision; only the Special Educational Needs and Disability First Tier Tribunal (the Tribunal) can do that.
4. The law states that where a council maintains a Statement, then unless the child's parent has made suitable arrangements, that council must ensure the special educational provision specified in the Statement is provided to the child. (**Education Act 1996, section 324(5)(a)(i)**)
5. The Special Educational Needs Code of Practice 2001 (the Code) provides practical advice to councils, schools and others in carrying out their statutory duties under the Education Act 1996 to identify, assess and make provision for children's special educational needs. The 2001 Code remains in force for those children who have a Statement. There is a newer version of the Code for those children assessed after September 2014 and provided with an Education, Health and Care Plan under the Children and Families Act 2014. The relevant Code in this investigation is the 2001 Code.
6. The Code explains that Part 3 of the Statement describes the special educational provision a child will receive. The council has a duty to ensure the child is provided with the educational provision specified in Part 3 of their Statement. (**Special Educational Needs Code of Practice 2001**)
7. Case law shows therapies such as speech and language therapy, physiotherapy and occupational therapy can be considered as an educational need and included in Part 3 of the Statement. (**Special Educational Needs Code of Practice 2001, paragraph 8:49**)

8. The Courts have held that councils have a binding legal duty to ensure special educational provision in a Statement is provided. In *R v London Borough of Harrow ex parte M* [1997] ELR 62 the judge ruled that the council's duty to arrange provision in Part 3 of a Statement is owed personally to the child and is non-delegable. This was upheld by the Court of Appeal in *R v North Tyneside Borough Council* [2010] EWCA Civ 135 which held that the Statement identified a clear provision, and s324(5) of the Education Act 1996 requires the council to ensure that it is provided. It was not open to the council unilaterally to vary the Statement as and when it appeared to be appropriate. The judges stated that there is no best endeavours defence in the legislation. If the situation changes, there is machinery for revising the Statement, but while it stands it is the duty of the council to implement it.
9. The Code says where a child transfers from one school to another, Part 4 of the Statement, which is the section that names the school, will always need amending. The amended Statement should include details of both the current placement and the new placement, stating an appropriate start date for the new school.
10. We can consider complaints about where support set out in a Statement has not been provided or where there have been delays in the process.
11. At the time of Mr and Mrs X's complaint, the Council operated a Standing Residential Education Placement (STREP) Panel. The remit of the Panel was to make decisions about whether a residential school placement was appropriate for a particular child or young person. This included decisions about funding and reviewing a child's progress.
12. We investigate complaints about councils and certain other bodies. We cannot investigate the actions of schools. (*Local Government Act 1974, sections 25 and 34A, as amended*)

## How we considered this complaint

13. We produced this report after examining relevant files and documents and interviewing the complainants.
14. We gave the complainants and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.
15. 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 decision with Ofsted.

## Investigation

### Background

16. Mr and Mrs X's son has significant special educational needs. He has autism and he experiences considerable difficulties due to his severe and complex speech, language, social, sensory and physical needs, and severe learning disability. He attends a residential special school.

## **Previous complaints to the Ombudsman**

### ***Complaint to the Ombudsman 2008***

17. Mr and Mrs X first complained to us in 2008. They said the Council was at fault for failing to ensure S was provided with the occupational therapy specified in Part 3 of his Statement.
18. Our investigation upheld their complaint and identified fault. This was because the Council had failed to ensure S received occupational therapy for one year. We produced a public report setting out these failings.
19. As a result of the fault, the Council agreed to pay Mr and Mrs X:
  - £800 to acknowledge the injustice caused to S by the Council's fault;
  - £250 for the distress they had been caused;
  - £250 to reflect the unnecessary time and trouble they had been put to; and
  - £100 per month for any further delay in providing occupational therapy from September 2009 onwards.
20. The Council also agreed to ensure occupational therapy provision was in place for when S started school in September 2009.

### ***Complaint to the Ombudsman 2010***

21. Mr and Mrs X complained to us in 2010. They said the Council had failed to sufficiently take the views of their son's specialist occupational therapist into account when reviewing his Statement at his annual review in March 2010. This was despite the fact S's Statement said he needed the involvement of a specialist occupational therapist. As a result, S missed out on three months of occupational therapy.
22. Our investigation found the Council should have consulted with the specialist occupational therapist before making a decision about whether S needed occupational therapy. Because the Council did not do this, there was fault in the way it made its decision.
23. As a result of the fault, the Council agreed to:
  - pay Mr and Mrs X £200 for the three months that S did not receive occupational therapy;
  - pay Mr and Mrs X £250 for the unnecessary time and trouble they were put to; and
  - review its policies and procedures in light of working with families where an independent practitioner has also seen the child.

### **Complaint to the Council 2015**

24. Mr and Mrs X complained to the Council in June 2015. They said the Council provided S with no occupational therapy between 24 November 2014 and 2 February 2015. This was because it ended its contract with the existing occupational therapy providers before commissioning a new provider.
25. When occupational therapy started on 2 February 2015 Mr and Mrs X complained the sessions were not meeting the requirements of S's Statement.
26. The Council carried out a Stage 2 investigation but Mr and Mrs X were unhappy with the outcome. However, following their request for a Stage 3 review, the Council reconsidered the Stage 2 findings and formally upheld all of Mr and Mrs X's complaints.
27. As a result of the faults identified, the Council said it would:
  - pay Mr and Mrs X £250 for the unnecessary time and trouble they were put to;
  - pay Mr and Mrs X £250 for the distress caused to S and Mr and Mrs X;
  - not terminate a service until it had another one in place; and
  - offer training to staff in relation to communicating with families and dealing with complaints.

### **Recent events**

28. In June 2015, S went for an overnight assessment at a residential specialist school for children with complex behavioural, learning and health needs. The school's assessment report from that visit said S was a suitable candidate who *"required 1:1 support to access learning and to reassure him throughout the day"*.
29. S began to attend the school from September 2015. The Council failed to amend S's Statement to reflect the change in school. As a result, S's Statement from 12 January 2012 remained in force. Part 3 of this Statement said S requires *"a very high level of support from a learning support assistant to facilitate communication and interaction with others, to assist with language programmes and targets and to meet his behaviour and learning needs"*.
30. The Statement also said *"in order to support the school in meeting [S's] special educational needs, the Local Education Authority will also provide additional resources for a Learning Support Assistant, the allocation of LSA time will be 30 hours a week in addition to 1 hour 5 minutes provided by the school"*. This support would be on a 1:1 (one learning support assistant to one pupil) basis.
31. The school initially invoiced the Council at a higher rate to include the additional 1:1 support S required. However, the Council replied and said it would not pay for the extra support until it had been agreed by the Panel.

32. On 23 October 2015, Mr and Mrs X attended a six week review at the residential school. At the review they discovered S was not receiving any 1:1 support. The school told them when S began at the school, the Council sent it S's Statement, which contained the requirement for 1:1 support. However, the Council also sent across S's individual pupil arrangement, which did not include this requirement. As a result, the school had been providing S with support at its normal 1:2 ratio (one learning support assistant to two pupils) for 21 hours a week.
33. Between October and December 2015, Mr and Mrs X emailed the school numerous times for updates. On 8 December 2015, the school said it would approach the Council about the requirement to provide S with 1:1 support because the school was not receiving the appropriate funding from the Council to provide this.
34. At the end of January 2016, Mr and Mrs X asked the school for an update. The school replied on 29 January 2016 and said it had still not heard from the Council but would provide 1:1 support 30 hours a week for S from 3 February 2016, which it would fund itself whilst it waited for the Council's response. By this stage S had not received 1:1 support for five months.
35. On 18 March 2016, the Council's Standing Residential Education Placement (STREP) Panel met and decided it would not fund the 30 hours a week 1:1 support detailed in S's Statement. The minutes of that meeting state *"The Panel has said that there is no evidence in the paperwork provided to say [S] needs 1:1 support. [S's] mother will be asked to supply additional information as to why she thinks [S] needs more support than the school is providing at the moment. This request will be considered further through the [Education, Health and Care Plan] ... process which is due to start on 21 April."*
36. The Council did not inform Mr and Mrs X of the outcome of the STREP Panel. They did not find out what had happened until 21 June 2016 when the school gave Mr and Mrs X four weeks' notice it would cease to provide S with 1:1 support. This was because of the decision of the STREP Panel to not fund the support.
37. Mr and Mrs X complained to the Council about this on the same day. The Council replied on 30 June 2016. It apologised for not informing Mr and Mrs X of the outcome of the STREP Panel meeting on 18 March.
38. It also said the STREP Panel had now approved the school's request for 30 hours of 1:1 support at its meeting in May 2016. At this meeting the school had provided evidence of why S required 1:1 support. The evidence said without 1:1 support *"it would be very difficult to meet [his] sensory and learning needs... [he] would sit and not interact with anyone ... [he] would not remain focused and would sit and stare out of the window. Unsupported, [S] is then at risk of becoming increasingly agitated and distressed. This can manifest itself in manic laughing or at its worst crying which then requires in excess of 1:1 support to calm [him]"*.

39. Mr and Mrs X were dissatisfied with the Council's response and asked for five complaints to go to a Stage 2 investigation. They said:

*"His support has been and is under constant threat. When it was not in place we noted to the school that [S] was showing signs of distress and getting upset – this arises as [S] suffers from anxiety and needs constant 1:1 support to feel safe and well as well as to learn and enjoy life ...we have lived a life of stress and worry because of the inability to access health and other services for our son. This leads to lack of trust and affects our health".*

40. Following the investigation, the Council:

- partially upheld the complaint it failed to provide the 1:1 support required by S's Statement;
- did not uphold the complaint it acted incorrectly when it failed to fund the 1:1 provision and indicated it may not fund it in future;
- partially upheld the complaint it demonstrated poor understanding of the legislation around special educational needs;
- upheld the complaint it acted incorrectly and without an understanding of the law, when the STREP Panel failed to approve the requirements for 1:1 support set out in S's Statement; and
- partially upheld the complaint it failed to act in a family and child centred way which was required under the Children and Families Act 2014.

41. The Council apologised to Mr and Mrs X and recommended a payment of £250 for their time and trouble in bringing the complaint. The Council also said it would:

- review the remit and terms of reference of the STREP Panel and would provide Mr and Mrs X with details of how it would operate in the future; and
- provide Mr and Mrs X with details of any training the STREP Panel received on law and policy together with details of training received by staff as a result of their complaints.

42. Mr and Mrs X were dissatisfied with the outcome of the Stage 2 investigation and asked for the four complaints which had either not been upheld or only partially upheld to go to a Stage 3 review.

43. The Council held the Stage 3 review on 15 December 2016 and upheld all four complaints. With regard to the STREP Panel, the Review noted *"The STREP Panel is not the forum to discuss the reduction of funding of 1:1 support and the process may even be illegal. There is no evidence of the Special Educational Needs Code of Practice 2001 being followed ... this demonstrates that the procedure ... for reviewing the provision of service to [S] had not been followed"*.

44. The Council informed Mr and Mrs X that following the Stage 3 review, the Council had:
- reviewed its special educational needs systems, including the remit and decision-making of the STREP Panel; and
  - reviewed its procedures and training of special educational needs officers in relation to procuring support services.
45. The Council also offered Mr and Mrs X a further £250 *“for any distress that may have been caused in terms of the concerns raised in this complaint”*.
46. Mr and Mrs X remained dissatisfied and complained to us. They said:
- the Council had failed to consider the harm its actions had caused S who they felt had suffered a considerable injustice;
  - the sum of £500 offered to them was insufficient to address the time, worry and distress this complaint had caused them, particularly because it was the fourth complaint they had brought against the Council;
  - the STREP Panel should not have asked them for evidence of their son’s need for 1:1 support because the reasons why were contained in his Statement; and
  - the training proposed by the Council was not sufficient to address the lack of awareness of the relevant law and policy.
47. In response to our formal enquiries, the Council says it has:
- provided additional training in relation to procuring and contracting because this led to the initial error in not providing S with 1:1 support;
  - recognised the STREP Panel was not compliant with legislation. As a result the Council has abolished the Panel and set up a new Multi-Agency Resource Panel with revised terms of reference and processes;
  - provided training to the special educational needs team on communication, working with parents and statutory plans, procedures and annual review processes; and
  - not identified any other children who have had their provision altered by the STREP Panel without a review of their Statements.
48. The Council also informed us it would provide S with *“additional counselling for any stress or injustice that he experienced as a result of not receiving dedicated 1:1 support”*.

## Conclusions

49. The Council failed to amend S's Statement when he changed schools. This is not in line with the Code and this is fault.
50. If the Council had reviewed S's Statement, this would have given it the opportunity to make any amendments it felt necessary, including amendments to the provision in Part 3 such as 1:1 support. Mr and Mrs X would then have had a right of appeal to the Tribunal.
51. However, the Council reviewed and changed the provision in S's Statement without following the statutory procedures. It has admitted this was fault and the STREP Panel may have been acting unlawfully. The Council was acting outside its powers and the STREP Panel was not the correct decision-making body. The Council was not permitted to remove educational provision from S's Statement without amending his Statement and providing Mr and Mrs X with a right of appeal to the Tribunal. The Council has abolished the STREP Panel and established a new Multi-Agency Resource Panel with revised terms of reference. It says it has provided the new Panel and relevant staff with training. The Council should provide evidence to us that this has taken place.
52. On two occasions, Mr and Mrs X did not find out about the Council's decisions around funding S's 1:1 support until the school told them. The Council therefore failed to communicate appropriately with Mr and Mrs X throughout this period. It says it has provided training to the special educational needs team on communication, working with parents and statutory plans, procedures and annual review processes. The Council should provide evidence to us that this has taken place.
53. Where a council repeats the same fault we may issue a public report. In this case it is the fourth time the Council has failed to provide the support required by S's Statement.
54. On this occasion, the Council has already admitted it was at fault and the Stage 3 review upheld all of Mr and Mrs X's complaints. However, Mr and Mrs X remain unhappy because they do not believe the actions the Council has taken or says it will take are sufficient to address the faults identified. This view is compounded by the fact the Council has said it will make changes in the past but has continued to fail them and their son by not providing the support he needs and which is in his Statement. They are particularly unhappy that the Council did not acknowledge the injustice its actions caused S.
55. S missed out on around five months of 1:1 provision. The Council has already admitted it was at fault. However, it was not until Mr and Mrs X complained to us that it offered to provide a remedy to address the injustice to S. It has now offered provide him with *"additional counselling for any stress or injustice that he experienced as a result of not receiving dedicated 1:1 support"*. However, after taking S's particular needs into account, the school's evaluation of the effect the lack of 1:1 support would have on S and his parents' description of the distress and anxiety he has been caused, this is not a suitable way to deal with the injustice he has suffered.

56. For around 14 weeks between 23 October 2015 and 29 January 2016, Mr and Mrs X did not know if the Council would provide the 1:1 support S required. On 2 February 2016, the school said it would fund the support from 3 February 2016 whilst it continued its discussions over payment with the Council. However, this still left Mr and Mrs X with the fear that the school could stop the funding at any time. This was because it was ultimately the responsibility of the Council, and not the school, to fund the provision.
57. Mr and Mrs X were then caused further distress when the school said in June 2016 it would only fund the 1:1 support S required for another four weeks because the Council had refused to fund it.
58. The Council acknowledged the distress it had caused Mr and Mrs X and following the Stage 3 review it offered to pay them £250 *“for any distress that may have been caused in terms of the concerns raised in this complaint”*. It then offered a further £250 for any distress as well as the time and trouble it had caused them.
59. This is the fourth time that we are aware Mr and Mrs X have had to complain about the Council’s failure to provide the support their son requires. They no longer have any faith in the Council’s ability to support them and their son and they remain unconvinced the Council will provide the support S needs in future. Therefore, the payment of £500 is not sufficient to remedy the distress, time and trouble the Council’s actions have caused, and continue to cause, Mr and Mrs X.

### **Cumulative effect of complaints**

60. In total since 2008, the Council has failed to provide S with approximately 23 months of the support required in Part 3 of his Statement. The Council had identified the support in S’s Statement as an educational need; therefore we are satisfied that without this support his educational and behavioural needs were not fully met. Although we cannot say for certain what the cumulative effect of this lack of support will have had on S, it is likely to be significant. In addition, Mr and Mrs X have the uncertainty of not knowing the extent to which their son’s development has suffered or the distress and anxiety caused to him due to the lack of this support.
61. In addition, the nature of S’s condition means that he will need the support of the Council throughout his life. The past failings by the Council have left Mr and Mrs X with an abiding fear that the promised support will not be forthcoming.
62. On each occasion in the past, the Council has made a payment to acknowledge the distress and/or time and trouble its actions have caused Mr and Mrs X. However, the same faults have reoccurred four times in the last nine years. As a result, we have taken this into account when determining the remedies in this case. Until they brought their complaint to us, the remedy the Council offered to Mr and Mrs X on this occasion failed to take into account the impact on S.

## Decision

63. There was fault by the Council causing injustice to Mr and Mrs X and S. The Council has agreed it will take the action identified in paragraph 64 to remedy that injustice.

## Recommendations

64. We recommend that within three months of our final decision the Council:

- pay Mr and Mrs X an additional £500, to the £500 it has already offered, to acknowledge the distress and uncertainty caused by its actions which they continue to experience despite earlier complaints having been upheld;
- pay Mr and Mrs X £800 for them to spend on a family break to acknowledge the cumulative injustice its faults have caused S;
- review its procedures to ensure when a child transfers to another school, their Statement or Education, Health and Care Plan is amended and the appropriate procedures are followed to ensure the Council is compliant with the Code. The Council should provide evidence it has done this;
- review its procedures to ensure it has provisions in place to ensure Multi-Agency Resource Panel decisions are communicated to families and carers with reasons why the decision was made. The Council should provide evidence it has done this; and
- provide us with evidence of the training it says it has carried out with:
  - i. staff in procuring and contracting because this contributed to the initial error in not providing S with 1:1 support;
  - ii. the special educational needs team on communication, working with parents and statutory plans, procedures and annual review processes; and
  - iii. the new Multi-Agency Resource Panel members and supporting staff.

65. The Council has agreed to the findings and the recommendations in this report.