

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

**Investigation into a complaint against  
Isle of Wight Council  
(reference number: 19 012 699)**

**1 April 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

Mrs X	The complainant
Y	The complainant's son

---

## **Report summary**

### **Special Educational Needs**

Mrs X complained the Council delayed in sending her a copy of the final Education Health and Care Plan (EHC Plan) for her son following the Tribunal's decision, and wrongly removed agreed provision from Section G of the final EHC Plan.

### **Finding**

Fault found causing injustice and recommendations made.

### **Recommendations**

To remedy the injustice caused, we recommend that the Council:

- apologises to Mrs X and Y for the failure to clarify the Tribunal's instructions in May 2019;
- pays Y £150 to recognise the distress and anxiety caused by the unnecessary delay in agreeing provision;
- pays Mrs X £150 to recognise the distress, and the time and trouble she has been put to in pursuing this matter; and
- provides reminders/training to ensure that staff seek to clarify any discrepancies in Tribunal decisions at the time the Tribunal decision is issued.

We are proceeding by way of report as the Council refused to accept our findings when a draft decision was issued setting out our initial view.

---

## **The complaint**

1. Mrs X complained the Council delayed in sending her a copy of the final Education Health and Care Plan (EHC Plan) for her son following the Tribunal's decision, and wrongly removed agreed provision from Section G of the final EHC Plan.
2. Mrs X also complained the Council has failed to provide the provision the Tribunal specified in Section G of the EHC Plan.

## **Legal and administrative background**

3. 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*)
4. SEND is a tribunal that considers special educational needs. (The Special Educational Needs and Disability Tribunal ('SEND'))
5. 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.

## **Education Health and Care Plans**

6. A child with special educational needs may have an EHC Plan. This sets out the child's needs and what arrangements should be made to meet them. The EHC Plan is set out in sections. We cannot direct changes to the sections about education or name a different school. Only the SEND Tribunal can do this.
7. We can consider the other sections of an EHC Plan. We do this by checking the Council followed the correct process, and took account of all relevant information, in deciding what to include. If we find fault affected the outcome, we may ask the Council to reconsider. We will not usually substitute our judgement for the judgement of professionals if their decision were made without fault.
8. The Council is responsible for making sure that arrangements for special educational provision and social care provision specified in the EHC Plan are put in place. The Clinical Commissioning Group is responsible for securing health care provision. We can look at complaints about this, such as where support set out in the EHC Plan has not been provided, or where there have been delays in the process.

## **How we considered this complaint**

9. We produced this report after examining relevant files and documents.
10. We are proceeding by way of report as the Council refused to accept our findings when a draft decision was issued setting out our initial view.
11. We gave the complainant 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.

---

## What we found

12. Mrs X appealed against the contents of her son Y's EHC Plan. She also asked the Tribunal to make recommendations concerning Section D (social care needs), Section H1/H2 (social care provision), Section C (health needs) and Section G (health provision). Mrs X states the Tribunal agreed to the following provision in Section G.
  - Air conditioning unit at home and mobile unit for overnight respite.
  - Visual aids and adaptations to home/school when/if necessary, including wet room to help with personal hygiene.
  - Support with hospital visits and accompanied by a carer to support Y's behavioural plan.
13. The Council had submitted a working document to the Tribunal which highlighted, in yellow, the aspects of the Plan which were in dispute. This included the above provision in Section G.
14. The Tribunal issued an amendment notice in May 2019. This stated:
  - all text in red type was to be deleted;
  - all text in green type was to be added;
  - all text in black type was as agreed between the parties; and
  - text highlighted in yellow was not agreed but was outside the Tribunal's remit.The provision set out in paragraph 12 above was included in Section G in black type. It was no longer highlighted in yellow.
15. The Council must issue the final EHC Plan within five weeks of the Tribunal decision. Mrs X states that despite repeatedly chasing the Council, she did not receive the final EHC Plan until September 2019. However, the Council has provided a copy letter to Mrs X of May 2019 which enclosed the final EHC Plan. It is unclear why Mrs X did not receive this letter.
16. In June 2019 Mrs X contacted the Council about provision. The Council confirmed it had contacted Guide Dogs for the Blind about a symbol cane, which it would fund. The Council also stated Children's Services was satisfied the current package of care and support was appropriate for Y's needs.
17. Mrs X states she was not aware until she received the final EHC Plan in September 2019 that the Council had removed the provision from Section G. She immediately complained and asked for the provision agreed by the Tribunal to be reinstated in Section G of Y's Plan. In considering Mrs X's complaint the Council contacted the Tribunal asking for clarity on what should be done about these provisions. It asked the Tribunal to review and make a decision on these items of provision as it had not previously made a determination. The Tribunal advised that the Judge could not comment further on the decision and the Tribunal would not take any further action. The Council then suggested the outstanding matters should be discussed at Y's annual review in December 2019.
18. The Council has not provided records of the annual review, but this did not lead to any changes in Y's EHC Plan.
19. The Council did not uphold Mrs X's complaint as it considered its response to the outcome from the Tribunal was correct. It considered discussing these matters at the annual review was an appropriate response to the situation which it alleged had been created by the Tribunal's failure to conclude the hearing properly. The

- 
- Council also noted that the issues relating to air conditioning units, and visual aids and adaptations had now been jointly resolved at the review meeting. In addition, the Council had sought additional information to resolve the issue regarding hospital visits. The Council considered colleagues from education, health and social care services were working together in Y's best interests.
20. Mrs X was not happy with the Council's response and asserted the Council had not followed the timescales or directions set out by the Tribunal. She noted the Tribunal had sent out an amendment notice and directions on 3 May 2019, and that the final date for notification of dispute by either party was 7 June 2019. Mrs X states the Council did not suggest within this five-week timeframe that there was any disagreement on the provision in the EHC Plan. She states she chased provision based on the Tribunal's working document in June 2019 and did not receive a copy of the updated EHC Plan from the Council until September 2019.
  21. Mrs X also challenged the suggestion the issues had been jointly resolved at the review meeting. The health service representative had not attended the annual review, and while the provision in Section G was discussed there was no agreement, just confirmation the Council would look into this. Mrs X considered the Council's removal of provision from Section G was unlawful as they were not given an opportunity to contest this.
  22. In February 2020, the Council confirmed Y had a fan for use as necessary at school, and that the respite placement had ordered an air conditioning unit. The unit would be in place before the summer months and would be provided via Y's personal budget.
  23. The Council also confirmed it had purchased specialist software to support Y's access to electronic materials on his laptop. It confirmed the sighted guide training had taken place and a course of independent living skills was scheduled. And that it had provided Y with a symbol cane for use in busy places.
  24. In relation to support for hospital visits, the Council confirmed it would provide an annual contribution of £300 to support Y's attendance.
  25. As Mrs X remains dissatisfied, she has asked us to investigate her complaint. She states the Council has not provided the provision it says it has and would like the three elements of provision reinstated in Section G of Y's EHC Plan. Mrs X states Y attended his first overnight stay at the respite centre following lockdown, in September 2020, but despite the Council's assurances, the air conditioning unit was not in place.
  26. Mrs X questions why it has taken so long to install the unit. She states she made a parental referral to the NHS to install an air conditioning unit in Y's bedroom at home and that the whole process was completed in three months. Mrs X asserts that had the Council included the provision of an air conditioning unit in Section G of Y's EHC Plan, this could have been in place by the late summer of 2019. Mrs X states that not having this provision has led to Y suffering several seizures following his stays in respite.
  27. Mrs X also states that not including the provision for support with hospital visits, accompanied by a carer has led to Y's deteriorating tolerance of hospital visits and numerous failed visits. Y also now refuses to attend some appointments which puts his health at risk. In addition, Mrs X is concerned that without the provision of appropriate adaptations and modifications for his visual impairment, Y's chances of becoming an independent adult are reduced.

- 
28. The Council carried out a further annual review in May 2020. The records of this review note that Mrs X was still concerned about the lack of assistance they receive when taking Y to hospital appointments. There were no changes to Section G of Y's EHC Plan following this review.
  29. Mrs X is not aware of any attempts by the Council to gain information about Y's hospital visits. She states Y receives two to one support at school and at home and should receive the same level of support to travel to medical appointments.
  30. In response to our enquiries the Council disputes there was a delay in sending Mrs X the final EHC Plan, which it states was issued on 17 May 2019. The Council states it also sent a copy to Y's school and the professionals involved with Y, at the same time. The Council has not issued any further EHC Plans since May 2019, as it believes this is the correct interpretation of the Tribunal Judge's instructions.
  31. The Council also disputes Mrs X's assertion that it wrongly removed provision from Section G of the EHC Plan. It states that as the Tribunal had not made a ruling on the matters, it was appropriate to ask the Tribunal for a ruling. When the Tribunal did not agree, it was appropriate to try and resolve the issues at the annual review.
  32. Y is a Looked After Child due to the high number of nights' respite he has. The Council states it carries out six monthly reviews and that none of these reviews show a lack of provision is having a detrimental effect on him. The Council states that during the COVID-19 period, while Y was not able to access the respite placement, it increased his care package to 25 hours a week. This care was provided by a private carer.
  33. Funding for an air conditioning unit at the respite placement was agreed in February 2020, but work was paused due to the COVID-19 pandemic. Services have now resumed, and the Council states the fitting is due to take place soon. The Council states its information shows Y has not had a seizure for more than 18 months. The Council will review its information if there is medical evidence to the contrary.
  34. In relation to Y's medical appointments, the Council acknowledges Y dislikes hospital visits. It states it has not been able to obtain any evidence from medical professionals that Y's tolerance to hospital visits has deteriorated. The Council has confirmed it will review any new evidence. The Council states it is not required to fund support for access to medical appointments, and that this is not included in Y's significant package of care. It states it offered to pay £300 as a gesture of goodwill, given Mrs X's concerns on this matter.
  35. The Council also disagrees with Mrs X's view that Y is not receiving independence training. It states that preparation for adulthood is a fundamental part of the support provided by Y's school, and that provision is being implemented to meet his needs.

## **Conclusions**

36. The documentation shows that the Council wrote to Mrs X with a copy of the final EHC Plan on 17 May 2019. It is not clear why Mrs X did not receive this letter or the final Plan. But there is no evidence this was due to fault on the part of the Council.

- 
37. It is also not clear why the Council did not contact the Tribunal in May 2019 to clarify its instructions on the provision in Section G. We are not persuaded it is clear from the Tribunal's working document that it intended for all disputed provision to be removed. The Tribunal had removed the yellow highlighting from Section G of the working document and indicated in red text the sections which should be deleted. It had left the provision regarding air conditioning units, visual aids and adaptations, and support with hospital visits in black, rather than red text.
38. Where it is not clear, we would expect the Council to contact the Tribunal to confirm its recommendations. The Council has acknowledged this was the appropriate course of action, but rather than contact the Tribunal, it removed the provision and issued a final EHC Plan. The Council did not contact the Tribunal to confirm its instructions until November 2019 when Mrs X raised concerns.
39. We consider the Council's decision to remove the provision in Section G without seeking clarity from the Tribunal amounts to fault.
40. This fault has caused Mrs X and Y an injustice in the form of uncertainty and distress. It is possible the Tribunal would still have declined to comment further in May 2019. But this would have led the Council to try and resolve the matter locally much sooner. As the Council did not include this provision in Section G of Y's EHC Plan there was no duty on the Clinical Commissioning Group to secure it.
41. The Council has since agreed to fit an air conditioning unit at the respite placement and has offered financial assistance to attend Y's medical appointments, outside of Y's EHC Plan. Had the uncertainty regarding the Tribunal's instructions been clarified sooner, this provision could have been agreed and in place sooner.
42. It is unfortunate that the installation of the air conditioning unit and the planned guide dog training were further delayed due to the COVID-19 pandemic. But these are circumstances beyond the Council's control.
43. Mrs X does not consider the level of assistance the Council has offered is sufficient to support Y in attending medical appointments. The Council has confirmed it will review any evidence from medical professionals to show Y's tolerance to hospital visits has deteriorated. This is an appropriate response.

## **Recommendations**

44. To remedy the injustice caused, we recommend that the Council:
- apologises to Mrs X and Y for the failure to clarify the Tribunal's instructions in May 2019;
  - pays Y £150 to recognise the distress and anxiety caused by the unnecessary delay in agreeing provision;
  - pays Mrs X £150 to recognise the distress, and the time and trouble she has been put to in pursuing this matter; and
  - provides reminders/training to ensure that staff seek to clarify any discrepancies in Tribunal decisions at the time the Tribunal decision is issued.
45. 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**

46. The Council's failure to clarify the Tribunal's instructions regarding Y's EHC Plan in May 2019 amounts to fault. This fault has caused Mrs X and Y an injustice.