Local Government & Social Care OMBUDSMAN

Report by the Local Government and Social Care Ombudsman

Investigation into complaints against Nottinghamshire County Council (reference numbers: 17 004 666 and 17 014 121)

20 July 2018

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.

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 first complainant
Y and Z	Her daughters
Mr Q	The second complainant
P	His son

Report summary

Education Appeal Panel: School Admissions

Mrs X complains there was fault in the admissions process and the actions of a panel that heard her appeal against the refusal of places for her daughters, Y and Z at School A.

Mr Q complains of the same fault affecting his son, P.

Finding

Fault found causing injustice and recommendations made.

Recommendations

Regarding Mrs X, we recommend the Council, within one month of the date of this report:

- apologises to Mrs X;
- pays Mrs X £500 per school year from September 2016 until the time either her eldest child leaves School A or she has an offer of places for Y and Z at School A, whichever is earlier, to recognise the extra time and cost she and her husband have incurred. Should there be an offer of places mid-year or her eldest child leave School A mid-year, the £500 for that year should be paid pro rata; and
- pays Mrs X £250 for her distress in being denied the remedy to which she would normally be entitled and £250 for her time and trouble in having to go through two appeals and approach us. This makes a total of £500.

Regarding Mr Q, we recommend the Council within one month of the date of this report:

- apologises to Mr Q;
- pays Mr Q £500 per school year from September 2016 until the time either his elder child leaves School A or he has an offer of a place for P at School A, whichever is earlier, to recognise the extra time and cost he and his wife have incurred. Should there be an offer of places mid-year or his eldest child leave School A mid-year, the £500 for that year should be paid pro rata; and
- pays Mr Q £250 for his distress in being denied the remedy to which he would normally be entitled and £250 for his time and trouble in having to go through two appeals and approach us. This makes a total of £500.

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)***

The Council has accepted these recommendations.

The complaint

1. Mrs X complains there was fault in the admissions process and the actions of a panel that heard her appeal against the refusal of places for her daughters, Y and Z at School A.

2. Mr Q complains of the same fault affecting his son, P.

Legal and administrative background

The Ombudsman's role

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)***

The School Admissions Code 2014

4. This governs the setting of admissions policies. It prohibits the setting of certain admissions criteria, but it does not require or prohibit giving priority to siblings of children already at a school over other children without siblings.

The Office of the Schools Adjudicator (OSA)

5. The OSA receives complaints about school admissions arrangements and determines whether they are lawful or fair. The OSA has the power to order the amendment of admission arrangements it finds unlawful or unfair.

The School Admission Appeals Code 2012

6. This regulates the conduct of appeal hearings. It has special rules for appeals involving infant classes, which are limited to 30 children with few exceptions. Where a child or children have lost places in an infant class as a result of fault by the admission authority, the Code lays out a procedure panels must follow. We give specific details of this later. The Code is silent on the conduct of fresh appeals.

How we considered this complaint

7. We gave the complainants 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

Relevant background

8. Councillors decided to change the Council's admissions arrangements for schools in September 2016. Local campaigners have disputed the consultation the Council carried out before making the change, but that has no relevance to this complaint, for the reason we lay out later.

9. The change removed priority in the over-subscription criteria for children outside the schools' catchment areas who had siblings, over those outside catchment areas who did not.

10. Mrs X applied for Reception class places for her children, Y and Z for September 2016 at School A. They had a sibling at the school, but did not live in the catchment area. Mr Q applied for a place for his son, P, who also had a sibling at the school and did not live in the catchment area. The Council refused the applications as other children had higher priority under the new arrangements and the school was full.

11. Mrs X and Mr Q both appealed against the refusal.

The conduct of the first appeals

12. As the appeals were for an infant class, there were only limited grounds on which the panel could have upheld them. These were where a child had lost a place because of:

- admissions arrangements that breached the School Admissions Code 2014;
- an error in applying the admissions arrangements; or
- a decision so unreasonable that it was perverse or outrageous in its defiance of logic.

13. The panel refused Mrs X's appeal and Mr Q's appeal as it found none of these grounds applied.

The Council's decision to offer second appeals

14. Seven months later, following a challenge by a parent of a child at another school, the OSA ruled in January 2017 the admissions arrangements for that school for September 2017 were unfair. These were the arrangements that no longer gave priority in the over-subscription criteria for children outside the school's catchment area who had siblings over those outside its catchment areas who did not. It invited the Council to consider what to do about other schools for which it controls admissions.

15. The Council accepted the OSA's ruling. Councillors decided to offer all parents whose children might have lost a place in 2016 at any of its schools a fresh appeal.

The conduct of the second appeals

16. Mrs X and Mr Q's second appeals were heard together in May 2017. There were only the same limited grounds for upholding an appeal as explained earlier.

17. Where one of the three grounds applies, the School Admission Appeals Code 2012 lays out that panels must decide first if the school can admit all the children without causing serious prejudice to efficient education. If so, it must admit them. If not, it must decide how many children the school could cope with without serious prejudice. It must then admit those whose case for admission is strongest.

18. The second panel in May 2017 found the admissions arrangements for School A did not comply with the School Admissions Code 2014. It found five children, including Y, Z and P lost places at School A as a result. Four of these children were still without places and each of their parents had appealed.

19. The clerk's notes of the hearing show the panel considered if School A could admit any of these four remaining children. It found there was one class of 30 and another of 31. It decided School A could cope with a second class of 31, so it would admit one of the four children. The clerk's notes show it decided the cases put forward by the parents were similar. So, it decided to admit the child who lived

nearest to School A. Mrs X and her children and Mr Q and his child lived further away. The May 2017 panel turned down their appeals.

20. The School Admission Appeals Code 2012 only deals with first appeals. It makes no comment on the conduct of fresh appeals.

21. School A, which is now an academy, has confirmed it cannot offer places to the affected children owing to the difficulties already created by the over-sized classes.

Conclusions

Was there fault?

22. The first panel in 2016 could not have known of the later ruling by the OSA in January 2017. We do not find the first panel at fault.

23. The second panel in May 2017 followed the requirements of the School Admission Appeals Code 2012. The Code is silent about fresh appeals, so there was no clear guidance for the panel to follow. But it was not the second panel's fault that the Code is silent about the conduct of fresh appeals. It did not have to admit Y, Z or P. And its decision to follow the Code and to admit the child who lived nearest to the school, making a second class of 31, was reasonable in the circumstances. We do not find the second panel at fault.

24. There is an argument that the second panel in May 2017 should have decided the fresh appeal based on the numbers on roll from the time of the first appeals. We have taken this approach in other cases where there has been fault in a first appeal. However, the first appeals in this case were not faulty, so we do not find the argument persuasive.

25. Moreover, infant classes, unlike older classes, are restricted to 30 for a good reason. Therefore, even if the second panel in May 2017 had departed from the School Admission Appeals Code 2012, it would have had to have regard to a persuasive argument. This is that, with 30 and 31 children in two classes and no prospect of other arrangements, School A was full. As already stated, its decision to admit only one child was reasonable.

26. There is an argument that, as neither panel was at fault, the Council was not at fault. But the Council did not challenge the OSA's ruling. Instead, it accepted it. That is significant.

27. As the OSA's ruling has not been challenged, it follows this ruling is not in question. Although the OSA only considered the arrangements for 2017, the admissions arrangements for 2016 were identical. We therefore consider they were also unfair. The Council acted with fault in amending its admissions arrangements to this unfair form.

28. This created a situation where the fresh panel accepted Y, Z, P and two other children had lost places at School A the previous year due to the admissions arrangements. Four of these remained without places and their parents had appealed. Given there were already 30 and 31 children in the two classes concerned, the prospect of success at the fresh appeal was limited. Three of the four children whose parents appealed, Y, Z and P remain without places at School A. This is despite two appeals a year apart. They would have had these places in 2016 but for the changed admissions arrangements.

29. The OSA's ruling, accepted by the Council in its decision to offer fresh appeals, thereby acknowledged that fault and the injustice caused. There was limited prospect of remedy in the fresh appeals and Mrs X and Mr Q have had none. We do not accept the Council's view that the second appeals constituted a suitable remedy. Nor do we accept that there is any inconsistency between our position here and in investigation 17 003 543. In that case, the complainant obtained the school place she wanted at the second appeal. The injustice caused by fault was not the same.

Was there injustice?

30. The change of admission arrangements caused Mrs X and Mr Q injustice in the form of lost school places for Y, Z and P. With 31 children per class, this is unlikely to be resolved for some time if at all. This is demonstrated by School A's recent confirmation it cannot offer places owing to the difficulties already created by the over-sized classes.

31. We do not accept the Council's argument there is no injustice to Mrs X and Mr Q because they are not committed to seeking places at the school as they have not applied again. For the reason given in the paragraph above, applying again would be unlikely to be fruitful. Moreover, both Mrs X and Mr Q told us they still wanted places at the school when the Council asked the school if it could offer places.

32. Mrs X and her husband have had, since September 2016, to transport Y and Z to a different school from their sibling or arrange to pick them up and drop them off with friends and relations who do so. We have seen these arrangements, which are complicated. They involve extra journeys and time. And while many other parents must do the same, in this case it should not have been necessary. These arrangements will continue until the time when either their eldest child leaves School A or they have the opportunity of places at School A. They have also suffered distress because of the fault and time and trouble in trying to resolve the matter.

33. Mr Q and his wife have also had, since September 2016, to transport P to a different school from his sibling. This has involved arranging drop-offs and pick-ups with their extended family. They have also incurred some childcare costs since September 2016 via a breakfast club. We have seen these arrangements, which are complicated and require extra journeys and time. And as with Mrs X and her husband, Mr Q and his wife should not have had to make them. These will continue until the time their elder child leaves School A or a place there is offered. They have also suffered distress because of the fault and time and trouble in trying to resolve the matter.

Remedy

34. Where a child loses a place at a school, the usual remedy is via a fresh appeal or a direct offer of a place.

35. We have considered whether it would be reasonable to recommend fresh appeals for Y, Z and P. Regrettably, we cannot do so. This would require us to recommend third appeals where the resulting panel would be faced with two over-sized infant classes of 31 and three children wanting places. This would merely be repeating the same exercise that has already taken place.

36. The Council has also checked on our behalf if School A, now an academy, is prepared to offer places. It is not. Neither the Council nor we have authority to offer the places.

37. Regarding Mrs X, we therefore recommend the Council, within one month of the date of this report:

- apologises to Mrs X;
- pays Mrs X £500 per school year from September 2016 until the time either her eldest child leaves School A or she has an offer of places for Y and Z at School A, whichever is earlier, to recognise the extra time and cost she and her husband have incurred. Should there be an offer of places mid-year or her eldest child leave School A mid-year, the £500 for that year should be paid pro rata; and
- pays Mrs X £250 for her distress in being denied the remedy to which she would normally be entitled and £250 for her time and trouble in having to go through two appeals and approach the Ombudsman. This makes a total of £500.

38. Regarding Mr Q, we therefore recommend the Council, within one month of the date of this report:

- apologises to Mr Q;
- pays Mr Q £500 per school year from September 2016 until the time either his elder child leaves School A or he has an offer of a place for P at School A, whichever is earlier, to recognise the extra time and cost he and his wife have incurred. Should there be an offer of places mid-year or his eldest child leave School A mid-year, the £500 for that year should be paid pro rata; and
- pays Mr Q £250 for his distress in being denied the remedy to which he would normally be entitled and £250 for his time and trouble in having to go through two appeals and approach the Ombudsman. This makes a total of £500.

39. 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)***

40. The Council has accepted these recommendations.

29 May 2018

Complaint reference:
17 016 041

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr X complained about a footway on his land, which is included in maps the Council holds. The Council was not at fault. It could not take enforcement action 30 years after the development was built and in any event, it was not the relevant planning authority. It has not taken land, as the land is still within Mr X's title's boundary. The Council's maps do not show registered extent of titles, as these are different to rights of way.

The complaint

1. Mr X complained the Council:

   a) allowed a footway to be installed in the 1980s on land which is within the title for the property Mr X later purchased in the 1990s. The path was not present on the plans that gained planning permission;

   b) has wrongly taken land that should have been part of Mr X's property's title, to use as an adopted public highway;

   c) wrongly represents Mr X's property's title on the documents it holds showing highways in its area, which has led to the title showing incorrectly on ordnance survey and land registry plans.

2. Mr X is concerned this prejudices his title and will make it difficult to sell his property.

What I have investigated

3. I have considered parts 1 b) and c) above.

4. I have not investigated part 1a) relating to the Council's actions in the 1980s (bullet point one). I have explained this further in "*the Ombudsman's role and powers*" and "*parts of the complaint that I did not investigate*". However, I have considered the Council's actions in 2017 when Mr X told it there may have been a breach in the 1980s.

The Ombudsman's role and powers

5. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. ***(Local Government Act 1974, section 34(3), as amended)***

6. 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)***

7. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

8. For this investigation, I:

- considered the information Mr X provided and discussed the complaint with him;
- looked at the relevant law and guidance, including the Highways Act 1980; and
- wrote to Mr X and the Council with my draft decision and considered their comments.

What I found

Footway installed without planning permission

9. Mr X provided copies of the plans that gained planning permission in the 1980s when this development was built. The agreed plans did not include a footway within his property's title. However, the development was then built with an added footway within the boundaries of his property.

10. If a breach of planning control exists unchallenged for many years, it becomes lawful and councils no longer have enforcement powers.

11. Mr X made the Council aware in 2017 that there was a potential breach of planning control. A council has no powers to enforce against a breach of planning control that becomes evident 30 years after a development was built. The Council told Mr X it could not pursue the matter. In any event, this Council was not the relevant planning authority for this development. The Council was not at fault.

Council taking land and wrongly representing the property's title

12. Title deeds held by the Land Registry show the extent of land in a registered title. Councils are required to keep maps of public rights of way, which might not look the same as title deeds. This is because they represent different things, and it is possible for a public right of way to also be within the boundary of private title deeds. When this is the case, the land owner cannot build on that right of way even though the land belongs to them as this would be considered obstructing a public right of way. However, if they wish to build on the land, they can apply to the Council to extinguish the public right of way.

13. Mr X applied to the Land Registry to alter his property's title in December 2017. This was because he believed the Council's records, which showed the footway,

impacted the extent of his title. He believed the Council had therefore taken land from his title. The Land Registry told Mr X it could not alter his title. Mr X assumed this was because the Council's map, and subsequently the ordnance survey, showed the footway rather than showing the title boundary as it should be.

14. However, the Council's maps and the ordnance survey do not show title boundaries. They show the layout as is present 'on the ground'. As explained above, land within a property's title, and so owned by that property's owner, can also be a public highway. Information the Council holds and the ordnance survey show footways, like that on Mr X's land, which the Council has adopted. The maps are not incorrect as the Council did adopt the footway on Mr X's property in the 1980s.

15. Having adopted a footway does not make the Council the landowner. Adoption simply means that it is the Council, and not the landowner, who has responsibility for the upkeep of the footway. That the Council has adopted this footway on Mr X's land benefits him, while the footway exists, because it means it is not Mr X's responsibility to maintain it for use by members of the public.

16. The Land Registry confirmed in its letter of December 2017 that its records were correct and were in line with the extent of Mr X's land as he understood it. The Land Registry could not alter the title because it was already in line with what Mr X was asking for. If Mr X believes the title deeds the Land Registry holds no longer represent the land that was originally registered for that title, that is an issue he would need to take up with the Land Registry directly.

17. It is open to Mr X to apply to the Council to extinguish the public right of way.

The Council's complaint responses to Mr X

18. Mr X wrote to the Council on 12 September 2016, complaining the Council had taken a significant amount of his land and used it to build a footway.

19. The Council responded on 24 May 2017. It explained it had been delayed while seeking legal advice. It explained the highways records showed the current, 'as built' layout to be adopted public highway. Mr X had not provided evidence its records were wrong. It explained how the land being adopted highway was of advantage to Mr X.

20. Although the Council delayed responding to Mr X, this did not cause him a significant injustice. He replied to the Council in January 2018 saying its investigation included incorrect information. He disagreed the Council's records were correct and he felt the Council had not properly considered the original agreement for this development which depicted his title.

21. The Council told Mr X in January 2018 its complaints process could not solve legal issues and it advised him to seek legal advice. It also explained due to the time lapsed since the fault Mr X alleged, and the situation being as it was when Mr X bought his house, it could not consider his complaint further. The Council explained its officers had looked over the information Mr X sent and its position had not changed. This was a view the Council was entitled to take. The Council properly considered the information Mr X supplied. The Council is not at fault.

Final decision

22. I have not found evidence of fault by the Council and I have completed my investigation.

Parts of the complaint that I did not investigate

23. We cannot investigate late complaints unless we decide there are good reasons. Mr X says he only became aware of the Council's plans, which he believed to be wrong, in 2016. However, this footway was present within this property's title when Mr X purchased the property in the 1990s. It was open to him to query this at the time with the support of his Solicitor. There is no worthwhile outcome I could achieve through further investigation of events in the 1980s because councils have no power to take enforcement action after 30 years. This Council was not the relevant planning authority.

Investigator's decision on behalf of the Ombudsman

Local Government & Social Care OMBUDSMAN

28 June 2018

Complaint reference:
17 011 416

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: Mrs B says the Council failed to take appropriate action to protect her son and placed him in unsuitable accommodation. There is no evidence of fault in how the Council handled the case or in how it arranged accommodation for Mrs B's son.

The complaint

1. The complainant, whom I shall refer to as Mrs B, complained about the way the Council dealt with her son. Mrs B complained the Council

- delayed taking action to protect her son while he was in care;
- failed to put in place a care plan while her son was in a secure children's home;
- failed to put in place the three key elements the psychiatrist identified as required before her son returned home;
- moved her son into semi-independent living when that is not suitable for him;
- failed to protect her son while he was in semi-independent living; and
- failed to act on a decision from the child sexual exploitation meeting that her son should be moved to a place of safety in a secure environment.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a Council's decision is right or wrong simply because the complainant disagrees with it. He must consider whether there was fault in the way the decision was reached. ***(Local Government Act 1974, section 34(3))***

3. If we are satisfied with a Council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

4. As part of the investigation, I have:

- considered the complaint and Mrs B's comments;
- made enquiries of the Council and considered the comments and documents the Council provided; and
- gave Mrs B and the Council an opportunity to comment on my draft decision.

What I found

Background

5. Until July 2015 Mrs B's son was living with her. However, following some violent episodes the Council accommodated Mrs B's son under section 20 of the Children Act 1989 and placed him with foster carers. That placement broke down in September 2015 due to Mrs B's son's violence. Mrs B's son moved into a residential unit.
6. The Council held a looked after child review on 2 November 2015. The meeting agreed to seek another placement as the existing placement had served notice. Mrs B's son moved into a residential home on 14 December.
7. The Council held a looked after child review on 4 January 2016. The meeting decided to continue the residential placement with a longer term plan to move Mrs B's son back to live with her and her husband. The Council also agreed to arrange a missing from care meeting due to three absences.
8. On 22 January 2016 staff at the accommodation found Mrs B's son in his room next to a radiator with a towel tied around his neck. The hospital assessed Mrs B's son under the Mental Health Act and judged him not to require inpatient assessment or treatment. The assessment concluded the incident was not a reflection of serious mental illness and Mrs B's son was not presenting with suicidal intent.
9. The Council held meetings on 25 January and 9 February to discuss the missing episodes. The home put in place a plan to manage the risk.
10. The Council held a looked after child review on 24 March.
11. On 20 May Mrs B's mother asked for a mental health assessment. That assessment concluded Mrs B's son did not present with psychotic or manic behaviours which would warrant hospitalisation.
12. Child and adolescent mental health services (CAMHS) visited Mrs B's son on 31 May. That visit identified nothing further could be done as Mrs B's son would not engage and he was not considered to have suicidal ideation.
13. On 1 June Mrs B's son wrapped a ligature around his neck and tied it to a wardrobe. The hospital assessed him as not suffering from any mental disorder and his behaviour was deemed low risk. When leaving hospital with two members of staff Mrs B's son absconded.
14. The Council held a legal planning meeting on 3 June. Following that the Council placed Mrs B's son in secure accommodation after securing an interim secure order.
15. Mrs B's son moved back in with her in September 2016 after the court considered the case and made an interim supervision order for the Council. In its decision the court referred to the contents of a psychiatric report which had recommended Mrs B's son return home to Mrs B's care provided three therapeutic interventions were in place. They were:

- For CAMHS to provide oversight of Mrs B's son's medication;
- for some educational or vocational training to be in place, referring to Mrs B's suggested school; and
- continuation of support to address Mrs B's son's issues around self esteem and identity.

16. Social work visits took place to ensure the return home was working and, where necessary, social workers provided some support and advice to Mrs B and her husband. Social work visits reduced to fortnightly from October 2016 due to positive progress.

17. An altercation took place between Mrs B's son and her husband on 29 October. The police arrested Mrs B's son and released him without charge. The family support worker visited Mrs B and gave advice about planning responses to behaviours and managing risk. From November the Council put in place a 12 week programme for Mrs B's son to cover life management skills, anger management and victim empathy and awareness.

18. Mrs B told the Council on 14 November about her son's verbal abuse towards her and him smashing property in the home. The following day Mrs B told the Council her son had not returned home. Social workers contacted Mrs B's son who said he did not want to go home. On 28 November the court granted the Council a supervision order for 12 months. The Council agreed to fund Mrs B's son's gym lessons.

19. On 5 December Mrs B reported her son's behaviour had deteriorated and he had threatened to kill her. The police arrested Mrs B's son, who said he wanted to go into supported accommodation. Mrs B said she would not allow her son to go into local authority care or agree to supported accommodation as she did not believe her son could manage.

20. On 8 December a social worker visited but Mrs B's son did not engage. Mrs B said she thought her son should be sectioned and needed a mental health assessment.

21. The Council held a child in need meeting on 19 December.

22. Further violent incidents took place in January and February 2017. In February CAMHS recommended putting Mrs B's son on stronger anger medication.

23. On 13 February Mrs B reported aggression from her son had and police had removed him from the home but not charged him. The social worker requested befriending provision.

24. CAMHS met with Mrs B and her son on 15 February. Mrs B's son agreed to take medication. CAMHS said it could request a mental health assessment if concerns persisted.

25. A child in need meeting took place on 24 February. The meeting recommended a package to provide Mrs B's son with daily structure and support. That included the gym providing support to wake him at a reasonable time, help him take medication, get him to the gym and to access an education package and counselling/befriending.

26. In March Mrs B raised concerns about her son engaging in risky sexual activity and maybe dealing drugs. She suggested a mental health assessment. The police later arrested Mrs B's son for criminal damage, common assault and resisting arrest.

27. On 7 March the social worker made a referral for a mental health assessment for Mrs B's son. The team dealing with it contacted the police who raised no concerns about his mental health and the team therefore declined the referral.

28. On 9 March the not in education, employment or training officer noted Mrs B's son had refused to meet with her but there were several options available for provision. The officer tried to visit Mrs B's son with a social worker on 10 March but he refused to answer the door.

29. On 21 March the Council received information Mrs B's son had missed sessions at the gym. The police later arrested Mrs B's son after he threatened Mrs B and her husband.

30. On 22 March a domestic abuse meeting took place. The Council requested a Mental Health Act assessment which the police did not support. The Council identified accommodation for Mrs B's son. Mrs B's son moved into semi-independent accommodation on 23 March.

31. On 3 April an initial looked after child meeting took place.

32. Following Mrs B's son being absent from his accommodation a multiagency meeting took place on 1 June. On the advice of the psychiatrist part of the plan was to continue to encourage Mrs B's son to take his medication and engage with support.

33. Following further periods of Mrs B's son being missing from his accommodation the Council held a multiagency meeting on 4 August. A family group conference took place on 8 August and a strategy discussion. The Council also made a referral to a drugs worker. That was because of concerns about whether Mrs B's son not engaging meant the accommodation provider could not monitor his use of his medication which could have a street value.

34. The Council contacted the police on 15 August due to concerns about the risk of child sexual exploitation around Mrs B's son working as an escort. The police recommended a referral for a child sexual exploitation strategy meeting.

35. When Mrs B's son went missing again the social worker found him at the alleged brothel owner's property. Council officers tried to visit Mrs B's son after he returned to his accommodation but he would not engage.

36. On 25 August Mrs B's son received a 10 month referred order to the youth offending team. The Council tried to take Mrs B's son for career advice but he refused to go.

37. The Council requested a Mental Health Act assessment for Mrs B's son. That was refused following a discussion with the consultant psychiatrist as the psychiatrist did not consider the behaviour issues mental health related.

38. On 2 October a child sexual exploitation strategy meeting took place. The meeting recommended a legal planning meeting due to concerns about whether the current accommodation could protect Mrs B's son. The Council took legal advice. The legal advice said the Council did not have grounds to move Mrs B's son into secure accommodation.

39. The Council referred the case back to CAMHS for a mental health assessment on 5 October.

40. The Council held a professionals meeting on 30 October. That included a representative from the police sexual exploitation unit. The meeting concluded there was no evidence of immediate risk of self harm, radicalisation or drug

misuse and that the risk of child sexual exploitation had reduced as Mrs B's son did not leave his placement for long without his key worker. The meeting also noted the Council could not apply for a secure accommodation order as Mrs B's son was over 17. The meeting decided the case had not met the threshold for court action and there were no grounds for detention under the Mental Health Act. The meeting recorded its view the case had not met the threshold for applying to the Court of Protection for authorisation of deprivation of liberty.

41. On 13 November a child exploitation review meeting took place. The meeting discussed Mrs B's concerns about the issues relating to her son's current accommodation. Those were addressed after the meeting.

42. On 6 December a multiagency meeting took place which recorded the risk as reduced as Mrs B's son had stopped going out. It recorded Mrs B's son had engaged with the youth offending team. It recorded key working sessions to prepare Mrs B's son for adulthood would continue.

43. On 4 January 2018 a progress panel meeting took place. That recorded that Mrs B's son had engaged with the youth offending team.

44. On 16 January a child sexual exploitation review meeting took place. The meeting decided the level of risk was medium and Mrs B's son's needs could be managed by the looked after child process rather than the child sexual exploitation process.

45. The Council has appointed an officer from the transitional team to work with Mrs B's son and staff at his current accommodation to ensure he is moved into suitable accommodation before his 18th birthday later in 2018.

Analysis

46. Mrs B says the Council delayed taking action to protect her son while he was in care. In particular, Mrs B says her son absconded from his accommodation on 40 occasions and made three suicide attempts before the Council held a legal planning meeting. I understand Mrs B's concern in those circumstances. However, the evidence I have seen satisfies me the Council did not ignore the occasions when Mrs B's son absconded or made a suicide attempt. Instead, I am satisfied the Council held meetings following the various absences and suicide attempts and put in place a plan to try and manage Mrs B's son's behaviour. That included greater oversight from staff at the accommodation, reduction in Mrs B's son's free time, supervising his spending and ensuring two members of staff accompanied Mrs B's son when he left the accommodation. Alongside that I am satisfied the Council put in support to try to work with Mrs B's son to address his issues. I therefore could not say the Council failed to take any action to protect Mrs B's son.

47. I recognise Mrs B does not believe the action taken by the Council was sufficient and her son should have been moved into a secure unit at an earlier stage. However, as well as the support referred to in the previous paragraph the Council also took Mrs B's son to the hospital. The hospital did not raise any concerns about Mrs B's son's mental health and did not identify suicidal intent. I am also satisfied the Council discussed the issues at multiagency meetings and did not decide before June 2016 that a secure accommodation unit was appropriate. I recognise Mrs B strongly disagrees with that view. However, it is not my role to comment on the merits of the decision that has been reached without fault. As the Council reached the decision to continue the accommodation with support after discussing the case with other professionals I have no grounds to criticise it.

48. Mrs B says the Council should have put in place a care plan while her son was in a secure children's home. As I understand it though, the social worker did not have access to Mrs B's son during that period. I also understand care proceedings were ongoing at that point. In those circumstances I do not consider there was a role for the Council other than to continue to have looked after child reviews and to complete a report before Mrs B's son left the secure unit. I am satisfied the Council completed those actions. I therefore have no grounds to criticise it.

49. Mrs B says the Council failed to put in place the three elements of support the psychiatrist identified as necessary for her son's return home from secure unit to be successful. I refer to those recommendations in paragraph 15. One of those recommendations was for work with CAMHS. I am aware this did not take place until February 2017, despite the fact Mrs B's son returned home in June 2016. However, the actions of CAMHS are not controlled by the Council. I therefore cannot hold the Council responsible for any failure to put the identified support into place. For the other two issues, I am satisfied the Council put in place the educational support identified by Mrs B and continued to provide the therapeutic work to address Mrs B's son's issues around self esteem. I am therefore satisfied the Council put in place those elements of the support identified as necessary by the psychiatrist that it was able to control. So, I have no grounds to criticise it.

50. Mrs B says the Council should not have moved her son into semi-independent living as it is not suitable for him. Mrs B says this meant her son has lived in squalor. The evidence I have seen satisfies me the Council moved Mrs B's son into semi-independent living following a violent incident which meant he could not return to Mrs B's care. I recognise Mrs B believes her son qualified for being placed in a secure unit at that point. However, the police and Council took a different view. The Council also took advice from its legal department about that option. The legal advice said there were no grounds to support an application to admit Mrs B's son to a secure unit. So, I cannot criticise the Council for not pursuing a secure placement at that point.

51. I am satisfied though the Council identified Mrs B's son would need support to enable any placement in semi-independent living to succeed given it was a different type of placement to all his previous placements. I am satisfied the Council put in place support. That included support from staff at the accommodation to help Mrs B's son with his independent living skills. It seems to me that support has made a difference as the documentary evidence shows increasing levels of engagement from Mrs B's son. I have seen nothing in the documentary evidence to suggest anyone other than Mrs B did not believe semi-independent living suitable for her son. I therefore have no grounds to criticise the Council. Clearly Mrs B does not agree with the Council's decision. However, as I have made clear, it is not my role to comment on the merits of the Council's decision unless there is evidence of fault in how it has reach that decision. I have found no evidence of fault here.

52. Mrs B says the Council failed to protect her son while he was in semi-independent living because he has been subjected to physical and emotional abuse, child sexual exploitation and grooming. I have carefully considered the documentary evidence. That shows while in semi-independent living there has been regular contact between staff members and Mrs B's son. That has been both to support him and to identify any issues. Over time, the notes show an improving relationship with Mrs B's son, more positivity and less violent outbursts. The Council also made a referral to the child sexual exploitation team which resulted

in child sexual exploitation meetings. Those meetings did not identify any significant concerns. It seems to me the support in place has worked because over time concerns about Mrs B's son being sexually exploited have diminished, with the result the child sexual exploitation team is no longer involved with him. Alongside that I am satisfied the Council liaised with the relevant professionals, including the police, to ensure any issues were addressed. I therefore could not say the Council failed to protect Mrs B's son.

53. Mrs B says the Council did not take action when the child sexual exploitation meeting recommended her son move to a place of safety in a secure environment. Having considered the documentary evidence from the child sexual exploitation meetings which took place between October 2017 and January 2018 I have found no evidence to suggest they recommended moving Mrs B's son to a place of safety. Nor is there any suggestion in any of the minutes of those meetings that Mrs B's son needed to move into a secure environment. The first meeting on 2 October 2017 did not recommend a change of placement. Instead, the Chair recommended a legal planning meeting. I am satisfied the Council followed that up by taking legal advice which was that the Council had no grounds to move Mrs B's son into a secure unit. I recognise Mrs B is likely to strongly disagree with that view. However, as I have made clear, as there is no fault in how the Council reached that view there are no grounds for me to criticise it. In further meetings on 30 October and 13 November there is no evidence the meetings recommended the Council move Mrs B's son to a place of safety in a secure environment. Nor is there evidence of any such recommendation from the January 2018 meeting. I therefore could not say the Council failed to act on the recommendations from the child sexual exploitation meetings.

Final decision

54. I have completed my investigation and found no fault by the Council.

Investigator's decision on behalf of the Ombudsman

2 July 2018

Complaint reference:
18 002 943

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr & Mrs X complained the Council refused to provide home to school transport for their son. The Council has now offered to provide transport for the new school year and made alternative arrangements for the rest of this term. The Ombudsman will not investigate this complaint as we are satisfied with the Council's actions.

The complaint

1. Mr & Mrs X complained the Council refused to pay for home to school transport for their son, Y, after they moved him to a new school.

The Ombudsman's role and powers

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. We can decide whether to start or discontinue an investigation into a complaint within our jurisdiction. ***(Local Government Act 1974, sections 24A (6) and 34B (8), as amended)***
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

5. I considered the information provided by Mr & Mrs X and the Council.

What I found

6. Mr & Mrs X's son, Y, suffers from significant disabilities, He attended a local school and then moved to a school for children with special needs. This school was named in his Education Health and Care Plan (EHCP). The Council provided home to school transport for him.
7. Mr & Mrs X were not happy with his progress at the school. They decided it could not meet his needs. They moved to a school which they consider suitable.
8. The Council stopped providing transport to take Y to and from school. This was because the school was not named in Y's EHCP and was the parents preferred school.

9. Mr & Mrs X appealed the Council's decision but the appeal failed as he Council insisted it was the parents' choice to send him to the new school.

10. Mr & Mrs X complained to the Ombudsman. We asked the Council to provide the papers for the appeal process and its decision.

11. The Council has now written to Mr & Mrs X confirming it has reviewed Y's case. It has now agreed to name the new school in the EHCP and provide home to school transport from the start of the new school year.

12. For the remainder of this school term it has offered Y a place on the school bus which Mr & Mrs X have accepted. It has also offered to pay for their mileage to and from the bus stop,

Final decision

13. I will not investigate this complaint. This is because we are satisfied with the actions the Council has taken to resolve this matter.

Investigator's decision on behalf of the Ombudsman

16 July 2018

Complaint reference:
18 000 709

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: There is no evidence that the Council was at fault in the way it considered the request for a Deferred Payment Agreement. There was a delay before it obtained an independent valuation of the property Mr B jointly owned with his mother Mrs F but that did not affect the outcome. There was an avoidable delay in responding to Mr B's requests for information for which the Council has already apologised.

The complaint

1. The complainant (whom I shall call Mr B) complains that the Council obtained an unrealistically high valuation of the property he jointly owns with his mother, for the purposes of assessing her finances when she went into residential care. He also complains that the Council refused a Deferred Payment Agreement despite the low risk.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. ***(Local Government Act 1974, section 34(3), as amended)***

How I considered this complaint

4. We considered the written information provided by Mr B and by the Council. We spoke to Mr B. Both Mr B and the Council had an opportunity to comment on an earlier draft of this statement before I reached a final decision.

What I found

Relevant background information and guidance

5. The charging rules for residential care are set out in the "*Care and Support (Charging and Assessment of Resources) Regulations 2014"*, and the "*Care and Support Statutory Guidance 2014*". When the Council arranges a care home

placement, it has to follow these rules when undertaking a financial assessment to decide how much a person has to pay towards the costs of their residential care.

6. The rules state that people who have over the upper capital limit are expected to pay for the full cost of their residential care home fees. The value of the property is disregarded for the first twelve weeks of residence.

7. The guidance says, "*A local authority will need to work out what value a capital asset has in order to take account of it in the financial assessment. Other than National Savings Certificates, valuation must be the current market or surrender value of the capital asset, for example, property, whichever is higher, minus the following:*

(a) 10% of the value if there will be any actual expenses involved in selling the asset. This must be expenses connected with the actual sale and not simply the realisation of the asset. For example the costs to withdraw funds from a bank account are not expenses of sale, but legal fees to sell a property would be

(b) any outstanding debts secured on the asset, for example a mortgage."

8. The guidance continues, "*Where a precise valuation is required, a professional valuer should be asked to provide a current market valuation. Once the asset is sold, the capital value to be taken into account is the actual amount realised from the sale, minus any actual expenses of the sale.*

Where the value of a property is disputed, the aim should be to resolve this as quickly as possible. Local authorities should try to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period where a person is in a care home. This will enable local authorities to work out what charges a person should pay and enable the person, or their representative, to consider whether to seek a deferred payment agreement."

9. In respect of Deferred Payment Agreements (DPA) the guidance says, "*the universal deferred payment scheme means that people should not be forced to sell their home in their lifetime to pay for their care. By entering into a deferred payment agreement, a local authority agrees to:*

•defer the payment of charges due to it from the adult, for the costs of meeting needs in a care home or supported living accommodation

or

•defer the repayment of a loan to the adult in instalments, to cover the costs of care and support in a care home or supported living accommodation."

10. The guidance also says, "*local authorities are required to offer deferred payment agreements to people who meet certain criteria governing eligibility set out …. below (the qualifying criteria) for the scheme. Local authorities need to ensure that adequate security is in place for the amount being deferred, so that they can be confident that the amount deferred will be repaid in the future*."

11. There are certain circumstances in which a local authority may refuse a request for a deferred payment agreement ('permission to refuse'), even if a person meets the qualifying criteria and the local authority would otherwise be required to offer the person an agreement. This permission (or discretion) to refuse is intended to provide local authorities with a reasonable safeguard against default or non-repayment of debt.

12. A local authority may refuse a deferred payment agreement despite someone meeting the qualifying criteria, (among other examples which do not apply here) where the authority is unable to secure a first charge on the person's property.

13. The Council's policy on the deferred payment scheme says that to join its scheme, "*the following additional criteria must be satisfied….*

The council is able to secure the first charge against the property …..."

What happened

14. Mr B bought a house jointly with his mother Mrs F about 20 years ago. Mrs F has lived there since. He says he bought the house to ensure that Mrs F had somewhere to live if he died during her lifetime, and to provide an investment for himself later in life. He says the mortgage on the property was taken out in both their names but only secured against his income, as his mother did not have an income. He said he had paid all the mortgage payments since the purchase as well as the insurances: Mrs F received mortgage interest relief and paid only her own utility bills.

15. In January 2017 Mrs F, who by then was suffering with dementia as well as other physical illnesses and was unsafe to be alone at home, moved into residential care. The Council contacted Mr B and assessed Mrs F's finances for the purposes of calculating her care home charges.

16. Mr B says the Council's financial assessor told him that after the initial twelve-week disregard period, the Council would not offer a DPA as there was an existing mortgage on the property. He says it was implied that it was his duty to sell the house to fund Mrs F's care home charges. He says when he told the financial assessor that he had paid the mortgage for the last 20 years he was asked to provide his bank statements as evidence.

17. Mr B says he gave an estimate of the value of the house for the Council to include in its calculations (which he thought was about £115,000). He says when he received the Council's assessment of Mrs F's finances, the Council had just halved the value. He wrote to the Council in March 2017. He asked how the calculation of the value had been reached as the Council was required to give a precise calculation. He said considering the amount he paid towards the mortgage and the bills since the purchase, he thought his mother's beneficial interest was so low that it probably did not even reach the upper capital limit. He also asked what would happen when Mrs F died, and whether the debt would pass to him.

18. A senior debt enforcement officer from the Council responded to him that the Council could apply to the Court for an order that Mr B would have to pay the value of his mother's equity in the property. He also advised that if the mortgage was held jointly, then both parties were liable for the whole amount. He said it was a matter for officers in the Adult Care Financial Services department to respond to his queries about the calculation of the value.

19. Mr B did not receive a further response from the Council until he made a formal complaint. In November the Council wrote to him and apologised for the delay. It said "*Regardless of how the mortgage is repaid the fact is that the property is jointly owned with each of you owning 50%. However, I understand that even though you are joint owners, this does not mean that you have equal rights to the financial value of the home. If this is the case then a written, signed declaration*

or a formal trust deed indicating the intention over financial shares should have been drawn up. If any of these documents exist then a consideration over beneficial interest can be made but in the absence of such an agreement we will continue to include 50% of the property value in the financial assessment."

It also said, "*We have assumed a property value of £148,374 but, as (Officer X) has already discussed with you, we would be able to amend this amount if 2 or 3 valuations are provided*."

The Council also explained the payments which had been made into the care charges account.

20. Mr B says he provided two valuations for the house. He says he does not know how the Council reached the valuation of £148,374 other than looking on the local websites.

21. In light of the dispute, the Council obtained an independent valuation. The valuer confirmed to the Council as part of the valuation that if Mrs F's interest in the property was offered for sale at auction it was likely to attract interest from investors. In March 2018 the Council wrote to Mr B and said that part ownership of the property would attract interest from investors if offered for sale by auction with a value on 50% estimated between £38,5000 and £41,500.

22. The Council also said that while it had considered his comments about the mortgage and other payments he had made over the years, the evidence he had supplied showed that Mrs F had made a contribution to the mortgage "*albeit via pension credits*" and therefore in the absence of any formal agreement stating otherwise, both Mr B and Mrs F had equal rights to the financial value of the property as joint owners. It said after taking an average of the range of figures provided by the independent valuer and deducting 10% to account for expenses of the potential sale, it had now included £36,000 in the calculation of Mrs F's finances.

23. Mr B says his mother's assets fell below the upper threshold in October 2017 and she has not funded her own care since then. He says however that he believes the Council should not have taken the mortgage into account considering his payments towards it. He says the Council should have offered a DPA because of the low risk attached to the remaining mortgage.

24. Mr B also says that he does not believe the valuation the Council obtained was accurate as it did not reflect the state of internal disrepair of the house. He says it was due to his persistence and queries about the valuation in the first place which led to the eventual outcome, not diligence on the part of the Council.

25. The Council says its policy on DPAs includes being able to secure the first charge, because it and other councils *"have been unable to recover a debt due to properties being sold and notification only going to the organisation having the principal charge. Mortgagees are also able to secure additional funds without notification to the second charge, reducing the equity available in the property to go towards care charges".* Mr B says this is erroneous – his mother had dementia, no-one has a power of attorney over her finances and no lender would advance a further mortgage in those circumstances.

26. The Council also says "*The Council also considers the sustainability of a Deferred Payment Agreement. (Mrs F's) equity in the property would only cover her fees at the home for a few months so a Deferred Payment would not have been agreed."*

Analysis

27. The Council assessed Mrs F's finances promptly when she went into care. It explained to Mr B the way in which it would calculate the value of the property. It sought an independent valuation, as the guidance stipulates, when Mr B objected to its initial valuations, although that was several months later, after Mr B's objections, and not within the twelve-month disregard period as the guidelines say.

28. There was an avoidable delay in responding to Mr B's requests for information and in the end he had to resort to the complaints process: the Council has already apologised for that. That delay meant that the issues about the disputed valuations were not resolved until several months later than they should have been, but I have not seen any evidence the delay made any difference to the outcome. I recognise the efforts made by Mr B which resulted in that conclusion but as there is no consequent injustice outstanding, I see no good reason to pursue that further now.

29. The Council considered the existing mortgage on the property as well as Mrs F's equity when it decided to refuse the DPA. I have not seen any evidence of fault in the way it considered it. The Council was *not* able to secure a first charge on the property at the Land Registry and so acted in accordance with its policy.

Final decision

30. There is no evidence that the actions of the Council caused any injustice to Mr B or Mrs F.

Investigator's decision on behalf of the Ombudsman

01 August 2018

Complaint reference:
17 010 605

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: There was fault by the Council in failing to provide alternative education when a child was unable to attend school with health needs. There was also fault in the way the Council carried out a statutory assessment for an education, health and care plan. We have made recommendations for an apology, financial payment and a review of procedures. The complaint is upheld.

The complaint

1. The complainant, whom I shall refer to as Mrs X, complains on her own behalf and on behalf of her son (whom I shall refer to as Y) that the Council:
   - Failed to provide education while Y was out of school with anxiety and until a new school placement was found
   - Had poor communication and provided 'false' information
   - Failed to find a school for Y to attend
   - Named an unsuitable school on Y's Education, Health and Care Plan
   - Missed deadlines for issuing an EHC plan and for Tribunal.
2. Mrs X says the Council's actions caused injustice to herself and Y because:
   - Mrs X had to be a full-time carer and provide education to Y and pay for private tutors.
   - Y missed out on education and was isolated.
   - Y's extended period out of school placed stress on the whole family including Y's siblings.

What I have investigated

3. I have investigated the above complaint for the period from January 2016 to 15 September 2016 except those matters appealed to the Tribunal. I have explained below why I cannot investigate the subsequent period.

The Ombudsman's role and powers

4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.

6. We cannot investigate complaints about what happens in schools. ***(Local Government Act 1974, Schedule 5, paragraph 5(b), as amended)***

7. The Ombudsman cannot investigate a complaint if someone has appealed to a tribunal. SEND is a tribunal that considers special educational needs. ***(The Special Educational Needs and Disability Chamber of the First Tier Tribunal ('SEND'))*** We cannot consider matters which have been appealed to SEND or which are '*inextricably linked*' to matters which have been the subject of an appeal, even if the tribunal has not provided a complete remedy for all the injustice claimed. ***(R v the Commissioner for Local Administration ex parte PH, 1999, R (on the application of ER) v the Commissioner for Local Administration, 2014, Local Government Act 1974, section 26(6)(a), as amended)***

8. A child with special educational needs may have an Education, Health and Care (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 tribunal can do this. We can consider delay or fault in the process of statutory assessment and work on an EHC plan before the final decision, which can be separated from the matters subject to appeal. ***(Local Government Act 1974, section 26(6)(a), as amended)***

9. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

10. 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.

How I considered this complaint

11. I have considered:

- Information provided by Mrs X
- Information provided by the Council including documents about Y's special education needs (SEN) and absence from education
- Policies and strategies on Council's website:

a) Children Missing from Education

b) Fair Access

c) Early Help

- Relevant law and statutory guidance including:

a) Education Act 1996 (sections 9 and 19)

b) Children and Families Act 2014, SEN Code of Practice and associated Regulations

c) Guidance: '*Children Missing Education'*, Department of Education, September 2016

d) Guidance: *'Alternative Education'*, Department of Education, January 2013

e) Guidance: *'Education for children with health needs who cannot attend school'*, May 2013.

- Local Government and Social Care Ombudsman guidance:

a) Focus Reports on special educational needs (2014 and 2017)

b) Focus Report on alternative education: *'Out of School…Out of Mind?'* (2011)

c) Guidance on Remedies.

12. I have written to Mrs X and the Council with my draft decision and considered their comments.

What I found

Chronology of events

13. Y has extreme anxiety which led to him being unable to attend his mainstream school from October 2013 until February 2014. Y then had a phased return to school, via a part-time timetable, and built up to full-time by the end of the school year, although still did not attend all subjects.

14. In September 2015 Y again experienced extreme anxiety which meant he could not attend school. He was seen by Children and Adolescent Mental Health Services (CAMHS) and also received a diagnosis of autism.

15. Mrs X told me Y was unfit to attend school in September 2015 and she spent a lot of time accessing the right level of help (Tier 3 CAMHS). Y required psychotherapy and medication. Mrs X told me CAMHS very much left it up to her to judge whether Y could safely attend school.

16. Mrs X told me that in December 2015 Y's School said it would offer Y a tutor after Christmas. Mrs X said by January 2016, when a 'Family Springboard' multiagency meeting was held, Y's School had changed this offer to Y coming into school and working in a corridor. The Council's specialist teacher for communication and interaction attended this meeting as did CAMHS. Y's absence from education was discussed. Advice had been obtained from the Council's Health Related Education Service (HRET) which said it could provide some funding for a teaching assistant (TA) from Y's school to engage Y with some work at home with a view to him being reintegrated into school (as he had following his previous absence). It was agreed to start with one session per week.

17. The Council's website indicates HRET is a service for children who are temporarily unable to attend school for medical reasons or severe anxiety and have been unable to attend school for at least 15 days. HRET provision is stated to be for 5 hours per week for a maximum of 12 weeks (with additional guided independent study expected from the pupil).

18. The arrangement for Y was different to the usual HRET offer, because it was felt important Y build up a relationship with someone at school over the long term and that a time limited service of 12 weeks would not be appropriate.

19. At a review meeting on 7 March 2016 it was reported Y had made a positive start with the TA and was engaging in some work at home. TA visits were increased to twice a week starting after Easter.

20. It is apparent from the records Mrs X had previously made a request for a statutory education, health and care (EHC) assessment for Y which the Council had refused. The records of the review meeting indicate the Council would review the position in May as Mrs X was still requesting an EHC plan and had started to visit special schools.

21. Mrs X pre-empted the review in May by making a formal parental request for an EHC assessment on 29 April. In her parental request Mrs X asked what the Council could do in the meantime to teach Y at home as she felt the current arrangement of the school sending work home for her to complete with Y was inadequate. I cannot see that she received a response to this enquiry.

22. Mrs X has provided me with evidence she paid for private tuition for Y from this time at a cost of £516.

23. A further review meeting on 3 May 2016 noted Y was engaging with the TA twice per week.

24. On 5 May Social Care confirmed to the Council's SEN team there was no open referral for Early Help or Common Assessment Framework.

25. On 9 May HRET 's confirmed it had provided £600 short term support for the school TA to visit Y.

26. As part of deciding whether to carry out the EHC assessment the Council obtained advices from relevant professionals in May 2016. Y's clinical psychologist advised Y would benefit from an environment that was smaller, with fewer children and where there was specialist autism expertise as the mainstream environment was too challenging for him. The psychologist reported parents feel the TA input is insufficient and they had asked for teacher / tutor input and would like Y to access specialist autism provision.

27. The advice from the educational psychologist (EP) stated the current situation was not adequate as Y was receiving only two visits a week from a TA and Y required greater access to education and support. Y was not making meaningful progress in learning and had accessed only a limited part of the Year 9 curriculum.

28. A specialist autism teacher advised Y's current mainstream school environment was too difficult for Y.

29. On receipt of this advice the Council decided to carry out formal EHC assessment. This process should take a maximum of 20 weeks and started on 3 June. The Council wrote to professionals who were already involved, but did not contact social care again.

30. A multiagency meeting on 13 June 2016 found a TA was doing practical science with Y twice a week and Y's School was providing work in English, Maths and History for Mrs X to do with Y.

31. On 26 June 2016 the specialist teacher advised she did not see Y returning to a typical mainstream school. CAMHS and HRET had both been involved but this had not impacted on Y's ability to return to school.

32. On 28 June Mrs X asked the EP about school possibilities for Y. The TA was leaving and Mrs X wanted teaching in place from September when Y would start year 10 (start of GCSE years). Mrs X indicated they were looking at an out of area school.

33. The EP replied that an out of county placement was usually a significant undertaking for the Council and the Council would need to satisfy itself no other provisions could meet his needs.

34. On 22 August 2016 Mrs X requested the Council consult with an independent special school. The Council did not do so until early 2017.

35. On 23 August Mrs X telephoned the Council to discuss the draft EHC plan she had received. The Officer stated she was focussed on getting the full 25 hours of education built up for Y by Christmas with a teacher rather than a TA and that this may involve the school commissioning independent tuition. The Officer said she was going through the Council's 'graduated approach' to finding a placement and Mrs X could appeal any decision about placement.

36. On 9 September the School emailed Mrs X stating it would not fund a teacher form an alternative provider as it had TAs who could provide education at home. The School would build up sessions and if Y engaged positively could then look at funding more time if this was successful. The School asked Mrs X to confirm if she would like to start this support.

37. Mrs X forwarded the email from school to the Council stating that the School's offer of a TA not a teacher clearly did not meet Y's legal entitlement.

38. On 15 September the Council issued the final EHC plan to comply with the 20 week statutory timescale. It had not yet consulted any schools so named Y's current school where he remained on roll. While it was agreed this school was not suitable for Y, this decision gave Mrs X a right of appeal to SEND against the placement named. Mrs X subsequently went on to register an appeal.

39. On 16 September the SEN officer told Mrs X she was *'following through with school to ascertain exactly what they were offering*' and would then contact the specialist teacher to discuss moving forward. Mrs X asked what the Officer was expecting Y's present school to provide given all the professionals had agreed the school could not meet Y's needs. Mrs X said *'in the interim a TA for a couple of hours is not enough or what he is entitled to as he is ready for more*'. Mrs X asked about the Council's plans for a permanent placement and said she would be appealing the final EHC plan.

40. The Officer then spoke to the specialist teacher service and Fair Access. The Officer established the School considered it had no spare funding in the current financial year for alternative provision for Y. Fair Access stated the School had a duty to provide 25 hours per week and use up £6000 delegated funding, when £6000 was exhausted the School could apply for further funding (at two levels). In this case Fair Access doubted the School would be eligible for further funding as funding a TA for 2 hours a week would be within the £6000. Fair Access said there was a route that could provide temporary funding for independent tuition for the term up to Christmas (I assume this is via HRET).

41. The Officer next spoke to the School which said it had not been able to claim additional funding for Y as he was not meeting the criteria for support with what he was managing with the TA. The School said it would have increased TA time up to 25 hours if Y had 'engaged', and at that point Y would have been eligible for further funding for independent tuition. As Mrs X had stated she did not want to go ahead with what School was offering (the TA) the School had not done anything further. The School doubted Y would engage with a tutor as well as Mrs X thought but said it had not been able to get into the home to assess this. The Officer said

she would look into temporary funding for home tuition while the Council went through its 'graduated approach' to finding Y a new placement.

42. On 21 September the SEN officer asked a colleague to *'initiate the first round of requests to LA Notts and Derbs schools…as part of the graduated response to finding a new placement for Y*'. Six schools were consulted.

43. On 21 September the Officer, having spoken to her managers, went back to the School and explained the decision to apply for emergency funding for tuition was one for the School and parents. The Officer asked the School to contact Mrs X direct to discuss this.

44. The Officer then sent Mrs X an email on 21 September confirming she had asked the School to contact Mrs X direct about whether to request High Level Funding for supported learning up until Christmas and was consulting with schools at level 1 under its 'graduated approach'. The Officer explained Mrs X's preferences of schools were appropriate at level 2 and would be consulted only if no schools at level 1 could meet Y's needs.

45. The School did contact Mrs X but its email simply stated *'Could I just confirm with you whether you would like to go ahead with the support we can offer for Y? If you don't want to go ahead with that would you like us to send work home for Y in the meantime of sorting a permanent placement'*. There was no mention of accessing funding for private tuition.

46. On 11 October the EP wrote to the School '*I am very conscious Y is continuing to receive no input in terms of his education and we don't know how long it will be before an alternative placement is identified.*'

47. The Council's records show the SEN officer and Mrs X discussed various placements in September and October 2016. Mrs X told the Council on 7 October Y was getting stressed as he knew he should have started GCSE work.

48. On 3 November Mrs X's Solicitor wrote to the Council complaining the Council had failed in its duty under s.19 Education Act to provide Y with fulltime suitable education since October 2015 and had not yet named a suitable school.

49. On 7 November the SEN officer wrote to the EP explaining she had consulted six local mainstream and special schools. No school could meet Y's needs. The Officer stated she had not consulted Mrs X's preference of school as she had been told this was not appropriate at that stage. The Officer felt she had exhausted all options.

50. The Council then consulted further schools from November 2016 to January 2017, including Mrs X's original preference. Y remained out of school and without tuition.

51. On 7 December 2016 the Council responded to the complaint from Mrs X's Solicitors that as Y remained on the roll of his previous school '*the commissioning of alternative educational provision remains the responsibility of the school. The local authority's records do not detail why the school have chosen to offer the support of a teaching assistant over that if a qualified teacher…you may wish to contact the school directly to understand their reasoning'*.

52. On 6 February Mrs X's original preference indicated it could probably meet Y's needs subject to a three day assessment.

53. On 9 February 2017 another independent (Section 41) school Mrs X had found agreed it could meet Y's needs and offered a place from 22 February 2017.

54. The Council named the s.41 school in Y's EHC plan on 3 March 2017, shortly before the SEND hearing was due to take place. Y started to attend school in April.

55. The Council told the Ombudsman it did not provide a further complaint response after December 2016 because the matter proceeded through the appeal process and when it did not hear further from Mrs X it considered the complaint closed.

56. Mrs X told me that her Solicitor continued to write to the Council until March 2017 when the Solicitor threatened to judicially review the Council if educational provision was not made for Y. Mrs X said this led to a placement being agreed.

Council's policy for children missing education

57. In November 2014 the Council issued new guidance and a flowchart for schools about its new policy and procedures for Children Missing Education (CME). This says that where a child is on roll but not attending:

- The School must attempt to make contact within 3 days, best practice 1 day
- When the whereabouts of the child are known and attendance meets definition of persistence absence the School should refer to Early Help
- Where a child is not in full receipt of education (defined as 25 hours) information is to be shared with the Fair Access team
- If a child has been out of school for 15 days or more due to illness schools should liaise with the school nurse and then refer to HRET
- That: *'We all have a responsibility for a child's attendance, speak to a service, do not assume that somebody else will be dealing with it!'*.

Relevant law and guidance

58. Section 9 of the Education Act 1996 says in exercising their functions Councils shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure. Councils must take Section 9 into account when a parent or young person requests an independent setting. Case law has established that for an independent placement (other than those approved under s.41 Children and Families Act 2014) to be named in an EHC plan a parent or young person will need to establish none of the schools a Council is offering can meet needs or that the cost of the placement does not constitute unreasonable public expenditure.

59. Parents have a right to request a school approved under s.41 and Councils must comply with this request unless that is incompatible with efficient education to other pupils or an inefficent use of public expenditure.

60. The Children and Families Act 2014, SEN Code of Practice, SEN Regulations and other guidance says when a Council decides to secure an EHC assessment:

- This is an assessment of the educational, health and social care needs of a child and the Council must as a minimum seek advice from education, health and social care
- The assessment must be completed as soon as practicable and in any event within 20 weeks, this includes issuing the final plan
- Any social care assessment required should be combined with the EHC assessment.

61. The Ombudsman has issued Focus Reports on SEN in 2014 and 2017. In both reports we advised that delay is a common feature in SEN complaints we investigate and that Councils should consult schools concurrently, not consecutively, to avoid delay and ensure statutory assessments are completed within timescales.

62. Section 19 of the Education Act 1996 (and statutory guidance on children not attending school) says Councils must make arrangements for the provision of suitable education for children who by reason of illness, exclusion or otherwise may not receive suitable education. Suitable means efficient education suitable to the age, ability, aptitude and to any SEN of the child concerned, unless a health condition means full-time provision would not be in the child's interests.

63. Statutory guidance says local authorities must provide such education as soon as it is clear the child will be away from school for 15 days or more, whether consecutive or cumulative, and ensure minimal delay. The education must be 'good quality' allowing children to take appropriate qualifications and prevent them slipping behind their peers. The guidance is clear that the Council's duty applies whether or not a child is on a school roll. Full-time is generally considered to be 22 to 25 hours per week (although one to one face to face tuition might be less as it is more concentrated). The guidance says Councils must intervene after a child has been without education for 15 working days and must provide a minimum of five hours teaching a week.

64. The Ombudsman issued a Focus Report in September 2011 amended in June 2016, '*Out of school….out of mind?*'. This gives guidance for local authorities on how to fulfil their responsibilities to children who, for whatever reason, do not attend school full-time. The Ombudsman takes the view that:

- Where councils contract out alternative provision they remain responsible for the quality of education provided
- Work sent home by schools to be completed at home (except in the first five days after an exclusion) is not the same as teaching and does not count towards full-time alternative provision.
- Any hours of teaching provided by a school will count towards the full-time duty, but Councils remain responsible for any shortfall.

65. Government guidance '*Ensuring a good education for children who cannot attend school because of health needs'* says:

> "*There will be a wide range of circumstances where a child has a health need but will receive suitable education that meets their needs without the intervention of the local authority - for example, where the child can still attend school with some support; where the school has made arrangements to deliver suitable education outside of school for the child; or where arrangements have been made for the child to be educated in a hospital by an on-site hospital school. We would not expect the local authority to become involved in such arrangements unless it had reason to think that the education being provided to the child was not suitable or, while otherwise suitable, was not full-time or for the number of hours the child could benefit from without adversely affecting their health. This might be the case where, for example, the child can attend school but only intermittently*."

Analysis

Jurisdiction

66. Section 26(6) of the Local Government Act is intended to ensure people do not ask the Ombudsman to intervene where they have already had recourse to an alternative legal remedy. The Ombudsman has no jurisdiction on matters where an appeal right has been used even if the appeal may not provide a complete remedy for all the injustice claimed ***(R v The Commissioner for Local Administration ex parte PH 1999).***

67. This means we cannot:

- Consider the naming of an unsuitable school in Part I of the EHC plan. This decision had a right of appeal to SEND which Mrs X has used.
- Look at delays in the appeal process, this was within the jurisdiction of the Tribunal.
- Provide a remedy for failure to provide alternative education from 15 September 2016. The evidence supports that Y was well enough to return to lessons in September 2016 but that a suitable specialist placement had not yet been identified. The loss of education is *'inextricably linked'* to the Council's decision to name Y's current school rather than an independent special school in the EHC plan. In *R (on the application of ER) v the Commissioner for Local Administration, 2014*, the Court held the Ombudsman cannot investigate the consequence of a decision (lack of education) if it cannot investigate the decision itself (naming an unsuitable school). The lack of an available financial remedy from the Tribunal does not mean the Ombudsman is empowered to investigate. While this creates a situation where loss has been suffered and no remedy for the loss will be provided, Parliament must have contemplated that such situations would arise when it set out the Ombudsman's powers. ***(R v the Commissioner for Local Administration ex parte PH, 1999)***

Fault in EHC assessment process

68. The Council did not consider whether Y had social care needs as part of his EHC assessment. This was fault. An EHC assessment must include an assessment of care needs. Confirmation a child is not known to social care does not meet the legal test of identifying whether care needs are present.

69. Councils must also assess the needs of parent carers where it appears to a local authority the parent carer may have needs for support or receive a request for a parent carer assessment. This is a low threshold for assessment.

70. In June 2016 Y had been absent from school since September 2015 and was socially isolated. Mrs Y reports this put a strain on the whole family and herself as a parent carer. On the balance of probabilities if the Council had carried out its duties under the Children and Families Act correctly it would have carried out a care assessment for both Mrs X and Y in or about June 2016. Government guidance says care assessments should be combined with the EHC assessment. This means the care assessment should have been completed within the timeframe for the EHC plan (by 15 September).

71. In response to my draft decision the Council has told me it recognises that the social care needs of children and young people are not always adequately addressed as part of its assessment process and it has made this a priority in its SEND improvement plan. It also told me it will be digitalising the EHC pathway in

the next twelve months which will allow further opportunities to review processes and make the process more accessible and transparent.

72. The Council failed to consult schools in a timely way. The EHC assessment should take a maximum of 20 weeks and this includes consulting schools and identifying a suitable placement to name in the final plan. The Council did not start consulting schools until after the final EHC plan had been issued. This was fault.

73. The Council's SEN officer repeatedly referred to a 'graduated approach' to finding a placement and the School referred to the Council's process often being lengthy and complicated. The Council consults schools at two levels, exhausting local authority schools before it will consider independent schools, even when these are schools approved under s.41 (which parents have a right to request be named on a Plan). As the 20 week process is already challenging for Councils to meet, the Ombudsman has provided guidance (2014 and 2017) that Councils should consult schools concurrently, not consecutively, to avoid delay.

74. The Council can develop its own processes for consulting schools but these must still comply with the statutory timeframes for issuing final EHC plans. I am concerned the Council's approach is too slow to meet the statutory timescales.

75. The Council must also consider parental preference. The law sets out when parental preference is displaced and this can only happen when the Council has an alternative school to offer. The Council had no alternative school when it issued the final EHC plan in September, or subsequently, and wrongly used the appeal period as in effect an extension to the statutory process to find a school.

76. If the Council had consulted schools before the issue of an EHC plan, Y may have been able to start at a suitable school in September 2016 rather than April 2017 and an appeal may have been avoided.

77. The SEN officer gave inaccurate advice to Mrs X about when the Council started to consult schools.

78. In response to my draft decision the Council told me it recognises consulting schools can be a lengthy and frustrating process and it plans to revisit this as part of its longer term business plan for its newly created Integrated Childrens Disability Service. It is also confident the digital platform will support improvement in consulting schools.

Failure to provide education under s.19 Education Act 1996

79. Y was absent from school from September 2015 until April 2017.

80. For reasons set out elsewhere in this decision I can only consider a remedy for loss of education for the period before 15 September 2016.

81. Councils have a statutory duty to make arrangements for the provision of suitable education at a school or elsewhere for a child of compulsory school age who cannot attend school for exclusion, health reasons or otherwise (s.19 Education Act 1996). Councils may expect schools to make provision or delegate funds to schools to arrange provision, but Councils cannot delegate the statutory duty. If a school does not make suitable arrangements then the Council must intervene. Where arrangements are in place but are not sufficient then the Council must make up the shortfall in provision.

82. The Council seems to take the view as Y was on the roll of a school, only the school had responsibility to make the arrangements. This was incorrect and was fault. The Council was wrong to ask Mrs X and her Solicitor to liaise with the

school over funding applications and about the use of a TA. It was for the Council to intervene and resolve the situation, making provision directly if necessary.

83. The Council should have intervened after Y had been absent for 15 working days and provided suitable education for a minimum of 5 hours per week as soon as Y was well enough. This should then have built up to full-time (subject to any medical advice about how much education Y could manage).

84. Y was not well enough to manage any education in September 2015 and there was a delay in getting his health needs met. By December 2015 however, Mrs X and the school were having discussions about home tuition. The evidence supports Y was able to engage in education from January 2016.

85. The Council has been aware and accepted since the multiagency meeting in January 2016 that Y was unable to attend school. The Council's specialist teacher and HRET service was involved at that time. I have seen no medical opinion to support that Y could not have managed the minimum of five hours tuition in January 2016. The evidence I have seen suggests not that Y could not access tuition from a teacher, but that the HRET service was deemed unsuitable because it was a time limited 12 week service. The implication is that if HRET had been long term Y could have started tuition in January.

86. Mrs X was able to engage Y in work sent home from school. That the school sent work home throughout the period supports Y was well enough to manage some education. He also managed private tuition.

87. When a TA was introduced in March, this was immediately successful. There is no medical opinion to support that Y needed to remain on one hour per week for such a long time. The Council should not have just accepted the plan from school, but formed its own view whether the provision offered amounted to suitable education given Y's health needs.

88. The expert advice available in early May, especially from the EP, supported that the TA support was not adequate or appropriate for Y, that he was not making meaningful progress or accessing the curriculum expected at Year 9. The Council failed to act on this advice and intervene to make its own arrangements under s.19. This was fault.

89. There were further missed opportunities when Mrs X raised the matter with the SEN officer directly and subsequently during the Council's consideration of the complaint. The school continued to only offer TA support rather than use the funding for teacher tuition and the Council failed to intervene in these unsuitable arrangements.

90. Officers did give inaccurate information to Mrs X about the Council's legal duties.

91. I find that the Council was at fault in failing to provide Y with suitable education between January and September 2016. While one hour TA time was provided from March 2016, this was not education suitable to Y's age and aptitude and fell short of the legal minimum.

Council's policy and funding arrangements

92. The Council was wrong to involve Mrs X in decisions about applying for funding for tuition. How the Council organises its provision of home tuition for children with health needs is a matter for the Council. A parent should have to become involved in how the Council meets or funds its statutory duties. If a school is not using the funding to purchase suitable quality alternative education the Council must intervene irrespective of whether funding has been exhausted.

93. The Council had a policy for CME with different referral routes depending on the individual circumstances. The problem with this approach was that no one officer or service had overall oversight. If a child did not meet the criteria for HRET or Fair Access then the request was simply rejected, not redirected within the Council.

94. In response to my draft decision the Council told me from 2014 it has developed more robust systems around CME and the Fair Access team takes referrals from schools, parents and Council services in relation to children who may not be accessing their full entitlement to education. It also told me since September 2014 it collects termly data on pupils on part-time time-tables and schools are required to inform the Council how many hours of education are provided and which support teams or agencies are involved. It says the School did not notify the Council of this pupil's provision via this process.

95. These comments do not alter my findings because this complaint relates to 2016, once the new CME procedures were already established. The Council's specialist teacher and HRET service both knew about the plan for Y to receive limited TA support in January 2016. The Council was therefore aware Y was not receiving the required quantity or quality of education from this date but failed to track Y under its CME procedures.

96. The Council's HRET service does not meet the Council's legal duty under s.19 or comply with statutory guidance because:

- HRET only accepts referrals after a child has already been absent for 15 days, when this is the legal maximum. The HRET service should be putting tuition in place within the 15 days and for planned absences (for example planned surgery) tuition should be in place no later than the sixth day.
- HRET only provides 5 hours tuition per week. This is the minimum entitlement and applies only to children who cannot manage more than 5 hours due to their health needs. Where there is no medical evidence supporting a limited 5 hour timetable the Council should be providing full-time education (although this can be spread across more than one provision and include on-line learning).

Injustice

97. As Mrs X and Y did not have their social care needs assessed while Y was out of school, it is difficult to quantify the injustice caused. I do not know whether the Council would have provided services (such as short breaks or support accessing leisure activities) or direct payments. I recognise the uncertainty caused by the failure to assess care needs is itself an injustice.

98. Y lost out on suitable education from January 2016 to 15 September 2016. This was an injustice to him, but also to Mrs X who had to provide full-time care and support with work at home.

99. Mrs X had to pay £516 for private tuition when the Council did not intervene to provide suitable education.

Agreed action

100. Within four weeks of my final decision:

- The Council will apologise to Mrs X and Y for the failings I have identified.

- The Council will pay Y £3234 to acknowledge his loss of education. This is calculated at £500 per month (£3750) for seven and a half months (January to 15 September 2016) less £516 private tuition received. The money should be paid into a savings account in Y's name and used for his educational or social benefit.
- The Council pay Mrs X £750 (£100 per month) to acknowledge that she had to act as Y's tutor completing school work with him at home when tuition should have been provided by the Council.
- The Council pay Mrs X £516 to refund the private tuition costs she incurred.
- The Council pay £250 each to Mrs X and Y to acknowledge the uncertainty of whether they would have been eligible for support from social care had assessments been completed at the relevant time.

101. The Council should review its policy and arrangements for alternative provision for CME to reflect on the weaknesses I have identified and whether the Council's current arrangements meet its legal duty and comply with statutory guidance. The Council may wish to consider whether a single referral point or officer with overall oversight may help it keep track of CME and ensure provision is made promptly, with children receiving less than the full entitlement kept under review. The Council may wish to consider introducing internal notification procedures between departments, in addition to relying on schools.

102. The Council will review its procedures for EHC assessments to ensure:

- Social care needs are considered as part of every EHC assessment
- Schools are consulted early in the process to ensure a final EHC plan with a suitable placement can be named within the statutory timeframe.

Final decision

103. There was fault by the Council in failing to provide alternative education when a child was unable to attend school with health needs. There was also fault in the way the Council carried out a statutory assessment for an education, health and care plan. This caused delay, loss of education and potentially an unnecessary appeal. It also placed strain on the family and parent carer. I have completed my investigation as I am satisfied the recommendations set out above are an appropriate remedy for the injustice caused. The complaint is upheld.

Parts of the complaint that I did not investigate

104. I have not investigated the actions of the school.

105. I have not investigated the naming of an unsuitable school by the Council. This decision was appealed to SEND.

106. I have not investigated the Council's handling of the appeal, this was a matter for SEND.

107. I cannot provide a remedy for the loss of education from the date the EHC plan was issued as this carried a right of appeal and this alternative remedy has been used.

Investigator's decision on behalf of the Ombudsman

3 August 2018

Complaint reference:
18 000 406

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mrs C complained about the Council's decision to refuse a blue badge for her son. Based on the evidence seen there was fault in the way the Council reached its decision. Following the Ombudsman's involvement, the Council has reconsidered the application and has agreed to issue a blue badge. This will remedy the injustice caused.

The complaint

1. The complainant whom I shall call Mrs C, complains that the Council did not properly assess her application to renew a blue badge for her disabled son [D]. She says the Council failed to consider his medical condition and the impact this has on his ability to walk and take part in daily activities at school.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

4. I spoke to Mrs C about her complaint and considered the information she provided. I made enquiries of the Council and considered its response.

5. I gave Mrs C and the Council a copy of my draft decision and invited their comments.

What I found

6. The DfT has issued Guidance to councils for providing blue badges to disabled people with severe mobility problems. The guidance says councils must ensure they only issue badges to residents who satisfy one or more of the criteria set out in legislation. A person can be eligible without further assessment because, for instance, they receive the higher rate of mobility component of Disability Living

Allowance (DLA) or are registered blind. Otherwise eligibility is decided through further assessment.

7. People who may receive a blue badge after further assessment are those who fall within one or more of the following descriptions:

   - Drives a vehicle regularly, has a severe disability in both arms and is unable to operate, or has considerable difficulty in operating, all or some types of parking meter;
   - Has a permanent and substantial disability that causes inability to walk or very considerable difficulty in walking

8. The Guidance sets out several factors that may be relevant in deciding whether an applicant meets the criteria for a badge. These include excessive pain, breathlessness, distance and speed when walking. It says "Each application should be considered on its merits – not a "one size fits all" basis".

9. The Guidance says that an applicant will need to show that as a result of their permanent and substantial disability they are unable to walk very far without experiencing severe difficulty. It says "If an applicant cannot walk 40 metres (44 yards) in a minute (a pace of less than 0.67 metres/second), including any stops to rest, then this is an extremely slow pace which is likely to make walking very difficult when considered in isolation".

10. Applicants who walk more than 80 metres and do not display very considerable difficulty in walking through any factors would not be deemed eligible.

11. If applicants are unhappy with the outcome of an assessment they may appeal by asking the Council to review the decision.

What happened

12. D is ten years old. He has a neurological disease that affects his mobility. Mrs C says that at some stage D will lose all his mobility and whilst it is important he keeps active by walking this needs to be proportionate and should not impact his ability to take part in normal activities at school.

13. Mrs C applied to the Council for a Blue Badge in August 2017. In her application she explained D's medical condition and how it impacts his walking. She said that D required the support of his parents when walking. She estimated that D could walk 804 metres in 35 minutes before he feels any discomfort. This equates to a speed of 23 metres per minute

14. On 13 November 2017, the Council wrote to Mrs C and refused the application. It said that D's walking difficulties were not severe enough to qualify for a blue badge. Mrs C appealed the Council's decision and D was asked to attend an Independent Mobility Assessment (IMA) on 20 February 2018. The assessor concluded that Mrs C's son did not qualify for a blue badge. She acknowledged that D has a permanent and sustainable disability "but during the assessment he demonstrated that he can walk approximately 280 metres in 09:05 minutes. This level of mobility is above that for which we are able to issue a blue badge".

15. Mrs C remained dissatisfied and complained to the Ombudsman

Analysis

16. The assessor said that D walked 280 metres in 09:05 minutes and therefore did not qualify for a blue badge. My calculations indicate that this equates to between 30-31 metres per minute which the guidance classifies as 'extremely slow'. The assessor's conclusion that this speed of walking was above the threshold for

eligibility for a badge was therefore flawed. The assessor noted that D walked without a walking aid but held onto Mrs C's hand. However, there is no evidence to show that the assessor took this into consideration in their assessment. This too was fault .

17. In response to my enquiries, the Council has accepted that there was fault in the way D's walking pace was calculated. It accepts that the calculations should have indicated an extremely slow pace. In response to my enquiries it said:

"[The Council has] considered the impact and risk of non-provision on [D's] health and well-being and looked at it holistically, considering all the information, [the Council does] not feel the IMA took account that he was supported by his mother when walking during the assessment. If he walks independently at school this will require greater effort and concentration. This will be tiring which will have an impact on his ability to participate fully in his school activities. Although the physio is aiming to maintain [D's] mobility he has a deteriorating condition and if we able to maintain this young person's independence we should consider the options available….the provision of a badge would assist [D] to be independent and participate in activities both at home and school…"

18. The Council has reconsidered the application and has decided to issue a blue badge.

Agreed action

19. To remedy the injustice caused by the fault, the Council has agreed to issue a blue badge for Mrs C's son. It has also agreed to apologise to Mrs C for the inconvenice casued.

Final decision

20. There was fault by the Council in its calculations of D's walking pace and how it considered that he was supported by his mother when walking. This fault caused a significant personal injustice to Mrs C and D. I welcome the Council's agreement to remedy that injustice by revising its decision and issuing a blue badge for D.

21. I have completed my investigation on this basis.

Investigator's decision on behalf of the Ombudsman

3 August 2018

Complaint reference:
17 016 439

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The Council was not at fault for suspending and then terminating the direct payment it made for C. Mrs B failed to comply with her direct payment agreement and C now lives full-time with his father, who says he does not need support. The Council was also not at fault for offsetting an overpayment against a previous Ombudsman remedy which it had yet to pay Mrs B. This was done in line with the Ombudsman decision.

The complaint

1. The complainant, whom I refer to as Mrs B, complains that the Council stopped making a direct payment for her son, whom I refer to as C. She says the direct payment was for her parents, who provide care to C while she is living abroad. She says C now does not have a payment to support his assessed needs.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

3. I spoke to Mrs B about her complaint, and considered information provided by Mrs B and the Council.
4. I wrote to Mrs B and the Council with my draft decision and considered their comments.

What I found

What happened

5. In 2017 the Ombudsman investigated a complaint from Mrs B about direct payments. We upheld her complaint and recommended that the Council pay her £500 as a remedy. However, we agreed that, as the Council was conducting a review of Mrs B's account, the remedy could be offset against any potential overpayment if one had been made.

6. In April 2017 C was living with his father 4 days a week, and Mrs B 3 days a week. He was receiving a direct payment for 5 hours of care each week, at £8.99 per hour. This meant he was receiving the equivalent of £44.95 per week. This payment was for C to have activities with Mrs B's father, and it was paid into an account which she managed.

7. On 6 April a child arrangements order was granted in respect of C. The Order said, "*For the time that the mother moves [abroad] … The child will live with the father [full-time]*".

8. On 31 May the Council decided to do an audit of Mrs B's direct payment account. It wrote to her at her UK address and asked her to provide evidence of expenditure.

9. Having not received a response to its letter, the Council wrote to Mrs B again on 11 July, again to her UK address, and repeated its request. It said, if she did not provide evidence of her expenditure by 28 July, it may suspend payments.

10. Shortly after this the Council became aware that Mrs B had moved abroad, and that C was living with his father. It stopped Mrs B's direct payments.

11. On 7 September Mrs B provided the Council with a copy of her bank statement. This did not give evidence of expenditure. It showed multiple transfers between accounts.

12. The Council says that, as C now lives with his father and Mrs B did not make it aware of the change in circumstances, the direct payment no longer meets the terms of Mrs B's agreement and has been cancelled.

13. Between the date of the Child Arrangement Order to when the Council suspended Mrs B's account, it made payments of £899.60 for C's care, and £540 for his brother.

14. The Council says Mrs B did not tell it exactly when she moved abroad, and so it estimated it had overpaid her £520.

Mrs B's direct payment agreement

15. Mrs B signed this agreement on 16 July 2013.

16. Paragraph 3.11 of the agreement says:

> *You agree to keep clear records of the Direct Payment money you have received and how it is being used to meet your Child's assessed needs and agreed outcomes. You will be required to keep invoices, payslips and receipts for anything that you have purchased from your Direct Payment. You must allow us to look at these records if we ask you.*

17. Paragraph 3.13 says, "*You agree to tell us if there is any change in your Child's circumstances which may affect their Support Plan or services they need*".

18. Paragraph 4.10 says the Council may suspend or terminate payments "*if you fail to comply with the review or monitoring process*".

19. Paragraph 6.1 says:

> *Periodically, we will look at your bank statements and other records to establish how you are spending the Direct Payment, to ensure you are using it to meet your Child's assessed needs and outcomes and using it as detailed in your Child's Support Plan and within the terms of this Agreement.*

Analysis

20. The Council's reasons for stopping C's direct payment were that Mrs B did not tell it about his change in circumstances and then failed to comply with its audit. It also says C now lives with his father full-time and no longer requires a direct payment.

21. Mrs B did fail to tell the Council about C's change in circumstances, and then did fail to respond to the Council's audit letters (because she moved abroad). This means she did not comply with the direct payment agreement she signed in 2013. As a result, the Council was not at fault for suspending the payments.

22. When Mrs B later provided a copy of her bank statement, it did not provide evidence of expenditure. Mrs B's direct payment agreement says she must provide such evidence when asked. As a result, she had not complied with her agreement, and the Council was not at fault for terminating the payments.

23. The child arrangements order, which says C will live with his father while Mrs B is abroad, was issued on 6 April 2017. The Council continued to make payments until July 2017, when it found out Mrs B had moved. The payments for C totalled £899.60 (and there was another payment for C's brother, who is not part of this complaint).

24. The Council did not know when Mrs B left the UK, although it asked her for this information, so it estimated it had overpaid her by £520 for the time when C was living with his father full-time. I have not found fault with this decision.

25. Although the Council has decided it overpaid Mrs B £520, a previous Ombudsman decision made clear that it could offset the £500 it owed her against any amount it might have overpaid her. The Council has done this, which is in line with the Ombudsman decision.

26. The Council is no longer providing C with financial support, and there is no support plan in place. This is because his father, with whom he is living full-time, has told the Council that support is no longer necessary.

27. As a result, I have not found fault with the Council.

Final decision

28. The Council was not at fault for suspending and then terminating the direct payment it made for C. Mrs B failed to comply with her direct payment agreement and C now lives full-time with his father, who says he does not need support. I also intend to find that the Council was not at fault for offsetting an overpayment against a previous Ombudsman remedy which it had yet to pay Mrs B. This was done in line with the Ombudsman decision.

Investigator's final decision on behalf of the Ombudsman

06 August 2018

Complaint reference:
17 016 290

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Ms C complained about the Council's decision that Mrs A's needs should be met in the community, rather than in the care home where she lives. The Ombudsman has found no evidence of fault in the way the Council considered these matters.

The complaint

1. The complainant, whom I shall call Ms C, complained to us on behalf of her great aunt, whom I shall call Mrs A. Ms C complained the Council has:

- Failed to consider the impact that moving Mrs A from her care home into the community, will have on her emotional and mental wellbeing (distress and anxiety).
- Failed to consider and explain how it would meet Mrs A's needs to be receive comfort and assurance throughout the night, as she would experience terrible night time anxieties again if she returned home.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the Council reached the decision. ***(Local Government Act 1974, section 34(3), as amended)***

4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

5. I considered the arguments and information I received from Ms C and the Council. I shared a copy of my draft decision statement with Ms C and the Council, and considered any comments I received before I made my final decision.

What I found

6. Mrs A moved into a care home, which she has paid for privately since July 2016. Since then, her capital assessed reduced and the family asked the Council to carry out an assessment to determine if the Council would have to start contributing towards the cost of Mrs A's care. Following the assessment, the Council concluded that Mrs A's needs should be met in the community, rather than a care home. The Council recommended Mrs A could return to her home with a support package, or she could live in an "assessment flat" for several weeks on a trial basis. However, Mrs A and her family were not happy with this, and said they believed Mrs A should remain in her care home.

7. Mrs A used to live at home with her son, who was her main carer. Ms C told me that:

   - Due to her day and night time anxiety, her son had to attend to Mrs A several times at night, as well as having to be present during the day. The level of support her son provided, caused huge strain on him.
   - Mrs A went into hospital, where health professionals advised that she needed residential care, because her needs could not be met at home. She privately arranged to move into a care home following her discharge from hospital.
   - If Mrs A is to return home, her son has said he will no longer be able to provide any care support, except for shopping Richard.
   - Throughout this process, the family has acknowledged and agreed that Mrs A is currently self-caring. However, the Council failed to recognised Mrs A is suffering from anxiety and depression, which is a debilitating illness. It seems the Council only based its decision of eligibility for residential care on her physical abilities.

8. Ms C says Mrs A is settled at her care home. The prospect of moving is causing her huge anxiety, which is affecting her psychological and emotional wellbeing. Since the Council suggested that it can meet her needs in the community there has been a massive change in her behaviour. She now frequently presents with periods of heightened agitation and anxiety and is not responsive to any reassurance. Ms C feels the Council have not taken in to account that it will cause great anxiety to Mrs A, if the Council puts her in an assessment flat for three weeks.

9. The Council has carried out a needs assessment in October 2017. The assessments found that Mrs A only has modest physical care needs and she was independent (or partially independent) in most aspects of personal care. The assessment forms state that:

   - Mrs A Said she does not need any help during the night.
   - The care home's daily carer records show that Mrs A is independent with her personal care needs.
   - The night care notes clearly state that Mrs A is settled throughout the night, no needs.
   - Mrs A is able to make her wishes known.

10. The family contested the assessor's conclusions, and the Council reassigned the case to an advanced social work practitioner. The Council asked her to review the original assessor's conclusions. This was not intended to be a further assessment. The conclusions of the review in December 2017 were consistent

with those of the original assessor. Both workers referred to accessing the care home records, speaking to the care home staff and consulting with Mrs A and her family, during the assessment/review.

11. The outcome of the assessment and the review was that the Council concluded that Mrs A's needs should be met in community. The Council says its approach is to explore and exhaust all options to manage a service users' needs in the community, before it will consider residential care. It would therefore like to trial a three weeks placement for Mrs A in supported accommodation.

12. The Council has also offered for Mrs A to return home with a care package and carry out a subsequent review to assess how this is working for her.

13. As mentioned above, Ms C says that Mrs A and her family do not want Mrs A to leave her care home, because this would case too much anxiety for Mrs A.

14. During a meeting on 3 January 2018, the Council officer explained that Mrs A should try out an assessment flat to assess her within an independent environment. Mrs A became very anxious at this point and her family was trying to calm her down. Mrs A has also said that she would do herself harm, if she would have to leave the care home. Ms C told me this was clear evidence of the distress and emotional impact a move away from the care home would have on Mrs A's emotional and mental wellbeing. Ms C told the officer that Mrs A has not been anxious in the care home, because she knew there would always be staff available if she would need them. The assessor advised this would also be the case within the assessment flats. However, the Council has failed to acknowledge and consider this.

15. Following the meeting, the GP assessed whether her anxiety could be reduced with medication. Following the GP's visit, the care home advised that: *Mrs A's anxiety was about food or waiting when she needs something.* The GP offered Mrs A anti-depressants, which she declined.

16. The Council told me:

- It fully understands that the prospect of having to move, or to consider returning home, is inevitably upsetting. It fully accepts that this has caused distress.
- However, it has to base its decision about funding long term care, on judgements about how a person's assessed needs can be met and whether there are reasonable alternatives.
- It is not entirely possible to predict how Mrs A will cope emotionally at home. However, her son still lives at her property and, given the range of services that are available, it believes this is an alternative that could and should be explored.
- Alternatively, assessment flat schemes are self-contained units that are staffed 24 hours a day. They provide a safe environment in which people can be helped to regain independence or, in other cases, for the Council to be able understand their needs more fully. The Council has offered Mrs A the option to spend up to 3 weeks in one of these units, to better understand the nature of her anxiety and to develop strategies to help her.
- Mrs A has been referred to the appropriate mental health services and subsequently discharged as they did no conclude that their services were required

17. Within the last few weeks, Mrs A's son has approached the Council. He has asked for a reassessment to take place as he believes Mrs A's condition has deteriorated since her last assessment. He has also indicated that he is willing to discuss the options that may be available to help his mother to return home. The Council has agreed to do this on 18 July 2018.

Assessment

18. I found the Council has acted in line with the Care Act 2014, and there is no fault. The Council has carried out an assessment (and a review) of her needs that considered information available about her care support needs (from the care home), the service user's view, and those of her family.

19. The social worker was entitled to reach a view about the way in which the Council should meet Mrs A's support needs. Although Mrs A and her family disagree with the recommendation, I see no fault in the way the Council carried out the assessment, and so I cannot criticise it (see paragraph 3 above). The High Court has confirmed social workers are entitled to use professional judgement in deciding how to meet eligible needs. My view is therefore that I should not uphold this complaint.

20. The Council has agreed to carry out a reassessment of Mrs A's needs in light of her son's concerns that her condition has recently deteriorated.

Final decision

21. For reasons explained above, I did not uphold Mrs A's complaint. I am satisfied with the Council's actions and have therefore completed my investigation.

Investigator's decision on behalf of the Ombudsman

9 August 2018

Complaint reference:
LGO reference: 17 006 806
PHSO reference: C2028929

Complaint against:
Nottinghamshire County Council
Nottinghamshire Healthcare NHS Foundation Trust
Oakenhall Medical Practice

Local Government & Social Care OMBUDSMAN

Parliamentary and Health Service Ombudsman

The Ombudsmen's decision

Summary: Mr P complained about the care provided to his mother Mrs D by a council, an NHS Trust and a GP Practice. The Ombudsmen investigated his concerns that the council did not arrange medical care when Mrs D had delirium caused by an infection, that the GP failed to diagnose and treat her, that the hospital did not manage her risk of falls properly so she broke her hip, and that the council inappropriately wanted to move her to an extra care scheme rather than to residential care with her husband. We found that medical care was arranged and the GP acted appropriately. The hospital did not properly assess Mrs D's risk of falls, but we cannot say this caused the fall. The council did not properly decide that Mrs D should move to an extra care scheme, which caused some distress. The council has agreed to apologise and make improvements.

The complaint

1. Mr P complained about the care provided to his mother, Mrs D, by Nottinghamshire County Council (the Council), Nottinghamshire Healthcare NHS Foundation Trust (the Trust) and Oakenhall Medical Practice (the Practice). Mr P said:

a) While Mrs D stayed in Aldercar Care Home (the Home) from December 2016 not enough was done about concerns she might be suffering from infection and delirium, which made her condition get worse;

b) Mrs D was detained under the Mental Health Act, when a few days earlier her care team agreed not to admit her to hospital;

c) The hospital did not properly manage Mrs D's risk of falling, so she fell and broke her hip;

d) When Mr P called the hospital a duty nurse did not disclose that they gave Mrs D sedative medication;

e) No one communicated with Mrs D's sons about her detention under the Mental Health Act;

f) The Council inappropriately wanted to move Mrs D to an extra care scheme, against the wishes of the family;

g) That Mrs D continued to be given sedative medication after discharge from hospital;

h) That medication records were tampered with, because observation sheets show a male name which is crossed out and not signed.

i) That the Practice failed to respond to requests to examine Mrs D and failed to clearly diagnose her condition until 30 January 2017.

What I have investigated

2. I have investigated parts a, c, e, f and i of Mr P's complaint. At the end of this decision statement I have explained why I have not investigated parts b, d, g or h.

The Ombudsmen's role and powers

1. The Ombudsmen investigate complaints about 'maladministration' and 'service failure'. We use the word 'fault' to refer to these. If there has been fault, the Ombudsmen consider whether it has caused injustice or hardship ***(Health Service Commissioners Act 1993, section 3(1) and Local Government Act 1974, sections 26(1) and 26A(1)).*** If it has, they may suggest a remedy. Recommendations might include asking the organisation to apologise or to pay a financial remedy, for example, for inconvenience or worry caused. We might also recommend the organisation takes action to stop the same mistakes happening again.

2. The Ombudsmen have the power to jointly consider complaints about health and social care. Since April 2015, a single team acting for both Ombudsmen has considered these complaints. ***(Local Government Act 1974, section 33ZA, and Health Service Commissioners Act 1993, section 18ZA)***

3. The Ombudsmen may investigate complaints made on behalf of someone else if they have given their consent. The Ombudsmen may also investigate a complaint on behalf of someone who cannot authorise someone to act for them, if the Ombudsmen consider them to be a suitable representative. ***(Health Service Commissioners Act 1993, section 9(3) and Local Government Act 1974, section 26A(2)) (Local Government Act 1974, section 26A(1))***

4. The Ombudsmen cannot question whether an organisation's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. ***(Local Government Act 1974, section 34(3), as amended, and Health Service Commissioners Act 1993, sections 3(4)- 3(7))***

5. The Health Service Ombudsman investigates complaints about 'maladministration' and 'service failure' in the delivery of health services by people and organisations specified in the Health Service Commissioners Act 1993. When doctors make recommendations under sections 2, 3 or 4 of the Mental Health Act 1983 (MHA), they are acting under powers given to them under the MHA. They are acting as individuals and not on behalf of the NHS. This means we cannot investigate complaints about their actions and recommendations. (***Health Service Commissioners Act 1993, sections 2, 2A, 2B and 3)***

6. If the Ombudsmen are satisfied with the actions or proposed actions of the bodies that are the subject of the complaint, they can complete their investigation and issue a decision statement. ***(Health Service Commissioners Act 1993, section 18ZA and Local Government Act 1974, section 30(1B) and 34H(i))***

How I considered this complaint

7. I reviewed information provided by Mr P in writing. I made enquiries of the Trust, the Council and the Practice and considered their responses. I reviewed the relevant health and social care records, including Mrs D's GP records. I took account of relevant law, policy and guidance. I took clinical advice from an experienced consultant in old age psychiatry and an experienced GP.

8. I shared a draft of this decision with the parties to the complaint and considered their comments.

What I found

Legal, administrative and clinical context

Delirium

9. Delirium is a sudden state of confusion which is common in elderly people, especially those with dementia. Various things can cause delirium. In people with dementia, infection is a common cause of delirium. Other causes include a change in environment or dehydration, among other things. When delirium is caused by infection, it will get better when the infection is treated. However, in patients with dementia delirium can take days, weeks, or longer to pass.

Falls in older people

10. In June 2013 NICE issued the clinical guideline: *Falls in older people: assessing risk and prevention (CG161)*. This notes that all patients over the age of 65 should be treated as at risk of falling in hospital. The guidance says that staff should identify and address individual risk factors.

Mental Health Act

11. Under the Mental Health Act 1983, when someone has a mental disorder and is putting their safety or someone else's at risk they can be detained in hospital against their wishes. This is often known as "being sectioned". Usually three professionals need to agree that the person needs detention in hospital. These are either an Approved Mental Health Professional (AMHP) or the Nearest Relative, plus a doctor who is specially approved in Mental Health Act detentions and another doctor. The AMHP is responsible for deciding whether to go ahead with the application to detain the person and for discussing this with the person and their Nearest Relative.

12. The Mental Health Act defines the Nearest Relative. If the person has a spouse and they are not separated, they are the Nearest Relative. People who live abroad cannot be the Nearest Relative when the person in question does not also live abroad. Lack of mental capacity does not stop a relative from being the Nearest Relative under the law. But when the Nearest Relative lacks capacity, the AMHP can decide it is not practicable to consult with them. The county courts can appoint a new Nearest Relative.

Extra care housing

13. Extra care housing is specialist accommodation for older people. Residents have self contained accommodation, usually flats in a block, but with care and support available on site. It is aimed at people who have care and support needs but who can live more independently than those who need residential care.

Mental Capacity Act

14. The Mental Capacity Act 2005 applies to people who may lack mental capacity to make certain decisions. Section 42 of the MCA provides for a Code of Practice (the Code) which sets out steps organisations should take when considering whether someone lacks mental capacity. A key principle of the Mental Capacity Act 2005 is that any act done for, or any decision made on behalf of a person who lacks capacity must be done, or made, in that person's best interests.

What happened

15. Mrs D, born in 1936, suffers from dementia. In 2016, she lived with her husband, Mr D, who also has dementia. Mrs D cared for Mr D, but became less able to as her own condition got worse. A community psychiatric nursing assistant I will call Officer B visited them regularly.

16. After Mr D was admitted to hospital in November 2016, Mrs D went to stay at the Home temporarily. On 16 January 2017 Mr and Mrs D returned to their own home. However, on 23 January Mr D returned to hospital after a fall. Mrs D, who was angry and distressed, agreed to go back to the Home.

17. Mrs D became increasingly confused and aggressive, and on 3 February she was detained under the Mental Health Act. On 5 February she fell and broke her hip in the hospital.

18. In early March, Mrs D's social worker applied for funding for Mrs D to live in a residential care home permanently. The Council's funding panel told the social worker she should have a period of assessment in an extra care flat instead. The Council planned to move her there, but stopped the move after Mrs D's sons objected and Mrs D said she would not go. The Council approved funding for residential care at the end of March.

Complaint that not enough was done about possible infection and delirium from December 2016

19. Mr P said on 12 and 13 December 2016 Officer B asked the Home to arrange for a GP to see Mrs D because she suspected Mrs D might have delirium, but no one did anything about this until 31 January 2017.

20. Mr P said if the Council had responded promptly to Officer B's concern that Mrs D had an infection in December 2016, Mrs D's behaviour would have improved. She could have avoided the hospital admission, broken hip and subsequent disability.

21. The Trust's records say Officer B visited Mrs D at the Home on 12 December. She noted that Mrs D's ankles and calves were red and swollen, and asked the Home to arrange for a GP to see her. The GP records of 13 December say a GP visited Mrs D at the Home. A urine test showed signs of a urinary tract infection (UTI). The GP examined Mrs D. They found that Mrs D's feet were pink and swollen, but not red or hot. Her legs were dry and she had been scratching them. She did not have an increased temperature. The GP thought she may have a UTI or mild cellulitis (a skin infection). They prescribed antibiotics and noted that they would see her again if her symptoms continued. They asked the care home staff to check Mrs D's urine again once the antibiotics were finished.

22. This is evidence that the Home acted on Officer B's concern in December and arranged for a GP to see her. Therefore, I do not find fault with the Council here.

23. There is no fault with the actions of the GP. They responded to the request to review Mrs D, found signs of a possible UTI, though this was not confirmed with a

laboratory test, and they treated it appropriately. Though Mrs D had pink and swollen legs, this is common in older people and is not necessarily a sign of infection.

24. The Trust's records say on 5 January Officer B called the Home to express concerns that Mrs D's legs were swollen and itchy. The Trust wrote that the Home said it was trying to get Mrs D to sit with her legs up to relieve water retention, but she was "on the move all the time". The Trust's records say the Home said it would ask a GP to see Mrs D. There is no reference to this in the GP records or the Home's records. I find fault with the Council here, because the Home appears not to have followed up the discussion with Officer B on 5 January and arranged for a GP to see Mrs D again. Further, it did not document any reasons for not doing so. However, I have not found an injustice from this. There is no evidence that there was any problem with Mrs D's legs which required treatment. The Home says Mrs D just had "the normal swelling which she has" that day.

25. Officer B and Mrs D's social worker visited Mrs D on 24 January. She was distressed, angry and confused. Her legs were still swollen, with broken skin. The Trust's records say Officer B spoke with a GP who agreed that Mrs D may have a UTI. They prescribed Mrs D antibiotics for one week. They also asked the Home to provide a urine sample, to be tested for infection. The results of this did not show infection.

26. The GP records of 30 January say they visited Mrs D, who was confused and aggressive and would not let staff care for Mr D. They had thought her confusion was because of a UTI, but it had not improved with antibiotics. The GP examined Mrs D again. They recorded that her ankles were swollen with some "patchy inflammation". Her skin was intact and warm to touch. They prescribed some different antibiotics to treat possible cellulitis in her legs or a possible chest infection. They also reduced her blood pressure medication. The Council's notes say the GP felt Mrs D's legs were swollen because of her blood pressure medication. Mrs D's behaviour became more difficult to manage over the following days. The GP also requested some blood tests. The results of the blood tests, which the Practice received on 2 February, showed that Mrs D did not have an acute infection.

27. I have found evidence that between them, Officer B and the Home arranged for GP involvement on 12 December, 24 January and 30 January, and that the GP acted correctly to try to diagnose and manage Mrs D's condition.

28. As Mrs D's blood tests showed no sign of infection, it is unlikely that her delirium was caused by infection. We do not know the cause of her delirium. Mrs D's behaviour got worse in late January and early February, suggesting a later cause for the deterioration. Therefore, I have not found that the failure to contact a GP on 5 January led to an injustice, or that there was a treatable cause for the delirium.

Complaint that the Hospital did not properly manage Mrs D's risk of falling

29. Mr P said that Mrs D fell because the Trust gave her lorazepam, and the Trust did not properly assess her risk of falling. He said the decision not to class her as at risk of a fall was wrong, because she did fall. He said the Trust's risk assessment did not take into account that she was on sedative medication.

30. On 4 February, the Trust completed an assessment of falls risk for older people with mental health needs, which identified that Mrs D's level of cognition, mental

health, behaviour and needs with nutrition and hydration were risk factors. It incorrectly said her medical history was not a factors. At the time of these events, the Trust's risk assessment documentation did not include a prompt for the use of sedative medication, which can increase the risk of falls. However, the Trust did recognise that she was at risk of falls.

31. The assessment form suggests that when someone has dementia, staff should take observations on admission and daily afterwards. It also suggests that they monitor postural blood pressure and check for an acute infection. There is evidence that on 4 February the Trust checked Mrs D's pulse, blood pressure and temperature, which were normal. Staff also checked her blood and urine, and the results were normal. The Trust says it did not need to check for postural hypotension too because this is a suggestion rather than a requirement and Mrs D did not have a history of fainting, in which case it would have considered that it should check for postural hypotension. There is some variation in practice within the NHS about checking for postural hypotension, and on balance I do not find that not checking it was fault.

32. The Trust's records say that on 5 February Mrs D was agitated, angry, and started trying to pull up the floor in the hospital corridor. Staff checked on her every ten minutes. They wrote that they gave her lorazepam at 15:05 but it did not help. As doctors had prescribed her lorazepam every 4 hours when needed, a nurse contacted the on call doctor for permission to give her a further dose. The doctor agreed. Mrs D took the second dose at 16:50, then went to sleep. At 20:39, Mrs D fell in the corridor and broke her hip. Staff did not see her fall.

33. The Trust recognised that Mrs D was at risk of falls because of the factors listed above. Giving her lorazepam adds another risk factor, therefore increases the risk of falling. However, it was not fault to give her the lorazepam. Prescribing lorazepam at the doses given to Mrs D is a routine way of managing agitation in people with dementia. This is because it reduces the risks from their agitation. The Trust monitored Mrs D after it gave her lorazepam as it should have, by observing her every ten minutes. Continuously observing someone in these circumstances is not routinely done. This is because it can make them more agitated and increase the risk of falls. Even if the Trust's assessment form had identified that the lorazepam increased the risk, the Trust should not have monitored her differently. So, although the lorazepam may have contributed to Mrs D fall, the fall was not caused by fault on the part of the Trust.

Complaint about lack of communication with Mrs D's sons about her detention

34. Mr P said he was unhappy that no one communicated with him or his brother about Mrs D's detention. He said they are her nearest relatives and have power of attorney for her. He said they only found out after a routine call to the Home.

35. The Trust's response to Mr P explained that the AMHP must make reasonable efforts to tell the Nearest Relative, and that under the Mental Health Act the nearest relative is Mr D. This is correct. Legally Mr D is Mrs D's Nearest Relative, even though he has dementia, and neither the AMHP nor the doctors needed to consult Mrs D's sons about detaining Mrs D.

36. The Trust also said Mrs D's admission was late on a Friday evening, and the community staff were not available to contact the ward or family over the weekend. The Trust's records show that the AMHP recorded that the manager of the Home would tell Mrs D's sons about Mrs D's admission to hospital. The Home's records do not refer to this. It appears that Mrs D's sons found out on the

Sunday morning, when they called the Home. I find fault with the Council for not telling Mrs D's sons sooner, as it should have. However, I do not find that this caused an injustice. Mrs D's sons could not have changed the fact that Mrs D was detained, had they known sooner.

Complaint about the Council wanting to move Mrs D to an extra care scheme

37. Mr P said the Council told him on 15 March it would move Mrs D to an extra care scheme for three weeks to assess whether she could live alone, rather than approving funding for her to stay at the Home with Mr D. He and his brother emailed the Council the same day to express their "disgust and concerns for the safety and welfare" of Mrs D. Mr P said on 20 March the Council sent him documents referring to him agreeing for Mrs D to move to the extra care scheme. He disputed this. The Council emailed again on 22 March to say it would defer the move to the extra care scheme.

38. The Council's response said it will usually only fund long term care once it has established that it is not possible for the person to live in the community. It said its funding panel did not consider that all possible ways for Mrs D to live at home had been tried, so it wanted an assessment period in the extra care scheme to see whether she could manage without a care home. If not, the social worker would ask the panel for funding for residential care again. It said when the social worker visited Mrs D to discuss the assessment flat on 20 March she refused to go there without Mr D.

39. The Trust's records of 2 March say the professionals held a best interests meeting with Mr P to discuss where Mrs D would live when she was discharged from hospital. They agreed that Mrs D would go back to the Home to live with Mr D. The social worker said she would apply for funding for this. Mr P asked what would happen if the funding was not approved. The social worker said it might be suggested that Mrs D moved to supported housing. The Trust's records say: "all agreed this would not be in her best interest so the hope is funding will be agreed".

40. The social worker's application to the funding panel says an assessment bed was not an appropriate option. It says Mrs D had a period of assessment at the Home. Since, her cognitive ability and ability to look after herself had got worse, and she needed "constant monitoring, reassurance and orientation to her environment". It would be unsafe for her to live alone because she did not understand her own care needs, she was agitated, and she was at risk of falling.

41. The paperwork completed by the Council's funding panel on 15 March says it deferred the decision about whether to approve long term funding, and an assessment flat should be explored.

42. The Trust's records of that day say the occupational therapist considered it inappropriate for Mrs D to move to the assessment flat, given her lack of insight and understanding into her care needs, the significant decline in her cognition over the past few months, the impact it would have on her psychological wellbeing, and the impact it would have on her functional skills. The social worker said the panel felt Mrs D's functional ability had not been properly assessed. The following day, the occupational therapist and Officer B visited Mr and Mrs D at the Home. The occupational therapist noted that they and the manager of the Home felt Mrs D would not understand the reason for an assessment in a flat, would not accept the separation from Mr D, and would likely become agitated when this was discussed with her.

43. The occupational therapist and Officer B went back to the Home on 22 March to complete a functional assessment to support the case that Mrs D needed long term care. On 29 March, the funding panel agreed to long term care funding for Mrs D. The Council's paperwork said this was a best interests decision because Mrs D's mental health had got significantly worse.

44. I find that the Council's decision to recommend the assessment flat on 15 March failed to take proper account of the evidence in the social worker's application, and failed to take account of the best interests decision of 2 March. This was fault.

45. I have not found that this fault caused an injustice to Mrs D, since she was not moved to the assessment flat. However, it caused some unnecessary distress to Mr P, which is an injustice to him.

Agreed action

46. Within two months, the Council will apologise to Mr P for the impact on him of failing to take account of the best interests decision and the full evidence presented to the panel. It will also explain what it has done to prevent similar fault happening in future.

Decision

47. I find that:

a) The Council is at fault because the Home did not ask a GP to see Mrs D on 5 January, but this did not cause an injustice.

b) The Council is at fault because the Home did not tell Mrs D's sons about her detention in hospital promptly, but this did not cause an injustice.

c) The Council is at fault for proposing that Mrs D went to an assessment flat, contrary to the best interests decision that she should live in the Home, and without taking proper account of the available evidence. This caused unnecessary distress to Mr P, which is an injustice to him.

d) There was no fault with the actions of the Practice.

e) There was some fault with the way the Trust completed its risk assessment, but this did not cause injustice. There was no fault with the way the Trust assessed and managed Mrs D.

Parts of the complaint that I did not investigate

48. I did not investigate the complaint that Mrs D was detained under the Mental Health Act because the Ombudsmen has no power to investigate complaints about the recommendations made by doctors to detain someone. There are no indications that the Ombudsmen would find fault with the way the AMHP made their decision to apply for Mrs D to be detained.

49. I did not investigate the complaint that a duty nurse did not disclose that Mrs D was prescribed sedative medication. Mr P said he and his brother spoke with Mrs D before her injury and she was slurring her speech, disoriented and confused. He spoke with the duty nurse who said she was on aspirin and antibiotics but did not say she was on lorazepam until later in the conversation. There is no evidence the nurse deliberately withheld information about the lorazepam. There are no indications of fault or injustice here.

50. I did not investigate the complaint that Mrs D continued to be given sedative medication after she was discharged from hospital because even if the Ombudsmen found that there was fault, there was no injustice from this.

51. I did not investigate the complaint that medication records were tampered with, because observation sheets show a male name which is crossed out and not signed. I have seen no indications of fault or injustice.

Investigator's decision on behalf of the Ombudsmen

20 August 2018

Complaint reference:
17014944

Complaint against:
Nottinghamshire County Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: Mr X complains the Council has failed to give him the personal budget he needs to meet his eligible care needs. The Council has not been at fault over this.

The complaint

1. The complainant, whom I shall refer to as Mr X, complains the Council has failed to give him the personal budget he needs to meet his eligible care needs.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

4. I have:

- considered the complaint and the documents provided by Mr X;
- considered the comments and documents the Council has provided in response to my enquiries; and
- shared a draft of this statement with Mr X and the Council, and invited comments for me to consider before making my final decision.

What I found

What happened

5. Mr X has cerebral palsy which affects his mobility and speech. He has little use of his arms, uses an electric wheelchair and communicates via a computer. He lives with his wife who also has physical and mental health conditions, and a significant care package. They used to have a joint care package but this caused problems.

6. In August 2016, when Mrs X was in hospital, the Council discussed the possibility of having separate care packages with Mr X. He said his care would cost over

£1,000 a week more than his direct payment if Mrs X's direct payment were split from his own. The Council said it could not understand why that would be the case. Care Agency B said there would be a conflict of interest supporting both Mr and Mrs X. The Council said it would look for a different care agency for Mrs X, with Mr X continuing to use Care Agency B.

7. On 2 September the Council told Mr X the maximum hourly rate it would pay for care was £14.80 "*with increases in exceptional circumstances"*.

8. The Council reassessed Mr X's needs in November 2016. The assessment identifies the need for help achieving these outcomes:

   - medication;
   - managing and maintaining nutrition;
   - maintaining personal hygiene;
   - managing toilet needs;
   - being appropriately clothed;
   - maintaining a habitable home environment;
   - being able to make use of the home safely;
   - developing and maintaining family or other personal relationships;
   - accessing and engaging in work, training, education or volunteering; and
   - making use of necessary facilities or services in the local community including public transport and recreational facilities or services.

9. The assessment explains what help Mr X needs to achieve these outcomes. It says he needs 11.5 to 12 hours or more during the day and someone to stay overnight (carers said "*at best"* they would help 2 or 3 times a week at night). The assessment says he needs support in the community 3-4 times a week.

10. The Council produced a care and support plan for Mr X in December, to start from January 2017. This includes a personal budget of £1,454.97 a week, with £1,445.57 paid as a direct payment:

    - £764.4 for 14 hours a day Mondays to Saturdays (£9.10 an hour);
    - £186 for 14 hours on Sundays (£13.30 an hour);
    - £490 for a carer to sleep over 7 nights a week (£70 a night);
    - £5.57 for help managing the direct payments.

11. The personal budget also includes one off costs of £200. The care and support plan notes Mr X's wish to keep his carers working for Care Agency B. The care and support plan identifies risks from financial exploitation and Mr X getting into debt because of blurred boundaries between his and his wife's care packages. It says these will be addressed by help managing the direct payments and separate care and support plans for Mr & Mrs X.

12. Mr X raised concerns about his personal budget as it does not include enough money to use Care Agency B, which charges £15.25 an hour and £115 for a night time carer. At a meeting on 6 December the Council said it would not cover the costs of Care Agency B as they were too high. It said other agencies were available and Mr X could consider employing the current carer's as personal assistants.

13. Mr X's Solicitor complained to the Council in March 2017 about the failure to provide the £2,432.67 a week needed to use Care Agency B. It said Mr X had understood the Council would pay £14.80 an hour "*with increases in exceptional circumstances"*. It said the Council had later told Mr X the most it would expect to pay was £15.00. It said Mr X would have been happy to meet the shortfall, but could not afford to do so when the hourly rate was £9.10 (£13.30 on Sundays). It said the personal budget must be enough to meet his needs.

14. When the Council replied in April, it said it would not increase Mr X's personal budget. It said his chosen care agency was one of the most expensive in the area. It said there were no grounds to meet its hourly rate when there were other ways of arranging care within Mr X's personal budget, about which it and a private social worker had advised him. It said, while significant, his needs were not complex. It said it had clearly told Mr X the "*maximum"* it would pay was £14.80 and it had never promised to pay that amount. It provided quotes from other agencies which showed Mr X could employ live in carers within his personal budget. It said it had increased its hourly rate for a sleep-in service to £7.50 and would reflect this in Mr X's personal budget. It said his personal assistant had confirmed she was willing to be employed directly by him. The Council noted it had agreed to fund a sleep-in carer when his night time needs could be met via assistive technology or a small contribution towards the cost of his wife's waking carer. It said Mr X would have to make up any shortfall from using Care Agency B.

Is there evidence of fault by the Council which caused injustice?

15. The Care & Support Statutory Guidance says the personal budget "*must always be an amount sufficient to meet the person's care and support needs, and must include the cost to the local authority of meeting the person's needs which the local authority is under a duty to meet".* It says decisions should "*be based on outcomes and value for money, rather than purely financially motivated"*.

16. The Council accepts Mr X needs 24 hour care. It has provided him with a personal budget to pay for this, mainly in the form of a direct payment. It has explained how the direct payment can be used to meet his needs, either by employing a personal assistant via another agency or by employing his current personal assistant himself. Within that context, I cannot find fault with the Council over the way it has dealt with Mr X's personal budget.

Final decision

17. I have completed my investigation as there is no evidence of fault by the Council.

Investigator's decision on behalf of the Ombudsman