





## **The Ombudsman's final decision**

1. Summary: The Ombudsman will not investigate Mr X's complaint about the Council not allocating him a place at his preferred school for his child. This is because it is unlikely we would find fault and we would not achieve a significantly different outcome that already obtained.
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## **The complaint**

2. The complainant, whom I shall call Mr X, says the Council failed to provide him with a place for his child, Z, at his preferred School, Y.

## **The Ombudsman's role and powers**

3. 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'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
  - it is unlikely we could add to any previous investigation by the Council, or
  - it is unlikely further investigation will lead to a different outcome. (*Local Government Act 1974, section 24A(6), as amended*)
4. 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*)

## **How I considered this complaint**

5. I considered the information Mr X provided with his complaint and the Council reply to Mr X which it provided. I considered Mr X's comments on a draft version of this decision.

## **What I found**

6. Mr X says in June 2020 the Council told him his child, Z, was at the top of the waiting list for School Y. He then discovered three other children had been offered a place ahead of him. He says he has been trying for two years to get a place at School Y. He says he cannot afford the cost of transporting Z to their existing school and Z is upset at going to their existing school.

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7. The Council says:
- a) Mr X applied In September 2018 for an in year place for Z at School Y. It was full. The Council could not allocate a place. Mr X appealed to the Council's schools admissions appeal panel but later withdrew the appeal. Z's name was added to the waiting list.
  - b) In June 2019, the Council informed Mr X, in line with its policy, the waiting list was closing. Mr X applied again and said the family were moving home.
  - c) The Council again could not allocate a place at School Y, as it was still full, but offered Z a place at a school within a mile of their new home. Mr X refused this offer.
  - d) The Council wrote to Mr X again in early June 2020 to inform him the waiting list was closing again. It reminded him to apply by a date at the end of June for a place for September. It says it received Mr X's application after that date in early July. His application was therefore processed after those who had applied before the given date. School Y was full and his application refused.
  - e) A place became available in early September 2020. It has been offered to Z. Mr X has accepted it.

### **Analysis**

- 8. We cannot investigate events known to Mr X for more than 12 months without good reasons. Mr X had a right of appeal both in September 2018 and June 2019 which he chose not to use. I do not consider we have good reasons to disapply the 12 month rule.
- 9. This means we can only consider the events from June 2020 onwards. It is unlikely we would find fault in the way Mr X did not get a place offered in July given he applied late. In addition, our investigation could not achieve more than a place which he has now been granted.

### **Final decision**

- 10. The Ombudsman will not investigate this complaint. This is because it is unlikely we would find fault and we would not achieve a significantly different outcome that already obtained.

### **Investigator's decision on behalf of the Ombudsman**

## **The Ombudsman's final decision**

Summary: The Ombudsman will not investigate Mr X's complaint about an unsuccessful appeal for a school place. This is because there is not enough evidence of fault by the panel, and so we cannot question the merits of its decision.

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## **The complaint**

1. The complainant, whom I shall refer to as Mr X, complains about an unsuccessful appeal for a school place.

## **The Ombudsman's role and powers**

2. This complaint involves events that occurred during the Covid-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether the Council followed the relevant legislation, guidance and our published "Principles of Good Administrative Practice during Covid".
3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We cannot question whether an independent school admissions appeals panel's decision is right or wrong simply because the complainant disagrees with it. We must consider if there was fault in the way the decision was reached. If we find fault, which calls into question the panel's decision, we may ask for a new appeal hearing. (*Local Government Act 1974, section 34(3), as amended*)

## **How I considered this complaint**

4. I considered Mr X's complaint to the Ombudsman and information from the Council. I gave Mr X the opportunity to comment on a draft statement before reaching a final decision on his complaint.

## **What I found**

5. Mr X's wife (Mrs X) applied for a reception place for their daughter (Y) starting in September 2020. Because there were more applications than places available at her preferred school (School Z) the Council used its oversubscription criteria to decide which children it would offer a place. The Council did not offer Y a place at School Z.
6. Mrs X appealed the decision not to offer Y a place at School Z. Emergency legislation introduced by the Government during the Covid-19 pandemic allows school admission appeals to be heard remotely, by video or teleconference. Mrs

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X's appeal for a place at School Z was heard over the telephone. Mr X also took part in the appeal.

7. Independent appeal panels must follow the law when considering an appeal. They need to consider if the school's admission arrangements comply with the law, and if they were properly applied to the appellant's application. They need to decide if admitting a further child would "prejudice the provision of efficient education or the efficient use of resources". If they think it would, they need to consider if an appellant's arguments outweigh the prejudice to the school.
8. During the appeal, the Council's representative explained why it had not been possible to offer Y a place. They described the difficulties admitting a further child would cause the school. The panel decided the school's admission arrangement complied with the law and had been properly applied to Mrs X's application. The panel decided admitting further children would cause prejudice to the school. The clerk's notes show Mr and Mrs X had the opportunity to present their case. They explained why they wanted Y to attend School Z and the difficulties it would cause if she attended another school. They explained Y's older sibling attended the partner junior school.
9. The panel considered Mr and Mrs X's arguments. The panel decided the evidence they had put forward was not strong enough to outweigh the prejudice admitting a further child would cause the school. The clerk's letter to Mrs X explained the panel's decision.
10. The Ombudsman is not an appeal body and we cannot criticise decisions taken without fault. The evidence I have seen shows the panel followed the proper process to consider the appeal. The panel considered the information provided by Mr and Mrs X and the Council. It is for the panel to decide what weight should be given to each piece of evidence. The decision to refuse the appeal is one the panel was entitled to take.
11. I understand Mr X is disappointed with the panel's decision. But without evidence of fault in the decision-making process, there are no grounds for the Ombudsman to become involved. An investigation is not therefore appropriate.

### **Final decision**

12. The Ombudsman will not investigate Mr X's complaint. This is because there is not enough evidence of fault by the panel and so we cannot question the merits of its decision.

### **Investigator's decision on behalf of the Ombudsman**

## **The Ombudsman's final decision**

Summary: Mrs R says the Council has wrongly required her daughter, Ms C, to pay for respite care breaks and wrongly stated that Ms C does not need her carers while in respite care which has caused them injustice as they cannot afford to pay for the respite care. The Council was not at fault. It carried out financial and needs assessments as required. It was entitled to charge as it did according to the criteria set out in the relevant statutory guidance.

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## **The complaint**

1. The complainant, Ms C, is represented by her mother, Mrs R. Mrs R says the Council is at fault for its assessment of Ms C's contribution towards her respite care which, she says, has been made in the face of evidence she has provided that the costs of Ms C's care leave insufficient funds to pay it.
2. Mrs R says this has caused Ms C and herself injustice as Ms C cannot afford the additional fees and Mrs R has had to pay them.

## **The Ombudsman's role and powers**

3. We investigate complaints about 'maladministration' and 'service failure'. 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*)
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*)
5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Care Quality Commission (CQC), we will share this decision with CQC.

## **How I considered this complaint**

6. I spoke to Mrs R. I wrote an enquiry letter to the Council requesting further information. I considered this information alongside the relevant law and guidance before writing my draft decision.
7. I sent my draft decision to Mrs R and the Council and invited their comments. I then made changes to my draft as a result.

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## What I found

### What should happen

#### Social care

8. The Care Act 2014 introduced a requirement that local authorities should promote 'wellbeing' and 'signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs'. 'Meeting needs' recognises that everyone's needs are different. Local authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into'. (*Care and Support Statutory Guidance, Ch 1*)

#### Needs assessment

9. If a council decides a person is eligible for care, it must prepare a care and support plan. This must set out the needs identified in the assessment. It must say whether, and to what extent, the needs meet the eligibility criteria. It must specify the needs the council intends to meet and how it intends to meet them. It must hold annual reviews of its care and support plan. (*Care Act 2014, ss 24 and 25*)
10. The care and support plan must set out a personal budget which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. (*Care Act 2014, s 26*)
11. The High Court has confirmed an individual's wishes are not the same as their needs and their wishes are not the paramount consideration. A council must have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs. (*R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin)*)

#### Carers

12. A council must consider whether to carry out a carer's assessment if it appears the carer has need for support. It must assess the carer's ability and willingness to continue in the caring role. It must also consider the results the carer wishes to achieve in daily life and whether support could contribute to achieving those results (*Care Act 2014, s10*)

#### Charging for care

13. Where a local authority has decided to charge for care, it must carry out a financial assessment. (*Care and Support Statutory Guidance 2014, 8.16*)

#### Charging for care in the home

14. Councils have a discretion to charge for care provided in the home.
15. *'Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging rules must ensure they have enough money to meet these costs. After charging, a person must be left with the minimum income guarantee (MIG), as set out in the Care and Support (Charging and Assessment of Resources) Regulation 2014. In addition, where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for local authority care and support, the charging arrangements should ensure that they keep enough money to cover the cost of meeting these disability-related costs.'*



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## Charging for short term and temporary care

16. The way charges for residential care are calculated varies depending on the length of stay. Residents are divided into three categories; short-term residents, temporary residents and permanent residents.
  - Short-term residents stay for under eight weeks;
  - Temporary residents stay for less than 52 weeks; and
  - Permanent residents.
17. If it does decide to charge, a council must disregard expenses incurred in maintaining the service user's home during the stay. (*Care and Support Statutory Guidance 2014, Annex F*)
18. A local authority can choose whether or not to charge a person where it is arranging to meet needs. In the case of a short-term resident in a care home, the local authority has discretion to assess and charge as if the person were having needs met other than by the provision of accommodation in a care home. (*Care and Support Statutory Guidance, Annex F.8*)
19. Local authorities may take most of the benefits people receive into account. They need only disregard direct payments, veterans payments and the mobility component of disability living allowance and personal independence payments. . (*Care and Support Statutory Guidance, Annex C, 14-15*)
20. In financial reviews, councils should disregard any payments service users receive to meet their housing and independent living costs. Attendance allowance, disability living allowance care component and personal independent payments should be disregarded in the financial assessment. (*Care and Support Statutory Guidance 2014, Annex F, 14, 15*)

## What happened

### Background

21. Ms C is a woman in her 40s with profound and complex disabilities. She is non-verbal and doubly incontinent. She requires 24-hour care, usually from two carers. Her mother, Mrs R, has provided the majority of Ms C's care throughout her life. Ms C lives at Mrs R's house where she has a comprehensive care package funded by the NHS continuing healthcare (60%) and the Council (40%).
22. Mrs C says that, because of her complex needs, Ms C must receive certain care every day, where possible. This includes being taken for a walk.
23. Mrs C suffers from high blood pressure and migraines. She does not sleep well as Ms C requires support during the night. She gets very tired which causes her to lose motivation. Mrs R has said she wants to continue in the role of carer for as long as she can but says she requires respite breaks to do so.
24. The Council has twice assessed Mrs R's needs as a carer. It has recognised that she has a need for respite. It made two one off payments of £150. It has allocated no further budget towards this relief.
25. For over a decade, to provide Mrs R with respite, Ms C has gone into a local respite facility. She receives 70 nights respite care annually.
26. The Council also provides Ms C with funding for 106 hours care per week through direct payments. She does not pay a contribution towards this care. Mrs R has recently dispensed with the services of an agency which provided this care following a safeguarding incident and is now providing all the care herself.

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27. In 2009, the Council asked Ms C for a weekly contribution towards her respite care. Mrs R said Ms C could not afford to pay. The Council agreed to waive the charge for an indefinite period. In November 2015, the Council again began to charge Ms C for respite care. Mrs R paid the charges on Ms C's behalf for 10 months before saying she could not afford to do so. She began to reduce her use of the service. The evidence shows that there was concern that, without this respite, Mrs R would not be able to cope with Ms C's care at all. The Council again waived the charges. This waiver period lasted for ten months before the Council again asked for payment.
28. Mrs R paid for some time but found it very hard. In August 2017, Mrs R asked for a financial assessment because, she said, Ms C had outgoings which were not allowed for. She said the money Ms C had left did not cover her outgoings because, among other things:
- She ran the washing machine four times a day because of Ms C's incontinence and had to have heating on full blast when Ms C was at home;
  - Even when Ms C went into respite, her home carers had to take her to the day care centre she attends and take her back to the respite home every day and therefore had to be paid.
29. The Council carried out a financial assessment and again requested payment. In March 2018, Mrs R made a formal complaint about the fact that Ms C was required to pay a contribution towards her respite care. She said that Ms C had various expenses while at respite, such as travel to and from day care, admission charges for various activities and so forth, which were not taken into account when calculating Ms C's disposable income.
30. In April 2018, a manager responded saying the charges were correct and in line with charging regulations.
31. In August 2018, a senior manager provided a further response. She did not agree to waive the charges Ms C had incurred so far but said that, because of changes in 'benefits and allowances' it would not charge Ms C for respite received between April and August 2018.
32. She also said that *'I am aware that these expenses are not entirely being met by the Short Breaks unit as you are still contributing towards traveling expenses, food and activities whilst she is at Short Breaks. On discussions with [a manager] she informs me that she has held discussions with [the day care centre] and they have clarified they can meet [Ms C's] needs within the unit. This includes all food, transport and a range of activities that are provided to people who attend the Short Breaks service'*.
33. In autumn 2018, the Council completed a review of the care and support plan. The review found that, because of Ms C's complex needs, many providers of community support and adult care services were unable to support Ms C. One provider was identified who could provide day services five days a week if she attended with her full time carers paid for via direct payments.
34. In November 2018, the Council voted to amend its charging policy to include higher rate attendance allowance, disability living allowance, (care component) and personal independence payments in its financial assessments. It wrote to Ms C explaining the changes and saying she would be charged £41.30 per week.
35. The Council began charging Ms C for respite again in April 2019 in line with the new policy. It charges her £45.87 per week.

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36. Mrs R complained to the Council in June 2019. She said Ms C could not afford to pay for the respite care as she continued to pay bills she incurred for her care at home when she was there. She said Ms C was being charged twice.
37. A manager, Officer O, responded in August 2019 saying the Council would not waive respite charges as they were in line with the Council's policy. She said:
- a) Ms C did not contribute anything towards her direct payments. Therefore, she was not being charged twice. She could continue to fund the carers who travelled with her when at respite out of her direct payments; and
  - b) Staff at the respite facility were able to meet Ms C's care needs so there was no need for her carers to travel with her to the respite facility.
38. Mrs C disputed the stage one decision. She said:
- a) The respite facility could not provide all the care Ms C provided; and
  - b) The fact that Ms C did not contribute to the direct payments showed that she could not afford to pay towards her respite care either.
39. Officer O provided the stage 2 response too. She dismissed the complaint saying:
- a) After talking to officers concerned, she was satisfied the respite facility could provide the care; and
  - b) Different criteria were used to assess residential and non-residential care and therefore, there was no inconsistency of approach in the Council charging a contribution towards respite care but not towards direct payments.
40. Mrs R complained to the Ombudsman.
41. In August 2019, the Council reviewed Ms C's care package. In it, it was stated, at p.18 '*[Ms C] also accesses 2:1 support during respite breaks and attends [a] day service during this period when they are open*'.

### **Was there fault causing injustice?**

42. Mrs R complained to the Ombudsman about Officer O's second complaint response in September 2019. I have therefore considered her complaint using the two points set out in paragraph 40 above. These are:

#### **Respite faculty able to provide all care**

43. The Council has stated that the respite care facility is able to provide all the care that Ms C requires. Generally, the Ombudsman does not find fault with decisions made by professional officers in possession of the facts as to how a council provides care specified in the care plan. Further, case law is clear that councils can provide care in any way they see fit providing they meet the assessed needs.
44. However, in this case, it is stated explicitly that Ms C visits the day care service during respite. It then sought to withdraw that provision without a review.
45. Mrs R complained in 2018 that Ms C required her full-time carers with her every day at respite and incurred expenses in going out while there. She has stated that these are necessary because they help Ms C with exercise and other functions which have been set out as necessary by medical staff.
46. The Council should have reviewed the care package before deciding that the care home could provide all necessary care. This was fault.
47. Mrs R says the respite facility has, since she made her complaint, told her that it cannot, in fact, provide the care Ms C requires internally. If that is the case, and

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Ms C does need to leave the respite facility, then this must be resolved during a further review of her needs and care.

**Requirement to pay contribution towards respite care**

48. The Council is entitled to charge for respite care. The Care and Support Statutory Guidance is clear that it can charge for respite care as it would for different sorts of care.

**COVID 19**

49. These events took place before the Covid19 emergency. Mrs C had already dispensed with the services of the full-time carers because of a safeguarding incident before the lockdown. The respite care facility is no longer open because of potential risk. Ms C is in a high-risk category because she has a breathing disorder. The Council says it is looking to find some suitable care for Ms C.

**Draft decision**

50. Having considered the information gathered, I have reached a decision that the Council was not at fault. I have closed my investigation.

**Investigator's decision on behalf of the Ombudsman**

## **The Ombudsman's final decision**

Summary: Miss X complained about the Council's refusal to cut back vegetation and trees on the highway boundary with her property. The Ombudsman should not investigate this complaint. This is because there is insufficient evidence of fault by the Council which would warrant an investigation. Only the courts can determine private property boundaries.

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## **The complaint**

1. The complainant, whom I shall call Miss X, complained about the Council refusing to accept responsibility for maintaining trees and vegetation on her boundary with the public highway. She says an officer originally told her the Council would cut back the growth, but his advice was later overruled. She says her home is suffering from the loss of light and her fence has been damaged by branches.

## **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'. We provide a free service but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
  - it is unlikely we would find fault, or
  - it is unlikely we could add to any previous investigation by the Council
  - there is another body better placed to consider this complaint.

*(Local Government Act 1974, section 24A(6), as amended)*

## **How I considered this complaint**

3. I have considered all the information which Miss X submitted with her complaint. Miss X has been given an opportunity to comment on a draft copy of my decision.

## **What I found**

4. Miss X lives next to a highway verge which has trees and shrubs planted on the boundary with her property. She says the trees are overgrown and blocking light from her garden. The shrubs and vegetation have caused damaged to her grass and fencing.

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5. Miss X reported the problem to the Council and an officer originally told her that the Council would cut back the growth because it was within the highway boundary. Subsequently a more senior officer decided that the trees and vegetation were not highway responsibility because they were on the other side of a dividing ditch.
  6. The Council says this is often due to developers leaving a gap between completed property boundaries and the highway edge. The Council says it cannot use public resources to maintain private land unless the vegetation is affecting public highway users.
  7. The Ombudsman has no authority to determine property boundaries and we cannot resolve the dispute between Miss X and the highway authority. Only the courts could resolve a boundary dispute between landowners.

### **Final decision**

8. The Ombudsman should not investigate this complaint. This is because there is insufficient evidence of fault by the Council which would warrant an investigation. Only the courts can determine private property boundaries.

### **Investigator's decision on behalf of the Ombudsman**

## **The Ombudsman's final decision**

Summary: Mr X complains about the Council's response as a statutory consultee on 2 planning applications. The Ombudsman will not investigate this complaint because the injustice is speculative as the planning applications have been refused.

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## **The complaint**

1. The complainant, whom I shall refer to as Mr X, says the Council failed to consider all information before giving what he alleges is a flawed view on 2 planning applications. He says it has failed to raise proper road safety issues.

## **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'. We provide a free service but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
  - the fault has not caused injustice to the person who complained, or
  - the injustice is not significant enough to justify our involvement

*(Local Government Act 1974, section 24A (6), as amended)*

## **How I considered this complaint**

3. I considered the information provided by Mr X, the Council's responses to his complaint and the planning information on the Local Planning Authority website.
4. Mr X commented on the draft version of this decision.

## **What I found**

5. Mr X complains about the Council's response as statutory consultee on 2 planning applications. He says:
  - the Council failed to consider resident's views
  - failed to make independent observations of road conditions
  - failed to have a reasonable standard of duty of care

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- relied on flawed data
  - failed to provide data requested to support assertions of limited/normal danger to school children
  - held a presumption in favour of development rather than protecting residents from road deaths
6. Both planning applications commented on by the Council have been refused by the Local Planning Authority.
  7. I understand Mr X says the Council should correct its omissions and errors and give evidence-based advice on the expected re-application by the developer. However, no new application has been submitted therefore any injustice claimed by Mr X is speculative and insufficient to warrant investigation. Mr X may make a complaint to this office he is satisfied with the Council's comments on any future planning application which are granted permission.

### **Final decision**

8. I will not investigate this complaint because the injustice is insufficient to warrant investigation.

### **Investigator's decision on behalf of the Ombudsman**



## **The Ombudsman's final decision**

Summary: The Ombudsman will not investigate this complaint about the Council's actions in issuing an Education Health and Care Plan for Miss X's son. This is because these matters are not separable from the content of the Plan, which Miss X appealed to the Special Educational Needs and Disability Tribunal.

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## **The complaint**

1. Miss X complains the Council sought to prevent her son getting the right special educational needs provision in the right setting when it issued an Education Health and Care (EHC) Plan for him.

## **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. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
4. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)

## **How I considered this complaint**

5. I read Miss X's complaint and checked the Council's final response to it. I have given Miss X the opportunity to respond to a draft of this decision.

## **What I found**

6. Miss X was unhappy with the Council's actions in issuing an EHC Plan for her son. She says it sought to avoid him getting SEN provision he needed. She appealed the content of the Plan to the SEND Tribunal.

## **Final decision**

7. The Ombudsman will not investigate this complaint. This is because the matters complained of are not separable from the content of the EHC Plan, about which Miss X has exercised her right of appeal to the SEND Tribunal.

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## **Investigator's decision on behalf of the Ombudsman**