

The Ombudsman's final decision

Summary: The Ombudsman will not investigate whether an Education Health and Care Plan meets Mrs X's child's needs as a Tribunal is deciding this. We will not investigate the alleged Council fault before the Tribunal appeal, as it is not possible to find out what has been missed until the Tribunal decision is known.

The complaint

1. The complainant, whom I shall call Mrs X, says the Council failed to provide her child with their education as set out in their Education Health and Care Plan (EHC Plan). Mrs X also says it delayed in amending an EHC Plan following an annual review.

The Ombudsman's role and powers

2. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
3. We cannot investigate a complaint if someone has appealed to a tribunal. (*Local Government Act 1974, section 26(6)(a), as amended*)
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'. We provide a free service, but must use public money carefully. 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*)

How I considered this complaint

5. I considered the information Mrs X provided with her complaint and the Council's replies which it provided. I considered Mrs X's comments on this draft version of this decision.

What I found

Background

6. Mrs X has a child, D, who has special educational needs. 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.

7. D has an EHC Plan. In March 2018, the Council carried out its annual review of D's EHC Plan. D was due to move educational setting in September 2018 to move to the next stage of their education.
8. The Council is responsible for putting in place the arrangements named in the EHC plan. We can look at complaints about this, such as where support set out in the EHC plan has not been provided, or where there have been delays in the process.
9. Mrs X says the Council unreasonably delayed in amending D's EHC Plan following the annual review. The Council sent Mrs X the final version in December 2018. Mrs X says meanwhile D has not received a satisfactory education. Mrs X has appealed the EHC Plan wording to the Tribunal.
10. The Council accepts it delayed. It says it took steps to provide the education D needs.

Analysis

11. We cannot investigate whether the EHC Plan is worded in a way which should meet D's needs. This is because the Tribunal is considering this.
12. It is not practical at this time, to investigate the delays before the Council issued the EHC Plan in December. This is because it is not possible to work out the injustice to D, the education they did not receive, until we know what they should have received. We will not know this until the Tribunal has decided what the EHC Plan should say.

Final decision

13. The Ombudsman will not investigate this complaint. This is because we cannot investigate whether the EHC Plan is worded adequately. The Tribunal is considering this. It is not possible to know the injustice to D caused by any Council fault until the Tribunal's decision is known.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about a safeguarding investigation carried out by the Council. This is because we could not add to its review of the investigation, and could not achieve the outcome the complainant wants.

The complaint

1. The complainant, who I refer to here as Mr T, says that
 - His father was not properly cared for in his care home and was unfairly served with an eviction notice;
 - Mr T was unjustly banned from the care home;
 - The care home unfairly raised the fees for Mr T's father;
 - The care home did not investigate the Mr T's complaints properly;
 - The Council has not investigated properly Mr T's safeguarding concerns regarding his mother's death and a fall suffered by his father at the care home; and
 - The Council has not investigated his complaints properly.

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 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)
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'. 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, or

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- we cannot achieve the outcome someone wants.
(*Local Government Act 1974, section 24A(6), as amended*)

How I considered this complaint

5. I considered the information provided by Mr T and by the Council. I also considered information provided by Mr T in respect of a related complaint against the Care Provider. I have sent Mr T a draft decision for his comments.

What I found

6. Mr T's parents were placed in a new Care Home in early 2017. His mother, sadly, passed away soon after this, and Mr T raised a safeguarding concern to the Council regarding the Care Home's actions in the period before she was taken to hospital.
7. Over the following months Mr T raised several complaints against the Care Home. They were not upheld, but he was unhappy with the responses.
8. In July 2017 the Care Home served notice on Mr T's father, stating that Mr T appeared to have no trust in the Care Home. Mr T appealed the decision. He also complained about a decision by the Care Home to ban him from its premises.
9. Further complaints were made by Mr T about the level of fees charged, but they were not upheld. He additionally raised further safeguarding concerns to the Council in respect of his father.
10. Eventually, Mr T's father left the Care Home in December 2017.
11. Mr T remained dissatisfied, and complained to the Council both about the actions of the Care Home, and about the Council's response to his safeguarding concerns.
12. The Council considered the complaint and reviewed the safeguarding investigation, in its response of July 2018.
13. It did look at the complaints about the Care Home's actions and did not uphold them. However it also pointed out that as the care for Mr T's father was privately commissioned and funded (with some NHS funding support), it had no responsibility for the actions of the Care Home, or the response from the Care Provider.
14. The Council also reviewed its own safeguarding investigation. Its findings were that the issues were properly looked at, but that there was no evidence to support the allegations made, and that the documented evidence from the Care Home and the ambulance service did not support the allegations.
15. Mr T has now complained to the Ombudsman, but we will not investigate the complaint. This is for several reasons:
 - There is no fault in the Council's handling of the complaints about the actions of the Care Provider, as it has no responsibility for them.
 - Much of the complaint made relates to the Care Provider's actions, and that has been responded to in a related complaint against the Care Provider.
 - Parts of the complaint also relate to issues dating from 2017. The Ombudsman cannot consider complaints about issues known to the complainant more than 12 months previously, so those are out of our jurisdiction.

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- We could not add anything to the Council's thorough review of the safeguarding investigation;
 - We cannot investigate general issues such as the Council's relationship with the Care Provider or concerns about other residents, as our role is to consider whether there is specific fault by the Council causing injustice to the individual who complains to us, so we could not achieve Mr T's desired outcome of preventing the Council from placing further residents at the Home.

Final decision

16. I will not investigate this complaint. This is because some of the issues are out of our jurisdiction, and we could not add anything to the Council's response or achieve the outcomes that Mr T is looking for.

Investigator's decision on behalf of the Ombudsman

The Ombudsmen's decision

Summary: The Ombudsmen will not investigate Mr X's complaint about a best interest decision to discharge his wife to a residential home. The Ombudsmen are unlikely to be able to add to previous investigations by Nottinghamshire County Council and Nottinghamshire Healthcare NHS Foundation Trust.

The complaint

1. Mr X complains that Nottinghamshire County Council (the Council) and Nottinghamshire Healthcare NHS Foundation Trust (the Trust) wrongly decided it was in his wife's (Mrs X) best interests to discharge her from hospital to a residential home in February 2017. Mr X said this caused him significant distress, and he would like to make sure similar fault does not happen to others.

The Ombudsmen'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 could achieve a different outcome.

(Local Government Act 1974, section 24(A)(6) as amended, and Health Service Commissioners Act 1993, section 3(2))

How I considered this complaint

3. I considered information Mr X provided in writing and by telephone. This includes documents by the organisations complained about. I have also written to Mr X with my draft decision and considered their comments.

What I found

4. Mrs X suffered with vascular dementia and Mr X cared for her.
5. During an admission at the Trust in February 2017, a social worker completed a mental capacity assessment of Mrs X. The social worker determined Mrs X lacked capacity to decide what care and support she received. The Council and Trust later jointly decided it was in Mrs X's best interests to move to a residential home. Mr X disagreed with the decision, and said she needed one to one care, 24 hours a day, because she was prone to falls.

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6. In March 2017, Mrs X moved to the residential home.
 7. In May 2017, Mr X agreed with the social worker his wife should stay at the residential home.
 8. In August 2017, Mrs X fell and broke her hip. She also later had a seizure.
 9. Mrs X died in July 2018.
 10. In response to Mr X's complaints:
 - The Council said it considered many options for Mrs X during the best interest decision making process and considered Mr X's views. However, it should also have completed a risk assessment to see if Mrs X could have coped at home. The social worker would learn from this. The Council also agreed Mrs X needed one to one care, 24 hours a day, which the residential home provided.
 - The Trust said it supported the social worker to make the best interest decision for Mrs X.
 11. Mr X said the decision to discharge his wife to the residential home in her best interests was distressing for him. That decision, if it was taken with or without fault, would have always been distressing for Mr X.
 12. I do not believe further investigation could add to anything to address Mr X's distress. The social worker has demonstrated learning from not carrying out a risk assessment to see if Mrs X could have coped at home.
 13. The Ombudsmen must consider what material difference we can achieve by using public money to investigate. In this case it is unlikely further investigation would achieve more for Mr X.

Final decision

14. I consider the Ombudsmen should not investigate this complaint. I do not consider further investigation of these issues by the Ombudsmen would achieve more for Mr X.

Investigator's decision on behalf of the Ombudsmen

The Ombudsman's final decision

Summary: Mr B complained about the Council's refusal to renew his 'Blue Badge'. The Council, after obtaining more information has changed its decision and renewed the badge.

The complaint

1. Mr B complained that Nottinghamshire County Council (the Council) refused without good reason to renew his 'Blue Badge'.

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 the complainant, and the Council. I have written to Mr B and the Council with my draft decision and considered their comments.

What I found

5. Mr B had been in receipt of a 'Blue Badge' for a number of years. In January 2019 he applied, via a Government website, to renew it. He said he experienced excessive pain on waling and could only walk for a few minutes.
6. In February 2019 the Council refused his application on the grounds that he did not meet the eligibility criteria because his mobility problems were not severe enough.
7. He requested a review and detailed his medical conditions along with the impact on his daily life including walking. In March 2019 the Council refused to review its decision as it said Mr B had not provided any new information.

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8. Mr B then complained to us. Following notification of the complaint, the Council, in April 2019, offered Mr B a mobility assessment. It also telephoned Mr B's daughter and obtained more information about Mr B's disabilities. On the basis of this, it changed its decision and renewed Mr B's 'Blue Badge', which it sent to him on 9 May 2019. It said it made the original decision due to deficiencies with the information requested on the government website.
 9. I asked Mr B if he wished to pursue his complaint in the light of the new decision, but did not receive a reply.

Analysis

10. The Council's initial decision letter was very brief and failed to properly explain why the application had been refused. This made it difficult for Mr B to understand the decision and to know what information to provide to enable the Council to renew it. Following notification from us it promptly made efforts to obtain more accurate information and renewed the badge.
11. Given the lack of response to us I assume Mr B is satisfied with the outcome.

Final decision

12. I have completed my investigation as the Council's actions have resolved the complaint.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint about the Council's child protection team's choice of words to describe a safeguarding allegation. It is unlikely our investigation would find he had been caused any significant injustice by this.

The complaint

1. The complainant, whom I shall call Mr X, says the Council recorded an allegation against him inaccurately then took unnecessary action.

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
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify the cost of our involvement, or
 - 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*)
3. 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*)

How I considered this complaint

4. I considered the information Mr X provided with his complaint which included the Council's replies which it provided. I considered Mr X's comments on a draft version of this decision.

What I found

Background information

5. A child alleged Mr X had touched them in such a way that it made them feel uncomfortable. The child told their mother who reported it to the Council's children services team. A Council officer spoke to the education setting where Mr X works. Mr X says the Council officer then wrongly recorded the allegation. He says the officer referred to a specific part of the body rather than a general area.
6. Mr X believes that if the officer had recorded it as a general area, and not a specific part, the Council's following action would have been different.
7. The Council had a strategy meeting and decided to carry out a child safeguarding investigation. It also notified the Council in which Mr X lives and recommended it carry out a safeguarding investigation on his child.
8. The Council's investigation concluded with no further action and a decision of 'unfounded allegation'.
9. Mr X says there would have been no safeguarding investigation if the Council had recorded the area touched more accurately. He is concerned his future employment prospects might be affected. He believes it is wrong his home Council conducted a safeguarding investigation on his child.
10. The Council says if its officer had recorded the allegation as Mr X says it should have, it would have made no difference to its actions. It invited Mr X to set out the corrections he would like to the records for it to consider within its information complaints process.

Analysis

11. It is unlikely our investigation would say the alleged injustice caused to Mr X, the safeguarding investigation, has been directly and solely caused by the Council's use of words.
12. The Council is clear changing the words would not have made a difference.
13. Mr X says the Council should have given more consideration to the context in which the events took place. Given the allegation, it is unlikely we would conclude the Council should not have considered it properly. To consider the context, it is likely the Council would call a strategy meeting. And to consider the context fully a safeguarding investigation.
14. While Mr X may disagree with this, we will not investigate Council decisions just because a person disagrees with them.
15. The Council recently proposed a process to enable Mr X's comments to sit with the records he disputes. It is unlikely our investigation could achieve more on this part of his complaint.
16. It was not this Council's decision to conduct a safeguarding investigation into Mr X's child's situation.
17. This Council is not involved in the provision of Mr X's references should he change employers.

Final decision

18. The Ombudsman will not investigate this complaint. This is because it is unlikely we would find that he has been caused any injustice by the Council's choice of words.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Council was at fault when it carried out a transfer review to convert Mr Y's SEN statement to an Education, Health and Care Plan. The significant delay, and poor communication with Mrs X, Mr Y's mother, caused injustice. The Council has accepted our recommendations for a financial remedy and a review of procedures.

The complaint

1. Mrs X made this complaint in her own right, and on behalf of her son, Mr Y, who is now 18. Mr Y has complex special educational needs associated with autism and severe learning difficulties. He relies on others to manage every aspect of his daily life. He lacks capacity to make a complaint himself. Mrs X, his mother and carer, is a suitable person to make the complaint on his behalf.
2. In broad terms, the complaint is about the way the Council managed the process for amending and maintaining Mr Y's statement of special educational needs (SEN statement), annual reviews, and the delay in transferring Mr Y from a SEN statement to an Education, Health & Care Plan (EHC Plan). The matters raised in the complaint span August 2014 to March 2018.

What I have investigated

3. I have investigated Mrs X's complaint about the Council's management of Mr Y's transfer review from a SEN statement to a final EHC Plan. I decided to exercise discretion to investigate what happened between January 2017 and March 2018 to examine the entire transfer review period.
4. Mrs X complained about some matters that happened some years before we received their complaint in September 2018. I did not investigate those parts of the complaint for the reasons given in paragraph 103.

The Ombudsman's role and powers

5. We may investigate complaints from a person who is directly affected by the matter in the complaint. If the person who is affected does not have capacity to authorise someone to act on his or her behalf, we may investigate a complaint from a personal representative or someone we consider suitable to represent the person affected. (*section 26A or 34C, Local Government Act 1974*)
6. 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*)

7. We cannot investigate late complaints unless we decide there are good reasons to do so. A complaint is late 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*)
8. 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

9. I have spoken to Mrs X and considered all the correspondence and documents she sent to us.
10. I considered the Council's response to my enquiries. This includes the relevant case notes, key documents and correspondence with Mrs X and other parties about the transfer review.
11. I have written to Mrs X and the Council with my draft decision and considered their comments.
12. Under our information sharing agreement, we will share the final decision on this complaint with the Office for Standards in Education, Children's Services and Skills (OFSTED).

What I found

The relevant law and statutory guidance

Special educational needs and disability code of practice: 0 to 25 years

13. When considered necessary, a council will arrange education for a child or young person who has special educational needs (SEN) under an EHC Plan up to the age of 25. The Plan specifies the nature of the learning difficulty, provisions, outcomes and a named placement. Statutory guidance on EHC planning and assessment is provided in ‘Special educational needs and disability code of practice: 0 to 25 years January 2015’ (“the Code”).
14. Paragraph 9.77 of the Code says the authority must give the parents at least 15 days to make comments on the draft EHC Plan. It continues:

*“During this period, the local authority **must** make its officers available for a meeting with the child's parent or the young person on request if they wish to discuss the content of the draft EHC Plan.”*

Statutory guidance on converting SEN statements into EHC Plans

15. From September 2014 councils were under a duty to convert existing statements of SEN to EHC Plans. The process by which statements were transferred to an EHC Plan is called a transfer review.
16. All children and young people with existing SEN statements had to be transferred to an EHC Plan by 1 April 2018. Each council had to publish its local transition timetable for completing reviews for children and young people at different key stages and phases of education.

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17. The government published statutory guidance for councils on converting statements into EHC Plans. The statutory guidance in force at the time of the events in this complaint was *'Transition to the new 0 to 25 special educational needs and disability system: statutory guidance for local authorities and organisations providing services to children and young people with SEN August 2014' (Transition)*. This version of the statutory guidance is referred to in the paragraphs below.
 18. Paragraph 6.5 of Transition says that "as part of the transfer review local authorities must ensure that the child's parents or the young person are invited to a meeting". Paragraph 6.5 of Transition says that "at least two weeks' notice of the date of the meeting must be given". Paragraph 6.5 of Transition says that "in the case of a child or young person attending a school, the local authority can require the head teacher to arrange and hold that meeting". Paragraph 6.1 emphasises that the authority and the parents should work together during the assessment process.
 19. Paragraph 6.6 of Transition suggests two frameworks for the transfer review meeting. One is a meeting similar in structure and purpose to the Annual Review meeting under the former SEN system, a meeting "to which a range of relevant professionals are invited to consider the progress of the child or young person and the future provision required". The other framework is a meeting *"between the local authority and the child's parents or young person to discuss the draft EHC plan"*. Paragraph 6.6 of Transition suggests that the Council has overall responsibility for planning the meeting whichever format it takes: *"The precise purpose of the meeting will vary depending on the point during the transfer review that the meeting takes place. It is for local authorities to determine who should attend the meeting to ensure it achieves its purpose."*
 20. Paragraph 6.3 of Transition says that a transfer review *"will require them [the local authority] to undertake an EHC needs assessment under section 36 of the Children and Families Act 2014."* This involves consideration of existing advice and assessments and commissioning new assessments where necessary. Paragraph 6.7 suggests that when deciding whether a fresh assessment is necessary, the Council must consider how recently the existing advice is and must consult with parents and young people. Paragraph 6.7 of Transition says that *"the local authority must not seek any advice required for an EHC needs assessment if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child's parents or the young person are satisfied that it is sufficient for the purposes of an EHC needs assessment."* Paragraph 6.7 of Transition says that *"additional assessments can be conducted where needed"*.
 21. The statutory timescale to complete an assessment for an EHCP is a maximum of 20 weeks. Paragraph 6.1 of Transition says:

"the process of EHC assessment and EHC plan development must be carried out in a timely manner".

Other than in exceptional circumstances, which do not apply in this case, the Council must complete a transfer review within 18 weeks of notifying the parent or young person. The transfer review ends when the Council issues the final EHC Plan.

The Ombudsman's Focus Reports

22. The Ombudsman published Focus Reports on SEN in 2014 and 2017. In both reports we found delay was a common feature in the SEN complaints we investigate. We said councils should ensure they complete assessments within the statutory timescales.
23. The Council's Integrated Children's Disability service (ICDS) brings together services including the Special Educational Needs and Disability Assessment and Commissioning teams.
24. ICDS coordinates the statutory assessment process for EHC Plans for children and young people up to the age of 25 years and, where appropriate, their placement in specialist provision.

The background to this complaint

25. Mr Y lives at home with his parents and sibling. He is now a young adult. He has social, communication and learning difficulties associated with autistic spectrum disorder. He has Sensory Modulation Disorder – a condition which means he may over or under react to sensory and environmental stimuli. He has epilepsy, anxiety and obsessive compulsive disorder.
26. Since October 2008 Mr Y has attended a specialist non-maintained school for students with autism aged between 3 and 19. Mr Y has had a statement of SEN since he was six.

The transfer review for Mr Y

27. Mr Y was 16 years old, and in Year 12, when the transfer review started.
28. The school originally scheduled a transfer review meeting for 12 October 2016. Mrs X contacted the Council's SEN officer on 2 October 2016 to request more information about the transfer review process. The meeting was postponed at Mr & Mrs X's request because they did not get sufficient notice of the transfer review and did not have time to prepare properly. They asked the Council to restart the process, send them information and give them a minimum of 8 weeks' notice.
29. Mrs X asked for a worker from the Transitions team to be involved in the review. An officer informed Mrs X a Transitions worker would not be involved until shortly before Mr Y's 17th birthday. He advised her to speak to the Children's Short Breaks service about a request for increased respite care for Mr Y.
30. On 22 January 2017 Mr & Mrs X completed a form setting out their views, as Mr Y's parents, in advance of the transfer review meeting. They emphasised the importance of finalising a transition plan for Mr Y to move to a specialist college now that he was 16. They wanted the EHC plan to include all the provision in Mr Y's existing statement of SEN and the following additional provision:
 - **Education:** An Occupational Therapy plan for physical activity and an appropriate exercise plan;
 - A new communication programme for speech and language therapy;
 - A new assessment by an Educational Psychologist to develop a new plan, in conjunction with school staff and parents, to review Mr Y's learning style and needs and to devise a programme of interventions to help manage some of his behaviours;
 - **Health:** strategies to help manage his constipation, control his weight, reduce his anxiety to help improve his sleep and to keep him safe when he has epileptic seizures;

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- **Social Care:** An increase in Direct Payments to:
 - double the overnight respite care at home from 13 to 26 nights per year;
 - continue the 5 hours of 2:1 support Mr Y received from personal assistants during term-time and provide an extra 360 hours of 2:1 support per year to enable Mr Y to get more access to the community during school holidays.
31. The school later gave the Council notice that Mr Y's transfer review would take place on 6 February 2017. The Reviewing Officer from ICDS confirmed she would attend. The school later rearranged the meeting to 24 February 2017.
32. In its report for the transfer review, the school noted the following significant changes in Mr Y's needs since the last annual review:
- The need to update his Occupational Therapy programme;
 - The need to continue Mr Y's weekly access to the community with the appropriate level of staff support;
 - Support to manage some anti-social behaviour.
33. Following the transfer review, the SEN officer made a referral on 7 March to the Occupational Therapy team to ask it to assess Mr Y's needs.
34. On 17 April Mrs X contacted an officer in ICDS to follow up the request she made in the transfer review meeting for:
- Additional overnight support for Mr Y at home;
 - Additional personal assistant support for Mr Y to access the community more during school holidays;
 - Overnight respite at home to enable Mr & Mrs X to take a holiday.
35. On 27 April a manager in the Children's Disability Service contacted Mrs X to apologise for the delay in progressing the request. He explained a new social work assessment would be needed first. He said a social worker would be allocated to carry out the assessment once the referral was passed to the assessment team. He said it could take up to 45 working days to complete this assessment.
36. On 13 June Mrs X sent an email to chase up the draft EHC Plan. She said almost 16 weeks had passed since the transfer review meeting in February. She also noted that, according to the Council's guidance, she should have received the draft Plan by week 11.
37. After Mrs X sent further emails, an officer informed her in late June that she was liaising with the Plan writing team to check progress. In July an independent advice and support service for parents of children and young people with SEN contacted the Council on Mrs X's behalf. The Reviewing Officer in ICDS then contacted the Plan writing team to ask when the draft Plan would be ready.
38. On 18 July a manager in the ICDS assessment team wrote to Mrs X. She said all the papers for Mr Y's transfer review would now be sent to the Council's plan writing agency, to prepare a draft Plan. She said the Council had received an unprecedented increase in requests for EHC Plans since September 2016 which had prevented it from meeting the 20 weeks statutory timescale in some cases. She apologised for the delay and said the team would keep Mrs X informed of progress.

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39. ICDS received the draft Plan from the plan writing agency on 24 July. It wrote to Mr & Mrs X but the content of the letter was identical to the one sent on 18 July.
40. On 2 August a manager in the Children's Disability service informed ICDS that the new social work assessment had identified a need for an increase in Mr Y's overnight and befriending package funded by Direct Payments. He said he had closed Mr Y's case as there was no further role for the Children's Disability service. ICDS would take on responsibility for reviewing the short break provision.

The first draft EHC Plan

41. On 15 August the Council sent the draft EHC Plan to Mr & Mrs X and the school. This was week 24. I shall refer to this as the first draft Plan. The Council asked Mr & Mrs X to send their comments by 29 August.
42. The Plan listed the reports which had been considered:
- Mr & Mrs X's written report from January 2017 and the comments they made in transfer review meeting;
 - A report from Mr Y's class teacher (September 2016) and an undated report from an unnamed member of staff at the school;
 - A report from the case officer in ICDS.
43. The first draft Plan specified the social care provision that would be funded by Direct Payments:
- 416 hours for befriending to support Mr Y at home and in the community to be used flexibly each year;
 - 26 overnight respite breaks per year.
44. Mr & Mrs X did not agree with the draft Plan. The reply slip said parents could ask for an officer to telephone them to discuss the Plan. Mr & Mrs X ticked this box but also asked for a face to face meeting instead to discuss their concerns. ICDS received their comments on 29 August. Some of the key points Mr & Mrs X made were:
- They had not received any of the reports listed in the Appendices to the Plan;
 - They had not seen the school's report;
 - Important medical evidence from Mr Y's paediatrician was not included in the Plan;
 - The Council had not obtained an up to date Occupational Therapy report;
 - The speech and language therapy report from October 2016 was missing;
45. Mr & Mrs X told ICDS they would like to discuss the draft Plan with their independent adviser but she was not available until mid-September. The Council did not reply to Mr & Mrs X's request for a meeting.
46. In mid-October 2017 Mrs X sent her proposed amendments to the draft Plan to ICDS. She made very detailed submissions and identified several errors and omissions in every section of the first draft Plan. I will not itemise them here but summarise some key issues:
- There was a significant under-recording of the number of hours of overnight support and befriending in the social care provision section and the corresponding Direct Payment section – it should be 676 hours per year and 26 overnight respite breaks with 2:1 support;

- Significant omissions from the Appendices – there were no reports from the Occupational Therapy service, paediatrician and speech and language therapists and the core assessment from the Children's Disability Service social worker was missing;
 - The ratio of staff needed to support Mr Y when he accessed the community was missing;
 - There was no Health Action Plan in section G (health provision needed due to learning difficulties or disabilities)
47. In early November 2017 a staff member at Mr Y's school contacted ICDS to ask if the Transitions team were involved. Mr Y's 17th birthday was imminent. She told ICDS Mr Y would remain in education until he was 19. Mrs X was also keen for the Transitions team to get involved and plan Mr Y's transition to adult care services.
48. No further action was taken between mid-October and early January 2018. On 4 January Mrs X contacted Officer A to ask about the progress of the Plan. It seems this contact prompted ICDS to contact Mr Y's school to request a copy of the 2016 speech and language report (and later addendum) and an up to date occupational therapy report. The school sent the SALT reports to ICDS on the same day.
49. On 9 January Officer A apologised to Mrs X for the delay. She said she would send the second draft Plan to her by the end of that week. On the same day, the commissioning team confirmed Mrs X had correctly pointed out a significant error with the social care provision in the draft Plan. Mr Y's package was for 676 hours per year and 26 nights' respite with 2:1 support.

The second draft EHC Plan - 2018

50. On 12 January Officer A sent Mrs X the second draft EHC Plan by email. This was week 46.
51. She acknowledged it was not yet complete because she had not received and considered the Occupational Therapy report. She said she would make any further changes to the Plan later. She asked Mrs X to send comments on the second draft Plan meanwhile.
52. On 14 January the school informed Officer A that Mr Y was educated on a 1:1 basis in school but had 2:1 staff support when he went out in the community.
53. On 15 January ICDS sent Mr & Mrs X a hard copy of the second draft Plan and asked them to send comments by 1 February.
54. On 22 January Mrs X sent the reply slip by email to Officer A. She and Mr X disagreed with the second draft Plan. She sent additional information by post. Mrs X ticked a box on the reply slip which offered parents the option of a meeting with an officer.
55. On 24 January ICDS received Mr & Mrs X's comments. Mr & Mrs X repeated their previous request for a face to face meeting to discuss their concerns about the Plan. Among their concerns, many of which had been raised in their response to the first draft, were:
- They had not seen the reports listed in the Appendices to the Plan;
 - The Occupational Therapy report was still outstanding;
 - The core assessment by social worker was not included;

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- The Plan should state that Mr Y needed a minimum of 1:1 support to meet his SEN but 2:1 is preferable;
 - The Plan should include an assessment by the Transitions team and a transition plan should be put in place to plan for Mr Y's move from his school to a specialist college;
 - The 26 nights for overnight respite at home with 2:1 support had not been included in the section J (Direct Payments) and this provision had not been costed;
 - The 2016 speech and language therapy report and the 2017 addendum were not included in the Appendices;
 - Letters from Mr Y's paediatricians were not in the Appendices and there was still no paediatric report;
56. On the same day Officer A contacted the manager of the Transitions team to ask when a worker would be allocated to Mr Y. The manager asked Officer A to contact Mrs X to get more detailed information about the reasons for the referral. Officer A passed this information on to Mrs X the following day.
57. On 25 January a social worker in the Transitions team contacted Officer A to tell her Mr Y's case had been allocated to him. He would attend Mr Y's annual review on 6 February. He would also carry out an assessment of Mr Y's care and support needs to determine his eligibility for adult social care services.
58. On 26 January Mrs X contacted Officer A to ask her to confirm she had received her comments on the second draft Plan. She also asked her to propose some dates for a meeting. Officer A told Mrs X her manager had told her not to arrange a meeting with them but to make further amendments and issue the final EHC Plan instead. Mr & Mrs X could then appeal to SENDIST if they disagreed with the final Plan.
59. Mrs X asked Officer A why the reply slip had offered the option of a meeting if ICDS had no intention of arranging one. She also asked for details of the manager who had refused her request and for her reasons. Officer A gave Mrs X contact details for Officer B, her manager.
60. On 28 January and 1 February Mrs X sent emails to Officer B expressing her dissatisfaction with the decision not to arrange a meeting and the overall delay in the transfer review process. She said her independent adviser told her she had a right to a meeting. She said the transfer review process had been ongoing for well over a year. She suggested it would be beneficial to have a meeting as this would help to resolve the outstanding issues and get the final Plan issued more quickly.
61. On the same day Mrs X contacted the school to ask it to postpone the annual review due to be held on 6 February. She felt it would not be appropriate to hold the review until there had been more progress with the EHC Plan.
62. Officer B replied on 2 February. She apologised for the delay in the transfer review process for Mr Y. She explained this was due to the significant workload the service was experiencing in converting SEN statements to EHC Plans. She confirmed a parent could request a meeting but this usually happened after the first draft Plan was issued if there were significant concerns about the content. She said a meeting was not offered each time a new draft Plan is issued. She noted the reply form included this option and said it would be amended. After discussing the case with Officer A, she did not consider it was appropriate to

arrange a meeting with Mr & Mrs X at this stage. She said the transfer review meeting is facilitated by the school and this is the usual process for seeking parents' views. She concluded by telling Mrs X that Officer A was still waiting for the Occupational Therapy report. Once she had considered the report, she would contact Mrs X again.

63. Mrs X replied to Officer B on the same day. She expressed concerns about the lack of a two way a meeting dialogue during the transfer review process and the refusal of her request for. She said she had raised significant concerns about omissions and errors in the draft Plans at every stage and she still had significant concerns.
64. On 5 February Officer A contacted the ICDS Assessment team to chase up the outstanding OT report.
65. On 9 February Officer B contacted Mrs X to say Officer A would arrange to meet her within the next two weeks.
66. On 15 February the school sent the final OT and speech and language therapy reports to Mrs X and to Officer A. Mr Y's annual review was rescheduled for 22 March.

The third draft EHC Plan

67. On 21 February ICDS sent the third draft EHC Plan to Mr & Mrs X.
68. Officer A met Mr & Mrs X and Mr Y on 2 March to discuss the third draft Plan. They discussed which section of the Plan should include Mr Y's need for 2:1 support in the community. They also discussed the need to include the Transitions team's involvement in the Plan. They agreed to defer that until September 2018 by which team the Transitions team would have completed its assessment of Mr Y. Some other actions were agreed.
69. On 5 March 2018 Mrs X returned the reply slip setting out her comments on the third Plan. She said she did not agree with the draft Plan in its current form. However, they had been able to reach agreement at the meeting on 2 March about the further amendments needed before issuing the final Plan.

The final EHC Plan

70. Following some further enquiries to Mrs X and the school, ICDS issued Mr Y's final EHC Plan on 8 March 2018. This was week 54. The final Plan was issued a few weeks before the 1 April 2018 deadline for converting all SEN statements to EHC Plans.
71. The final Plan named Mr Y's existing school as the educational placement. It included the correct information about his social care package and the costings used for the Direct Payment. The need for a Health Action Plan was included.

The Council's comments on changes to the service

72. The duty to move children and young people with existing SEN statements to EHC Plans by 1 April 2018 created significant demands on the assessment team and workload pressures. That process is now complete.
73. The Council says an inspection and reviews of the service between 2016 and 2018 led to some significant changes. The local Parents and Carers Forum was involved in this process. The changes include:
 - Updating working protocols;

- Work to update processes for annual reviews in partnership with schools and other statutory agencies involved;
 - Reviewing and updating the Local Offer;
 - Updating published information for parents and young people;
 - Creating posts for dedicated link workers to liaise with independent non-maintained and special schools and carry out termly monitoring;
 - Developing and trialling a digital hub to facilitate and track the EHC process and give parents and young people access to real-time information on the system;
 - Developing a co-production charter and tool kit with support from the local Parent & Carer Forum;
 - Creating extra temporary posts to support the service while these changes are introduced and embedded;
 - Investing in workforce development – this includes supporting all ICDS assessment officers to undertake a recognised SEN case worker qualification.
74. The manager in the Complaints and Information team has offered to meet Mr & Mrs X if they would like to discuss these changes and find out how they can get involved in the local Parents & Carers Forum to shape future service changes.

The Council's handling of Mrs X's complaint

75. Mrs X made a complaint on 25 March 2018, shortly after the Council issued the final EHC Plan. She raised several historic issues about the SEN assessment and statementing process since 2014 and officers' non-attendance at Mr Y's annual reviews over the years. These matters are outside the scope of this investigation.
76. Mrs X also complained about the failure to complete the transfer review process within the statutory timescale and the conduct of officers who were involved.
77. The manager of the EHC assessment team replied on 26 April. She upheld Mrs X's complaint that the Council had not completed the transfer review in time. She apologised for any distress this may have caused. She wrongly stated Mrs X had not asked for a meeting with officers in her response to the first draft EHC Plan. Mrs X was not satisfied with this response and asked for a Stage Two investigation on 29 April.
78. On 2 May the Complaints team contacted Mrs X to ask her to explain in more detail why she was dissatisfied with the Stage Two reply. Mrs X sent a detailed letter on 7 May. The Council acknowledged this on 11 May.
79. The manager of the Complaints team sent holding letters to Mrs X in June. On 14 June she confirmed the complaint would be investigated at Stage Two of the corporate complaints procedure. She apologised for the delay. She said the Chief Executive would reply within 20 working days.
80. On 26 July the Chief Executive replied to Mrs X's Stage 2 complaint. The Chief Executive upheld two parts of Mrs X's complaint. One of the upheld complaints related to the Council's handling of the SEN statementing process and annual reviews during a period not covered in this investigation. The Chief Executive also accepted Mr Y's transfer review had not been completed within the statutory timescale. He also accepted there had been some failings in communication and measures could have been put in place to reduce the delays. He accepted these

failings had caused distress to Mrs X and her family and offered his unreserved apologies. He said he considered the apology was a reasonable and proportionate remedy for the failings he had identified.

81. The Chief Executive said he did not consider it appropriate to offer Mrs X the opportunity to present her complaint to the panel of Councillors at Stage Three of the corporate complaints procedure. He said the Complaints Panel was unlikely to change the Council's position. He said Mrs X could contact the Ombudsman instead and gave her the relevant contact details.
82. Mrs X did ask for a Stage 3 complaints panel. But the Council maintained it was not appropriate to convene a Panel. Mrs X then complained to the Ombudsman.

The impact on Mr & Mrs X and Mr Y

83. Mr & Mrs X was satisfied with the final EHC Plan issued on 8 March 2018 and so she did not appeal to SENDIST.
84. Mrs X says the main impact of the prolonged delay in completing the EHC transfer review, and the issues with communication, has been extra stress and time and trouble for her and her husband. They are parents who are busy caring for an autistic young person with complex and severe needs. Mrs X had to engage in considerable correspondence with ICDS officers to ensure the full range of Mr Y's needs were properly assessed and reflected in the Plan and adequate provision was made. The EHC transfer process took more than 12 months when it should have been completed in 20 weeks.
85. Mr Y remained at the same specialist school after the final EHC Plan was issued. School staff took him out on weekly visits to the community to build up his life skills and independence. The school continued to assess and meet his need for occupational therapy input and speech and language therapy. Mrs X says she wanted clarity in the Plan about 2:1 support for Mr Y in the community to ensure this need was properly recognised and funded. As far as she is aware, the delay in finalising the Plan had no impact on the frequency of Mr Y's visits to the community in the transfer review period.
86. Mrs X says Mr Y was aware that she and her husband were sometimes distracted and anxious during this period as they struggled to get the EHC Plan amended and finalised.
87. Mrs X wants the Council to carry out an in-depth review of the SEN and EHC processes to ensure staff work collaboratively with parents. She wants the Council to retrain staff, arrange a fully independent review of her complaint and recognise that its actions caused them significant stress.

Analysis

Production of the EHC Plan

88. The Council took 54 weeks to issue the final EHC Plan for Mr Y. The statutory time limit was 20 weeks (including the requirement to give parents two weeks' notice of the transfer review meeting).
89. The failure to comply with a statutory timescale was fault. Staff in ICDS were undoubtedly working under severe pressure to complete the conversion of all SEN statements to EHC Plans by the 1 April 2018 deadline. But a delay on this scale is not acceptable.
90. There were missed opportunities to reduce the time it took to complete the transfer review and issue the final EHC Plan in Mr Y's case. If all the relevant

advice and reports from professionals had been requested immediately after the initial transfer review meeting, it would not have been necessary to make so many amendments and issue three draft Plans. Between mid-October 2017 and January 2018 no action was taken to progress the Plan. And, as Mr & Mrs X say, some errors and omissions were repeated in successive versions of the draft Plan even when they had drawn attention to these deficiencies. All this caused further avoidable delay.

91. Mr & Mrs X asked to meet Officer A when they sent their comments on the first draft Plan in August 2017. They clearly expressed significant concerns about the content of the Plan. The Code says the authority **must** meet parents in these circumstances but the Council did not respond. That was fault. If a meeting had been arranged then to discuss the first draft, rather than not until after the third draft was issued, it is likely issues would have been resolved much sooner. The meeting in March 2018 only took place because Mr & Mrs X persisted and made direct contact with Officer B. After that meeting, the outstanding concerns were resolved fairly quickly.
92. The Code says the assessment and production of the EHC Plan should be a collaborative process. Officers should maintain a dialogue with the parents. I do not consider officers adopted this approach in Mr & Mrs X's case. If they had met Mr & Mrs X earlier to discuss the first draft Plan, that would have saved time in the long run. It would also have given Mr & Mrs X greater confidence in the process and reassured them that the assessment team was listening to, and acting on, their legitimate concerns about deficiencies and omissions in the draft Plan.
93. Mr & Mrs X say the delay and lack of communication caused them avoidable distress. They were put to the time and trouble of proposing several amendments to the Plan and pursuing a complaint. Fortunately, in this case, the delay did not have adverse consequences for Mr Y. He remained in the same school after the transfer review was completed. As it was a specialist school catering for children and young people with autism, it continued to meet his SEN and arranged suitable occupational therapy and speech and language provision. The core assessment by the Children's Disability Service led to an increase in Mr Y's care package and Direct Payments. This was put in place before the final Plan was issued.

Complaint-handling

94. It took three months to complete the Stage Two investigation of Mrs X's complaint. The Council says it had to first check that none of the issues should be considered under the separate statutory procedure for children's social care complaints. It also had to consider the time limits for investigating historic events. However, the complaints procedure says a Stage Two investigation should be completed within 20 working days, so I consider the delay at this stage was fault.
95. The Council's corporate complaints procedure has three stages. Mrs X asked to take the complaint to the third stage but the Council decided not to arrange a Complaints Panel hearing. In practice, the Complaints Panel of Councillors has not met for many years. Mrs X believes the Council was deliberately trying to block her complaint and denying her the opportunity for an independent investigation. The Council says that was not its intention. It knew the Complaints Panel would not re-investigate the complaint and provide the independent investigation Mr & Mrs X wanted. It considered an early referral of the complaint

to the Ombudsman would be more appropriate and the Ombudsman was better placed to investigate Mrs X's concerns.

96. The Council is free to design its corporate complaints procedure and to decide how many stages it should have. But the Council's corporate complaints procedure says the final stage is a Stage 3 Review Panel. It does not explain that there is a filter mechanism because officers have discretion about whether to refer a complaint to the final Review Panel stage. And, in practice, no Stage 3 Review Panels have been convened for several years. The current complaints procedure should be reviewed because it does not accurately reflect the Council's practice in handling complaints. That is fault.
97. Although this was fault, the Council's decision not to convene a Stage Three Complaints Panel did not cause Mrs X any significant injustice. The Ombudsman has now carried out the independent and impartial investigation she wanted. We examined the relevant evidence from Mr Y's case records. The Council's Complaints Panel would not have conducted this type of investigation. And if the complaint had gone to the Complaints Panel, that would have added to the delay in it reaching us.

Agreed action

98. The Chief Executive apologised to Mrs X when he replied to her Stage Two complaint. For this reason, I have not recommended a further apology. But I do not share the Council's view that an apology alone is a sufficient remedy for the injustice caused by its faults.
99. Within one month of my final decision the Council will pay Mrs X £500 to recognise the significant distress caused by its delay in completing Mr Y's transfer review, and the failure of staff to engage and communicate with her and Mr X properly in that period. It will pay a further £150 to recognise the delay in handling the Stage Two complaint and their time and trouble in pursuing it.
100. Within three months the Council will:
- (If this issue was not dealt with in earlier reviews) consider the way the assessment team in ICDS responds to parental requests for meetings with officers during the EHC process (other than the transfer review meeting) and seek views from the Parent & Carer Forum.
101. Within six months the Council will:
- review its corporate complaints procedure to ensure it reflects current practice in handling complaints and the element of discretion in deciding whether to make a referral to the Complaints Review Panel. Following that review, make any necessary changes to the complaints procedure and ensure it is publicly available on the Council's website.

Final decision

102. I have completed the investigation and found fault causing injustice to Mrs X.

Parts of the complaint that I did not investigate

103. I did not investigate the Council's actions in maintaining and amending Mr Y's SEN statement, and officers' attendance at annual reviews, between 2014 and

January 2017. These events happened too long ago for the Ombudsman to investigate them now.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint about the Council's decision not to provide his children with free transport to school. This is because there is not enough evidence of fault in how the Council has reached its decision and so we cannot question its merits.

The complaint

1. The complainant, whom I shall call Mr X, complains about the Council's decision not to provide his children with free transport to 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'. 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. (*Local Government Act 1974, section 24A(6), 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. I considered Mr X's complaint to the Ombudsman and the information he provided. I also 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 asked the Council to provide his children with free transport to school. He explained he had recently moved them to a different school due to bullying. The Council refused his application on the basis there were closer schools to home with spaces.
6. Councils must apply their transport policy when deciding entitlement to transport assistance. But they also have the discretion to consider exceptional circumstances, and they must have a review or appeal process by which to do so.

Mr X appealed against the Council's decision and provided information in support of his appeal.

7. A senior officer refused Mr X's appeal at the first stage of the Council's appeals process. They decided his application had been properly assessed and the extra information he had provided did not warrant an exception to the Council's transport policy.
8. An independent appeal panel considered Mr X's appeal at the second stage of the process. Mr X could not attend the appeal due to other commitments. The Panel considered information from the Council's transport policy and information from Mr X. This included information from his children's previous school. The Panel decided the Council had properly applied its policy. It decided there was no automatic entitlement to transport assistance, and there were no exceptional circumstances meaning transport should be granted.
9. The Ombudsman is not an appeal body and we cannot criticise a decision which is properly made, or intervene to substitute an alternative view. The Council has applied its transport policy and there is no indication of fault in the way it did so. Appeal panels are entitled to make their own judgements on the information before them. Based on the evidence available, it is unlikely an investigation would find fault with the way the Council has acted.

Final decision

10. The Ombudsman will not investigate Mr X's complaint. This is because it is unlikely an investigation would find fault with the Council.

Investigator's decision on behalf of the Ombudsman