

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

**Investigation into a complaint against  
London Borough of Croydon  
(reference number: 16 006 391)**

**4 July 2017**

## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

# Investigation into complaint number 16 006 391 against London Borough of Croydon

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

## Key to names used

Miss X is the complainant and is also representing her grandson B.

## Report summary

### Adult care services – transition from child to adult

Miss X complains the Council has failed to ensure continuity of care through the transition from Children's Services to Adult Services for her grandson B.

Miss X says the Council's failure to provide suitable respite care and the delayed transition process has caused her considerable anxiety and uncertainty. She also refers to unnecessary effort to get information and action from the Council, which she describes as being 'debilitated by frustration'. She says it has also caused B extreme distress from a lack of planning and provision of routine, necessary because of his complex and specific conditions of Autism and Fragile X Syndrome. This has also resulted in her becoming exhausted by the lack of respite from caring for B throughout school holidays.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice we recommend the Council:

- apologises to Miss X and B for its failure to start transition planning from 2011 (school Year 9) and for the resultant delays in providing suitable assessments and plans for B's move into adult life;
- apologises to Miss X for the related failure to properly assess her carer's needs within the transition process;
- apologises to Miss X and B for failing to provide suitable alternative respite provision from February 2015 and for the considerable adverse impacts this has had on B and Miss X;
- apologises for failing to ensure the annual discretionary holiday payment was paid in a timely way, causing Miss X additional and unnecessary anxiety;
- apologises for failing to complete the Transfer process under the 2014 Special Educational Needs (SEN) Regulations within the statutory timescales;
- pays Miss X and B each £5,000 in recognition of the harm caused to each of them by the lack of suitable respite for two years; and
- pays Miss X a further £1,250 to recognise the distress caused to her from having to pursue these matters over two years without a suitable resolution and for the impact of the delay of the Transfer process.

These actions should all be completed within one month of our report.

- completes the Transition Assessment for B and prepares a Transition Plan within two months of our report. This should take full account of B's wishes, feelings and aspirations (through an independent advocate if necessary) and be with Miss X's full involvement and co-operation.
- If the Transition Plan retains the discretionary annual holiday payment or provides an equivalent payment, the Council should ensure this is paid in time to allow Miss X to plan holidays with her family.
- If the Council has not yet done so it should issue B's Final Education Health and Care Plan (EHCP), as soon as possible, to provide B and Miss X with certainty about its provisions and, if needed, a right of appeal to the Tribunal.
- We recommend the Council urgently reviews its Transition to Adulthood policies and procedures. The review should look at embedding the requirement for transition work to start in the school Year 9 for all children with assessed care needs. It should link fully into the statutory SEN Education Health and Care (EHC) plan process set out in the 2014 Regulations, where social care forms a defined element of the plan.
- We recommend the Council drafts a new Transition policy document that sets out to service users what they can expect. It should also provide Council staff with clear timelines and procedures to follow. The policy should require officers to evidence the basis for deciding when they consider it is 'of benefit' to the young person to start the Transition Assessment. It should also include details of monitoring to ensure the delays experienced in this case do not happen in future.
- The Council should provide us and Miss X with a timetable for this work within one month (which should be concluded within six months of this report). It should provide updates at two monthly intervals until it is completed, and a copy of the final policy documents.

The Council has accepted our recommendations.

## Introduction

1. Miss X complains the Council has failed to ensure continuity of care through the transition from Children's Services to Adult Services for her grandson B.
2. Specifically Miss X says the Council has failed to continue to provide overnight respite care and an annual holiday grant, both established under Children's Services.
3. Miss X also raised concerns about the transition process for B from a Statement of Special Educational Needs to an Education Health and Care Plan.

## Legal and administrative background

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. The law was updated for both adult social care and Special Educational Needs (SEN) in 2014, with the Care Act 2014 and the new SEN Regulations in the same year.
6. However, a consistent thread through the previous legislation and the new is the need for robust processes for the transition between children's and adult support services for children and young people with assessed needs.
7. The Care Act 2014 and the new SEN Regulations 2014 are specific that the transition process should start in school Year 9, when the young person is aged around 14. This provides a reasonable period before the young person reaches 16 or 18 in which to plan and prepare a suitable package of support and help the young person prepare themselves for adult life, including ongoing education if appropriate.
8. The Care and Support Statutory Guidance June 2014 (the Guidance) sets out the process councils should follow to complete a Transition Assessment. The timing of this is left to the discretion of the Council. The Guidance says the assessment should take place when it is most appropriate for the young person and there is 'significant benefit' in doing so. Councils must carry out a transition assessment "*when there is significant benefit to the young person or carer in doing so, and if they are likely to have needs for care or support after turning 18*".
9. In deciding when this may be the Council should take into account the time it may take to carry out an assessment. It should also consider the time it may take to plan and put in place the adult care and support and any relevant family circumstances.
10. Within the assessment the Council must assess "*current needs for care and support and how these impact on wellbeing; whether the child or carer is likely to have needs for care and support after the child becomes 18 and if so, what those needs are likely to be, and which are likely to be eligible needs*".

11. The assessment must include an appraisal of the carer and must form an opinion of their strengths and capabilities to continue caring. The assessment and resulting plans should build on existing information and the Transition Plan should be reviewed regularly.
12. The Council must continue to provide services at 18 to give continuity unless the assessed needs have changed or a new care plan is in place. If needed the Council can and should continue to provide services through its Children's Services.
13. The Council's own policy documents also refer to transition assessments in Year 9, continuity of support and are in line with the statutory guidance.
14. The SEN Transitional arrangements set out when specific groups of children and young people with a statement of SEN should be reviewed and, if agreed, moved onto an Education Health and Care Plan (EHCP). For those with a statement in Year 12 in September 2014, the Regulations say the transition must be completed by April 2018. A Transition Review should take place in the academic year in which the Council proposes to make the transfer.
15. The Guidance 'Transition to the new 0 to 25 special educational needs and disability system' Departmental advice for local authorities and their partners Third edition: September 2015 sets out clear timescales in which the Transfer Process should be completed. The Guidance says that to conclude the process the Council must:
  - send a copy of the finalised EHC plan to the parents of the child or the young person and the governing body, proprietor or principal of any school or other institution named in the plan and the responsible commissioning body for health care provision. (From that point, the statement of SEN is ceased and replaced by the EHC plan); or
  - notify the child's parents or young person of its decision that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan and that it is proposing to cease to maintain the statement of SEN for the child or young person.
16. The Council has a maximum of 18 weeks from the notified start date of the process to issue an EHCP or 14 weeks if it decides not to continue the SEN support.

## How we considered this complaint

17. We produced this report after examining relevant files and documents and interviewing the complainant. We provided a draft decision statement to the Council but were not satisfied by its response.
18. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

## Investigation

## Summary of events

19. Miss X's grandson B is now aged 19. He has complex needs related to specific conditions of Autism and Fragile X Syndrome, which mean he needs routine and consistency. He has related behavioural difficulties and also has epilepsy, which can be life-threatening.
20. Miss X has cared for B since 2004 when his mother, her daughter died unexpectedly.
21. B has had a statement of SEN since 2005. He has attended the same specialist secondary school since 2009 and has progressed to post 16 provision within it.
22. In 2011 Miss X asked the Council to support her caring role by providing respite periods when B could visit extended family members and also for support during the long summer holidays. B had significant behavioural issues when his routines were altered and Miss X was struggling to manage him as he grew older and stronger.
23. The Council agreed a two week respite package in March 2012 while Miss X attended a family wedding overseas.
24. In May 2012 the Council agreed a package of respite for B and Miss X that provided flexible use of three days each month and a seven day holiday break, taken at the school's residential facility.
25. In addition the Council agreed to pay £1,000 toward the cost of a summer holiday with B's extended family.
26. In July 2012 the Council completed a Core Assessment of B and Miss X because she had repeatedly told the Council she was finding it harder to cope with B as he got older and wanted more respite. This did not alter the respite provision.
27. In September 2014 the Council says it started transition work with B, and a Transition Assessment.
28. In December 2014 Miss X had to involve the police when B became violent. Miss X says the Council did not respond to subsequent police and ambulance crew reports which expressed concern about a lack of support for the family.
29. In February 2015, before the half term break, the school told Miss X and the Council it could not now provide B's respite breaks due to lack of capacity at its residential facility; it later said it could not meet B's complex needs. Miss X and B have had no respite provision since that date.
30. Miss X asked the Council in February 2015 to make alternative respite arrangements and complete the Transition Assessment. In June it offered Miss X an alternative respite option but she wanted somewhere that would enable B to continue there after he reached 18, to ensure the routine, stability and continuity that he needed. Miss X says the offer was not based on any proper assessment of B's needs and wishes or consideration of her information on the impact of change on B and her.

31. In May 2015 B had a severe epileptic episode and was hospitalised in Intensive Care. Miss X became emotionally unwell and the hospital would not discharge B into her care. The Council therefore provided B with interim care provision until Miss X was well enough to have B back at home.
32. Miss X complained formally through her Advocate to the Council about its actions in June 2016 and the Council responded in July 2016. Miss X then brought her concerns to us.
33. In discussing her complaint with us Miss X also raised concerns about the transition of B's statement of SEN to an EHCP, which is ongoing.

### **The Council's actions**

34. B was in Year 9 in 2011/12. At that point, both under previous care legislation and SEN Regulations there should have been a Transition review that started the transition process for B's education. As part of that, his care needs should also have been considered.
35. We have not seen any evidence this happened and this is fault.
36. In September 2014, when B was 16 and in Year 12, the Council says it appointed a Transition social worker to work with B and carry out a Transition Assessment. Miss X says she did not see a social worker until early 2015 and was therefore not aware the Transition Assessment may have started in 2014.
37. The Care Act 2014 and related Guidance says the Transition Assessment should take place when the Council consider it a suitable time for the young person. In deciding this it should also take into account the length of time the assessment may take and the time needed to put in place the outcomes and plan.
38. The Council has not yet completed the Transition Assessment; B is now 19. At this point we have not seen a Transition Plan for his future care or support for Miss X, which is fault.
39. While there is no set timescale in the Care Act 2014 or related Guidance for the completion of a Transition Assessment it is reasonable to assume it should be completed in a timely way. There is a recognition this may not be by the time a young person reaches 18.
40. In this case B's respite provision ended unexpectedly in February 2015. Miss X had been telling the Council she was struggling to manage B with respite since 2012 and there had been a specific incident in December 2014 when the police were involved. In addition B suffered a major epileptic incident in May 2015 when Miss X also became ill due to the stress of that event. Therefore the need to complete the Transition Assessment and provide a clear way forward for both B and Miss X was urgent.
41. The Council had a number of changes in social worker for B and has explained to Miss X it had a significant reorganisation of its services in 2016.

42. We accept these will have impacted on the Council's actions. However, it has lost sight of a vulnerable young person and his carer at a critical point in B's life and when Miss X had struggled to fulfil her caring role for many years.
43. The Council has a duty to maintain the provision for a young person through the transition period into adult care services. In this case the respite provider could no longer support B. Miss X was reasonable in wanting an alternative that would allow B to use the respite once he was 18. His specific conditions mean he has a much greater need for routine and continuity. Without considerable planning and preparation he finds changes in routine very difficult and this leads to violent outbursts against Miss X. Miss X has pointed out B has one to one support set out within his statement of SEN and a team who works with him at school. Yet she has been expected to care for B and manage his behaviours alone at all other times.
44. While we appreciate the Council was placed in a difficult position when the respite provider unexpectedly withdrew the provision in February 2015, the Council retained the duty to replace it. Given the strain Miss X was reporting about caring for B, this was an urgent need. While recognising the Council has limited resources, we consider it failed to find suitable alternative respite for B and Miss X and this is fault. This has led to two years in which neither has had that essential respite. Miss X has repeatedly asked the Council to arrange support over the school holiday periods, which are all at least two weeks. She has somehow managed to support B through two long summer holidays and all half term and other holiday periods since February 2015, but at considerable cost to her wellbeing.
45. The Council has offered Miss X a number of options to replace the respite. These have included a supported living placement, outreach care to visit B at home and residential placement. However, Miss X considers these offers did not take account of B's needs or wishes as the Council had not properly assessed them. She says the Council had not taken account of information she provided about the impact of unsuitable provision on B and her.
46. Miss X has turned each of these options down. She did not feel B could manage in supported living. She says B struggles with strangers in the house and then reacts violently towards her when they leave and she did not want the residential option at the time it was offered.
47. All of these are understandable responses from Miss X in the absence of a completed Transition Assessment or Plan in which she has played a full part and each element of which has been discussed with her fully. Her care of B has stretched her to, and she would say beyond, maximum capacity. It was a role she never anticipated but took on as his grandmother, while also dealing with the loss of her own daughter. It is therefore natural that she would find giving up that care difficult even when it is proving so complex and demanding.
48. Miss X has also explained she has had to battle each year for the £1,000 holiday payment. She says the Council has usually paid this *after* each summer holiday it was intended to support. This caused Miss X further considerable uncertainty and worry each year and some financial difficulties. The Council explained to Miss X this was a

discretionary amount under the Chronically Sick and Disabled Persons Act 1970. This places a duty on the Council to provide support, including taking a holiday, where that is an assessed need.

49. The Council has not been able to explain or evidence how it considered this holiday payment each year from 2012 and whether it met the criteria of the Chronically Sick and Disabled Persons Act 1970. There is no Care Plan for B for 2013 yet the Council sought an urgent Care Package review in May 2013 in response to Miss X's requests for the holiday payment that year. There is no evidence this review took place. That is fault.
50. In 2015 the Care Plan refers to the lack of respite for B since February that year. There is no reference to the holiday payment but clear reference to the difficulties Miss X faced caring for B over the summer holiday period.
51. Therefore Miss X has had no clarity about the holiday payment from a clear, annually reviewed Care Plan based on an assessed need. Without that clarity she has, understandably, assumed the payment would be made each year, based on the Council's communication to her in 2012. The Council did not explain the basis for this payment explicitly in its Resource Panel decision letter to her in May 2012 which suggested the holiday payment was part of B's approved support package.
52. The Council has failed to ensure it properly assessed B's need for a family holiday and to then meet any resultant duty under the Chronically Sick and Disabled Persons Act 1970. That is fault. This has caused Miss X unnecessary stress, anxiety and effort to get a clear answer on whether the payment would be made each year.
53. The Council failed to tell Miss X the outcome of the Transfer process under the 2014 SEN Regulations until the end of May 2017.
54. The Council held a Transition Review on 8 November 2016 but did not tell Miss X when the Transition Process formally started. That was fault.
55. The Transition Guidance allows a minimum of two weeks' notice of the start of the process. In the absence of official notification by the Council we have assumed the process started on 22 November 2016, two weeks after the Review.
56. The Council then had a maximum of 14 weeks to tell Miss X it had decided not to continue B's SEN support (by 28 February 2017) or 18 weeks to issue the EHCP (by 28 March 2017).
57. The Council has issued a draft EHCP but not yet a final version That is fault.
58. Miss X has had considerable uncertainty about the outcome of the EHCP process for over two months due to the delays by the Council. That is fault. These delays mean Miss X and B have considerably less time to prepare B for September 2017. This is significant as B needs lengthy transition support to enable him to make any changes.

## Conclusions

59. We find fault in the Council's failure to complete the Transition Assessment which has caused Miss X and B the injustice of a lack of clear planning and preparation for B's move into adult life.
60. We find fault in the Council's failure to provide suitable alternative respite provision from February 2015 to date. Miss X and B have lost two years worth of 43 days flexible respite and a seven day holiday break each year.
61. This has caused considerable injustice to both B and Miss X and exceptional strain on Miss X as she has had to cope with B's behaviours without planned and much-needed breaks. B has lost the periods of time living away from Miss X, gaining some independence and related living skills as well as time with his peers.
62. We find fault in the Council's failure to ensure the annual holiday payment, based on an assessed need, was not paid each year in a timely way causing Miss X additional stress and anxiety.
63. We find fault in the Council's failure to complete the transfer process to an EHCP within the statutory timescales. This has resulted in an unacceptably short period of time for B to prepare for his September 2017 placement.

## Decision

64. We have completed our investigation into this complaint. There was fault by the Council which caused significant injustice to both Miss X and B. The Council should take the action identified in paragraphs 65 to 70 to remedy that injustice.

## Recommendations

65. To remedy the injustice we recommend the Council:
  - apologises to Miss X and B for its failure to start transition planning from 2011 (Year 9) and for the resultant delays in providing suitable assessments and plans for B's move into adult life;
  - apologises to Miss X for the related failure to properly assess her carer's needs within the transition process;
  - apologises to Miss X and B for failing to provide suitable alternative respite provision from February 2015 and for the considerable adverse impacts this has had on B and Miss X;
  - apologises for failing to ensure the annual discretionary holiday payment was paid in a timely way, causing Miss X additional and unnecessary anxiety;
  - apologises for failing to complete the Transfer process under the 2014 SEN Regulations within the statutory timescales and so denying Miss X her right to appeal to Tribunal;

- pays Miss X and B each £5,000 in recognition of the harm caused to each of them by the lack of suitable respite for two years; and
- pays Miss X a further £1,250 to recognise the distress caused to her from having to pursue these matters over two years without a suitable resolution and for the impact of the delay of the Transfer process.

These actions should all be completed within one month of our report.

- completes the Transition Assessment for B and prepares a Transition Plan within two months of our report. This should take full account of B's wishes, feelings and aspirations (through an independent advocate if necessary) and be with Miss X's full involvement and co-operation.
  - If the Transition Plan retains the discretionary annual holiday payment or provides an equivalent payment, the Council should ensure this is paid in time to allow Miss X to plan holidays with her family.
  - If the Council has not yet done so it should issue B's Final Education Health and Care Plan (EHCP), as soon as possible, to provide B and Miss X with certainty about its provisions and, if needed, a right of appeal to the Tribunal.
  - We recommend the Council urgently reviews its Transition to Adulthood policies and procedures. The review should look at embedding the requirement for transition work to start in the school Year 9 for all children with assessed care needs. It should link fully into the statutory SEN EHC plan process set out in the 2014 Regulations, where social care forms a defined element of the plan.
  - We recommend the Council drafts a new Transition policy document that sets out to service users what they can expect. It should also provide Council staff with clear timelines and procedures to follow. The policy should require officers to evidence the basis for deciding when they consider it is 'of benefit' to the young person to start the Transition Assessment. It should also include details of monitoring to ensure the delays experienced in this case do not happen in future.
  - The Council should provide us and Miss X with a timetable for this work within one month (which should be concluded within six months of this report). It should provide updates at two monthly intervals until it is completed, and a copy of the final policy documents.
66. The Council has accepted our recommendations. It should confirm it has taken the action in line with the timescales set out above.
67. The Social Care Institute for Excellence (SCIE) has published [guidance](#) on how good transition work should be planned and implemented.
68. In addition it has given the example of [Newham LB](#) as having good practice in the transition of young people from children's to adult services.

69. We recommend the Council looks at this guidance and examples of good practice to inform its actions going forward. Other councils have faced similar staffing and resource issues in recent years but have still provided suitable transition support to the most vulnerable young people in their areas.
70. SCIE says “Good practice in transitions to adulthood can evolve to fully realise the vision in both Acts. It will take time, consistency and effective leadership to provide the sort of service people require”.