

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

**Investigation into a complaint about
London Borough of Croydon
(reference number: 21 013 878)**

28 November 2022

The Ombudsman's role

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

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

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

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

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

Key to names used

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| Ms B | the complainant |
| Mr C | her son |
| School X | a school attended by Mr C until April 2021 |
| School Y | a school attended by Mr C from May 2021 |
| CP1 | a respite care provider |
| CP2 | another respite care provider |
| CP3 | another respite care provider |
| CP4 | another respite care provider |
| CP5 | another respite care provider (identity unknown) |

Report summary

Adult care services & children's services – respite care provision

Ms B complained that after October 2019 the Council did not support her in arranging suitable respite care for her disabled son, Mr C. Ms B made separate complaints to the Council's children and adult care services as her complaint spanned the time when Mr C moved between the two services.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The Council should provide Ms B with the following personal remedy.

- An unqualified apology from a senior officer (Director level or above) recognising the injustice she has been caused.
- A payment of £3,000 to recognise the loss of service experienced by her and Mr C; it should pay Ms B £500 to recognise her distress and an additional £500 to recognise her time and trouble – making £4,000 in total.
- Agree that for so long as it is needed the Council will provide Ms B with direct payments to fund respite care for Mr C, from his existing respite provider, at the same level he received before October 2019. It can withdraw this support once Mr C moves to another placement where such respite is no longer needed (he is due to move to supported living accommodation soon).

The Council should also undertake the following procedural improvements.

- It should carry out further work to understand why, when Mr C was a client of its children's services, it did not do more to search for, or record, how his respite care needs could be met between December 2019 and December 2020.
- End its practice of delaying the registration of stage two complaints made under the statutory complaint process for children's complaints to await clarification or meetings.
- Brief all staff in its transitions service to make it clear the Council should not seek to refuse or limit care choices based on cost, or through comparison with national or local averages.

The complaint

1. We have called the complainant Ms B. She cares for her disabled son who we have called Mr C. Ms B complained that after October 2019 the Council did not support her in arranging suitable respite care for Mr C. Ms B has made separate complaints to the Council's children and adult care services as this complaint spans the time when Mr C moved between the two. This single investigation covers both complaints as well as a supplementary complaint made on Ms B's behalf from a charity which has supported her.
2. Ms B says because Mr C has not received adequate respite care since October 2019 she has been left feeling exhausted. She says by not identifying suitable provision, nor paying for adequate provision once a suitable provider was found, the Council has increased her anxiety and Mr C has also been stressed and unsettled. Ms B says she was left "*feeling terrified of the next call from social services pressurising [me] or being shouted at to try provider after provider when I know they couldn't meet [Mr C's] needs*". Ms B says she attended counselling and tried alternative therapies to help cope with the impact of not having enough support. She says the Council's actions left her at "*breaking point*".

Legal and administrative background

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We cannot question whether an organisation's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. 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. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

The Council's responsibilities towards disabled children and their parents/carers

6. Section 17 of the Children Act 1989 says councils must safeguard and promote the welfare of children within their area who are in need. A child is in need if they are disabled. Services provided under the Act can be offered to parents as well as children.
7. The Chronically Sick and Disabled Person's Act (CSDPA) 1970, section 2, requires councils, when undertaking an assessment of a child under section 17 of the Children Act 1989, to consider whether it is necessary to provide support including respite care. This is temporary care given or arranged by the council to provide relief for the disabled person's regular carer.
8. If a council is satisfied it is 'necessary' to provide support services under section 2 of the CSDPA then services must be provided regardless of the council's resources.

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9. Under the Children and Families Act 2014 a council must assess whether a parent carer within their area has needs for support and if so, what those needs are.

The Children Act statutory complaints procedures

10. The law sets out a three-stage procedure for councils to follow when looking at complaints about children's social care services. The accompanying statutory guidance, '*Getting the Best from Complaints*', explains councils' responsibilities in more detail.
11. The first stage of the procedure is local resolution. Councils have up to 20 working days to respond.
12. If a complainant is not happy with a council's stage one response, they can ask that it is considered at stage two. At this stage of the procedure, councils appoint an investigator and an independent person who is responsible for overseeing the investigation.
13. If a complainant is unhappy with the outcome of the stage two investigation, they can ask for a stage three review by an independent panel.
14. We published a [focus report in 2015](#) highlighting common failings in the way councils deal with complaints that are within the remit of the children's statutory procedure. In 2021 we issued [further guidance for practitioners](#) setting out our expectations on how statutory complaints should be handled and managed.
15. Among other matters this guidance explains:
 - the decision on whether a complaint should progress to stage two of the statutory procedure rests with the complainant and not the council;
 - any meetings with a complainant to discuss a complaint after stage one or stage two of the process should not unnecessarily delay progression to the next stage;
 - that Government guidance says the stage two process – from the time the complainant requests a stage two investigation through to the council giving its response to an investigation report – should take no more than 65 working days; *and*
 - that we will not usually investigate complaints that have not completed all three stages of the statutory procedure although an exception can be made using our discretion where appropriate.

Transitions and care planning for adults

16. When a child reaches 18 years of age, they are legally an adult and responsibility for meeting their needs moves from the council's children's services to its adult services. The legal basis for assessing their needs changes from the Children Act 1989 to the Care Act 2014. Transition assessments should begin when the council can be reasonably confident about what the young person's needs for care and support will look like when they turn 18. Where a child has an Education, Care and Health Plan (EHCP) a council can continue to provide children's services for as long as it is considered necessary. In addition, the Care Act 2014 requires local authorities to ensure there is no gap in support when an individual makes the transition from children's to adult services on or after their eighteenth birthday. (*see Special Educational Needs Code of Practice S9.139 & 9.140*).
17. The Care Act 2014 gives councils a legal responsibility to provide a care and support plan. The support plan must include a personal budget, which is the

money the council has worked out it will cost to arrange the necessary care and support for that person.

18. A personal budget must always be an amount sufficient to meet the person's care and support needs and users of services should have confidence it will be sufficient. Decisions on personal budgets should be based on outcomes and value for money rather than purely financially motivated. (*Care and Support Statutory Guidance 2014*)
19. A personal budget can be paid to a user of services or their carer as a direct payment. This means the person receiving care or their carer, can contract directly with third parties who can then provide the care set out in the care and support plan.

Carer's assessment

20. Where somebody provides or intends to provide care for another adult and it appears the carer may have a need for support, the council must carry out a carer's assessment. A carer's assessment must seek to find out not only the carer's needs for support, but also the sustainability of the caring role itself. This includes the practical and emotional support the carer provides to the adult.
21. As part of the carer's assessment, the council must consider the carer's potential future needs for support. It must also consider whether the carer is, and will continue to be, able and willing to care for the adult needing care. (*Care and Support Statutory Guidance 2014*)
22. The Care Act 2014 says the council may meet the carer's needs by providing a service directly to the adult needing care. The carer must still receive a support plan which covers their needs, and how the council will meet them. The carer's personal budget must be an amount that enables the carer to meet their needs to continue to fulfil their caring role. It must also consider what the carer wishes to achieve in their day-to-day life. (*Care and Support Statutory Guidance 2014*)

How we considered this complaint

23. Before issuing this report we considered:
 - Ms B's written complaint to us and any supporting information she provided including that gathered in telephone calls and emails;
 - correspondence exchanged between Ms B and the Council about the matters covered by this complaint which pre-dated this investigation;
 - information provided by the Council in reply to our written enquiries;
 - any relevant law, guidance or Council procedure referred to in the text above;
and
 - our published guidance, including our guidance on remedies.
24. Ms B and the Council had an opportunity to comment on a draft of this report and to provide any further evidence they considered relevant to the content. We took account of any comments they made and/or further evidence provided before issuing this final report.

What we found

Background and chronology

25. Mr C is a young adult with autism and attention deficit hyperactivity disorder (ADHD). He is largely non-verbal. He sleeps poorly. He displays a range of challenging behaviours including hitting, slapping, kicking and damaging property. He may also try and run away when distressed. Mr C needs skilled carers who understand and know how to meet his needs.
26. Mr C was 16 years old in October 2019. He attended School X (a residential school) as a day pupil, meaning he spent most evenings, weekends and holidays with Ms B. But the school also provided respite care for Mr C. He would stay overnight one night a week during term time and two nights a week during school holidays. The Council's children's services paid for this respite care as part of a package of care it gave Ms B to support her in caring for Mr C. This also provided for Ms B to use a direct payment to purchase care from a care agency to support her in meeting Mr C's needs when he was at home at a two-to-one staffing ratio.
27. In October 2019 School X suspended its respite provision. Initially this was while the school was refurbished. But in December 2019 School X told the Council it would not be resuming overnight respite care for day pupils. School X said this would apply from February 2020, although in effect Mr C's respite care had already stopped at this point.
28. The Council's children's services made some checks with a respite service that it runs and which Mr C used to attend. However, he had stopped using it because it could not meet his needs. He would also not be able to use it once he turned 18. The Council therefore did not pursue this option. The records do not show when, during 2020, these checks took place.
29. In March 2020, the Council also made an enquiry of a different residential school which provides respite care. But that school said it could not provide respite care to Mr C as he was a pupil at School X. There is no record children's services made any other enquiries about respite care options for Mr C. In August 2020 the Council asked School X if it had any vacancies for Mr C as a residential pupil. At the time, it did not.
30. In December 2020, Ms B made a complaint as over 12 months had passed since Mr C last received respite care. The Council replied later that month, under stage one of the children's complaint procedure. It said the lack of respite for Mr C was because of events largely outside its control. First, that School X had stopped providing respite for day pupils. Second, that the COVID-19 pandemic had left limited choice available. The Council said to help meet Ms B's need to provide care it had increased her direct payments to cover 45 hours of care a week.
31. In January 2021, Ms B escalated her complaint. She sent the Council copies of multiple text messages to social work staff where she had been raising her need for respite care. She said it was wrong to say direct payments had increased to pay for more care for Mr C when School X stopped providing respite. Because the increase in payments took place in October 2019, before School X took its decision to stop his respite care. Also, because the increase in direct payments was to fund therapeutic work with Mr C which Ms B took part in.
32. The Council replied to that letter in February 2021. It did not register Ms B's complaint at stage two of the statutory complaint procedure. Instead, a manager wrote back to Ms B offering clarification of the Council's position.

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33. In response, Ms B wrote again and said she wanted an independent investigation of her complaint. She said that she was at her “*wits end*” having no respite care for Mr C. Ms B noted she had just completed a parent carer’s assessment with support from a charity. This identified that Ms B’s desired outcome was for Mr C to attend a part-residential school that could offer some overnight respite during school holidays.
 34. Around this time, School X received a negative inspection report from Ofsted. The Council decided it would no longer support children attending School X due to the concerns outlined in the report. It agreed to fund Mr C’s placement until the end of the spring term only, meaning Mr C would need a new school from April 2021.
 35. The Council immediately began approaching alternative schools to see if they could meet Mr C’s needs. School Y was the only school which said it could offer a place to Mr C. It is not a residential school and so offers no respite care. There was a gap of several weeks before Mr C could start at School Y. In the interim Ms B expressed concern about how she could meet his needs.
 36. By now, with Mr C approaching his eighteenth birthday, the Council had transferred his case to its transitions service, which is part of its adult care service. In April 2021 the transitions service identified a Care Provider (CP1) who said it could provide respite care for Mr C and arranged a trial of its services. The Council says it understood CP1 knew about Mr C’s complex needs. But the trial was unsuccessful as after just one night, CP1 said it could not meet Mr C’s needs.
 37. In May 2021 the Council’s transitions service completed a needs assessment of Mr C. This recorded that Ms B was struggling to meet Mr C’s needs since the loss of respite care and meeting those needs was becoming “*increasingly challenging*” as he became older and more energetic.
 38. The assessment said Ms B needed a personal budget of £410 a week. It said that would enable two carers to support Mr C for one hour a day two days a week plus an extra three and a half hours a week one day a week. It did not mention respite care.
 39. Also in May 2021, Ms B went to a meeting with the Council to discuss her complaint with children’s services. The Council wrote to Ms B confirming the work that its transitions service and education service were undertaking at that time. In a reply sent by email Ms B made clear she did not regard the current level of support as satisfactory. She said she wanted to pursue her complaint. But the Council still did not register it at stage two of the children’s complaint procedure. Instead, it again asked her to clarify her concerns. It said: “*We always try to encourage services and complainants to try and resolve matters before progression to the next stage*”.
 40. Ms B again said she wanted to pursue her complaint and in June 2021 the Council registered it under stage two of the children’s complaint procedure. It appointed an independent investigating officer (IO) and an independent person. Ms B agreed with the IO that their investigation would look at the following.
 - Why Mr C had not received respite care since October 2019.
 - Why a residential care placement had not been arranged for Mr C.
 - Whether direct payments Ms B received were to support respite care; Ms B reported that when carers were at home with Mr C she did not have any respite from her caring needs as Mr C would still demand her attention.

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- What response the Council had given to Ms B's parent carer's assessment undertaken by the charity in March 2021.
41. By July 2021 Ms B had found a respite care provider which indicated it could meet Mr C's needs. We will call this Care Provider CP2. Its cost for meeting Mr C's needs over 24 hours was £779.
 42. At this time the Council had frozen direct payments to Ms B as there was an unspent balance in the account. The Council told Ms B she could use that money if she wanted to buy respite care from CP2. But the Council also told Ms B it had concerns about the extent of respite she wanted for Mr C. It said that if it funded one night a week that would be "*more than twice the UK average*". In further exchanges in July 2021 the Council said it would only pay Ms B £562 a week as a direct payment going forward. It said this would be enough to buy one night's respite care and "*a few hours*" of additional care. The Council said it also expected Ms B to keep looking for alternative respite care providers to CP2.
 43. In July 2021 the Council entered negotiation with another care provider, who we will call CP3. Initially that provider quoted an amount for care that envisaged Mr C receiving two-to-one support in view of his needs. The Council rejected this as too expensive. Later, CP3 agreed to drop the price quoted for care and Ms B met with it and was positive about the care it offered. CP3 contacted the Council further to its meeting with Ms B and said again Mr C would need two-to-one care.
 44. Also in July 2021, the Council registered a second complaint from Ms B about the transitions service. Ms B complained about the continuing lack of respite care and that the Council would not pay for respite from CP2.
 45. In August 2021 the Council identified another Care Provider, who we will call CP4, which it understood could meet Mr C's needs. It noted this in a reply to Ms B's complaint of July 2021. The Council said it had to consider cost when deciding what care it could provide.
 46. Ms B visited CP4's care setting. She found CP4 could only offer one-to-one support for Mr C. She also noted the setting appeared insecure and Ms B had concerns that Mr C could easily run away if distressed.
 47. In September 2021 a clinical psychologist undertook an assessment of Mr C. Their report said Mr C "*should receive respite during the school holidays and term time, for at least 2 nights a week. Any setting for [Mr C] must have secured buildings and grounds that [Mr C] could not independently leave (including locks on windows at all levels). He should have two-to-one provider care, or at a minimum greater than one-to-one (i.e. a higher number of staff than pupils/residents) [...] [Mr C] is a tall, strong, and physical young man and his environment must be equipped with the appropriate physical structures and staffing levels to keep him safe.*"
 48. In the same month the Council agreed Ms B could trial a placement with Mr C at CP2.
 49. While the trial was ongoing the Council remained in discussion with CP3. It continued to express the view that Mr C needed two-to-one care and referred to the clinical psychologist assessment in support of this. The Council responded saying there was "*no evidence*" Mr C needed two-to-one care except when in the community. Shortly afterwards CP3 advised the placement it had in mind for Mr C was no longer available.

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50. Mr C's trial respite with CP2 went well and so in November 2021 Ms B asked if the Council would fund this on an ongoing basis. In reply the Council said: "*the local authority must consider its own finances and budgetary position and must comply with related public law duties in determining how to meet needs including ensuring that the funding available to the local authority is sufficient to meet the needs of entire local population*". The Council therefore gave no indication it would increase direct payments to pay for Mr C to have respite care provided by CP2. It told Ms B it would continue to look for an alternative.
51. In December 2021 the IO issued their report into Ms B's complaint at stage two of the children's complaint procedure. The report explained the IO had faced difficulties in obtaining information from School X, which they considered necessary for their report and this caused delay. The report found:
- a lack of evidence the Council had looked for respite care for Mr C after October 2019. The report noted challenges to the Council during the pandemic and efforts made by the transitions team. But it found overall there had been a significant, unjustified delay in securing respite care for Mr C;
 - the direct payments made to Ms B did not offer her a chance of respite from caring for Mr C;
 - the Council had considered if Mr C needed a residential placement for the purposes of his education when he had been a day pupil at School X. Its judgement that Mr C did not need a residential placement at that time was one it could reasonably reach on the facts; *and*
 - the Council was not at fault for its response to Ms B's parent carer's assessment, as its consideration of that matter remained ongoing.
52. The report recommended the Council:
- apologise to Ms B for the faults found;
 - improve record keeping in places;
 - provide a clear commitment about what service it would offer Mr C moving forward; *and*
 - give a written response to carer's assessments in the future explaining how it proposed to meet needs.
53. Later in December 2021, the charity supporting Ms B made a further complaint on her behalf. It said that Ms B could not afford outstanding care costs and to pay for respite care from her direct payments and could not fund both moving forward. In response, the Council said it continued to look for respite care options for Mr C.
54. In January 2022 the Council increased the direct payment given to Ms B to £1,100 a week. It sent an email to Ms B which explained it had increased the payment. But the email did not explain the rationale for the award, which the Council says was to allow Ms B to purchase one night respite care at a rate of £500 a night and use the remainder to fund 48 hours of one-to-one care by employing a personal assistant.
55. Later that month the Council responded to the IO report. It accepted the findings and apologised. It also offered Ms B £100 for her time and trouble given delays in the complaint process. It agreed the service improvements. It said that as Ms B now received £1,100 a week as a direct payment, she could buy respite care with that. It said that the transitions team had discussed offering a supported living or

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- residential care package to Mr C in the future and that Ms B should contact that service if she wanted to discuss that further.
56. Around the same time the charity wrote again to the Council and explained Ms B could only afford one night's respite care with CP2 with reduced hours of two-to-one support to meet Mr C's needs at other times. Ms B says her direct payments only enabled her to purchase one night respite; taxi journeys for Mr C and four hours care from an agency at a two-to-one staffing ratio. Ms B would not buy in care from an agency during holidays so she could afford more respite.
 57. In January 2022 the Council offered to put Ms B in contact with another respite care provider to see if it could assess Mr C to meet his needs. In her reply Ms B questioned if it would be in Mr C's best interests to have a different provider as he had settled with CP2.
 58. Then, in February 2022, the Council said it had found another respite care provider, which we will call CP5, who could provide respite care at £500 a night. It has told us that it gave details of this provider in a telephone call to Ms B. But it has not provided us with any details of CP5 (so it has not clarified if this was the same provider which it told Ms B about in January 2022). It has not provided any record of what consultation it undertook with CP5 nor what service it offered to provide.
 59. In general comments to us the Council has repeatedly said it believes Ms B could buy respite care for Mr C at £500 a night saying its staff must consider the "*best value and the most cost-effective options to meet assessed needs*". It also said it considered one night a week sufficient to meet Mr C's needs and this would be more than what it "*usually offers*" for respite care.
 60. In May 2022 the Council appointed a new social worker to support Mr C. Following discussions with Ms B they agreed to look for a full-time residential placement for Mr C. In September 2022 Mr C was offered a placement in supported living accommodation with a care provider who also runs a college suitable to meet his needs. The placement will be permanent and full-time. Mr C's move was expected to complete around December 2022.
 61. In comments on a draft of this report the Council said that further to the events discussed above it had drawn up a new 'framework' of providers that can meet respite care for children with disabilities. It considers this will help prevent a repeat of the difficulties that service found in finding a respite placement for Mr C.

Findings

Ombudsman's approach to investigation

62. At the outset we note Ms B's overarching complaint about a lack of suitable respite care for Mr C has been through two different complaint procedures, including the statutory children's complaint procedure set out above. We note the complaint did not complete all stages of that procedure, as Ms B did not escalate it to the third stage of the process which involves referral to a review board. Usually, we would expect a complainant to complete the process in full before investigating their complaint.
63. However, in this instance we have decided that it is appropriate we investigate Ms B's complaint made through the children's statutory procedure despite her not completing it. Our reasons are as follows.

- First, there is clearly an overlap between Ms B's complaints made against children's and adult services. The thread connecting the two is a complaint about a lack of adequate respite care and the two complaints cover a continuum of events.
- Second, the most significant parts of Ms B's complaint investigated under the Children's Act procedure were upheld at stage two.
- Third, it is not clear that referring the children's services complaint to stage three of the procedure would be of practical benefit to Ms B or Mr C at this stage, given he is no longer a client of that service.
- Fourth, to avoid further delay; given the delays in the operation of the children's complaint procedure to date which are discussed below.

Findings on the substance of the complaint

64. Mr C is a young adult with significant and complex needs, which over time are growing more challenging as he gets older and physically stronger. At the beginning of the events covered by this complaint, the Council had assessed Mr C needed a significant care package, in addition to what he received when at school. And that to recognise the demands placed on Ms B, the Council assessed Mr C needed around 64 nights a year respite care; one a week during term time and two a week during school holidays.
65. That respite care stopped in October 2019 and the Council became aware of this no later than December 2019. There has already been a thorough investigation of Ms B's complaint about how the Council reacted when alerted to this. That investigation found the Council made enquiries to its own respite service which it should already have known could no longer meet Mr C's needs. The only other action it noted were two enquiries, to School X and another residential school, to see if Mr C could either have a residential placement at School X or receive respite elsewhere. Both those enquiries met a negative response. The investigation recognised the difficulties the Council had in arranging care – both respite care and more generally – once the COVID-19 pandemic began in March 2020. But found this offered little in the way of mitigation for the Council. Its efforts were clearly inadequate. That was fault, as the Council has already accepted. We recognise also that it has apologised for this.
66. Ms B waited 12 months before reaching the point where she felt she must complain about the response of the Council's children's services. That complaint process then took a further 12 months to complete. This meant by the time the investigation outcomes were reported and responded to by the Council, Mr C's case was already being managed by its transitions service, part of adult care services.
67. We consider fault by the Council contributed to this delay. We do not find it accountable for the delays the IO experienced during their investigation, which they explained in their report. But it took six months before that for Ms B's request for an escalation of her complaint, made in January 2021, to be registered as a stage two complaint under the children's complaint procedure. So even before the IO ran into difficulties with their investigation the timescale envisaged for the stage two investigation had approximately doubled.
68. The delay in registering the complaint at stage two of the process arose because the Council wanted first to issue a clarification to Ms B; then invite her to a meeting and then request more clarification of why she wanted a stage two investigation. There is no inherent fault in the Council looking to resolve a

complaint at any stage, including when a complainant wants it to go to stage two of the process. But any efforts to resolve the complaint must run alongside the statutory process and are not an alternative to it. If the Council does not register a stage two complaint when requested then it is gatekeeping, or unjustly denying access to the complaint procedure. That is what the Council was doing here and its approach was contrary to both Government guidance and guidance we publish. This justifies a finding of fault.

69. In addition, the Council then added more unnecessary delay in its slow response to the stage two report which added several more weeks. This was further fault.
70. During the time Ms B's complaint to children's services was under investigation her need for respite care became even more acute. Because in March 2021 the Council decided it would no longer fund Mr C's placement at School X. We make no criticism of that decision and find the Council acted promptly to try and arrange alternative education for Mr C. We also accept that to transfer a pupil with significant needs like Mr C is a process always likely to take a few weeks. But we cannot find evidence of how the Council considered the implications of this gap in Mr C's education on Ms B. She had to meet even more of Mr C's care needs as a result. We have not seen any evidence of emergency care planning for Mr C to run alongside the need for emergency planning for his education. That was fault.
71. We recognise that once Mr C's case transferred to the transitions team it made some new effort to find respite care for Mr C. We do not consider any fault attaches to the Council for the failure of the provider, CP1, to meet his needs during the respite trial in April. But the Council did not heed the lessons of that failure. If a care provider which claimed to be experienced in meeting the needs of young adults like Mr C could not meet his needs, then this should have led the Council to make extra checks of providers to ensure they were suitable.
72. Yet the evidence is that it did not do this. The Council put forward CP4 without evidence it was a viable option. We find there are some grounds for thinking the provider CP3 unrealistically raised expectations it had an available placement to meet Mr C's needs. But it is also evident that negotiations with that provider were delayed because the Council was seeking quotes for one-to-one provision despite the numerous references in the papers to Mr C needing two-to-one care; something CP3 also believed Mr C needed. The Council has also not provided any evidence for its contention the provider CP5 could meet Mr C's needs, with its emphasis being on the cost of that care not its suitability.
73. This shows the fundamental flaw in the Council's approach to meeting Mr C's need for respite care. Its approach to meeting his needs has clearly been budget driven and not needs driven. Its social worker and managers have made statements quoted above, to both Ms B and to us, which show this (see paragraphs 42, 50 and 59). The Council based its approach on what respite care Mr C needed by measuring against a benchmark of what is provided by way of a national average, or average in the Council's area.
74. This was the wrong approach. Government guidance accepts value for money can be a consideration for the Council when deciding how to meet an individual's care needs. But it can **never** replace the requirements that care planning should be outcome led and personal budgets must be sufficient to meet needs.
75. The Council did not carry out adequate care planning in this case. In particular we note the only evidence of a carer's assessment for Ms B was that completed as a 'parent-carer'. The Council never offered an adequate response to that and in any

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- event by the time it was completed Mr C's case had transferred to its adult care services. So, the Council had a duty to undertake a carer's assessment that would be compliant with the requirements of the Care Act 2014 and provide Ms B with her own support plan. It did not do this. That was fault.
76. Without undertaking such an assessment and knowing what needs Ms B was able and willing to provide, the Council could not properly assess which of Mr C's needs it should meet. It failed to assess how many nights a year respite Mr C needed. Added to which, its assessments failed to identify how many hours of additional care Mr C needed. That too was fault.
 77. Consequently, the Council failed to set a realistic personal budget to address Ms B's and Mr C's needs. We note the initial personal budget set by its transitions team did not take any account of need for respite at all.
 78. From summer 2021 onward, the Council relied on assertions Mr C had enough money in his direct payment account to pay for respite, without evidencing this was so. Because even if the Council could show that Mr C did not need more than one night a week respite (which it did not) and that such respite care could be met for £500 a night (which it did not) - it did not provide any evidence the direct payments given to Ms B were enough to meet the need for respite and Mr C's other care needs. It also failed to give Ms B any explanation for its direct payment award, setting out its thinking, flawed as it was.
 79. These facts reflect that the Council has approached this case with no regard to the most basic principles of care planning set out above. Given that this case has passed through several pairs of hands, including senior managers, it is not credible the Council would not be aware of this. This suggests a systemic failure has underpinned the poor service Ms B and Mr C have received, with the Council putting budgetary considerations above meeting individual needs.
 80. The evidence also does not support the Council's contention that Ms B rejected discussions around longer-term care options for Mr C such as supported living or residential care. The stage two report completed under the children's complaint procedure said Ms B would prefer to resolve the issue over respite care before looking at such options. But against this are many statements made by Ms B where she asked the Council to look at a residential placement for her son.
 81. For all the reasons above, there was significant further fault in the way in which the Council approached meeting Mr C's needs after his case passed from its children's services to its transitions service. We turn below to the injustice this caused Ms B and Mr C and make recommendations for how that injustice can be remedied. In doing so, we start from the position that all assessments of need and care and support planning done by the Council's transitions service before May 2022 were inherently unreliable. Because the Council did not begin from the position of undertaking a true assessment of Ms B's and Mr C's needs but from basing its decisions on the cost of care. So, we consider the default position must be that Mr C needed at least the same level of care as he received in October 2019 – something supported by the later clinical psychology assessment.
 82. The injustice the Council's faults have caused Ms B and Mr C is as follows.
 - They suffered a prolonged and significant loss of service by having no respite care between December 2019 and August 2021 (20 months).

- They suffered a further loss of service by having inadequate respite care and insufficient funds to purchase other care Mr C needed after September 2021 (14 months and counting).
- They suffered a further loss of service when the Council withdrew funding to support Mr C's placement at School X and failed to respond to the additional burden of care that would fall on Ms B as a result.
- Ms B was caused significant unnecessary distress by the Council's approach to her son's care. She has explained in her own words, the impact of the Council's actions upon her.
- Ms B was put to significant unnecessary time, trouble and frustration by the Council's children's services complaint handling and in her contacts with its transitions service when she consistently explained the position the Council's actions had put her in.

Recommended action

83. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
84. To remedy the injustice set out above, we recommend the Council should, within one month of the date of this report:
- provide Ms B with an unqualified apology from a senior officer (Director level or above) recognising the injustice she has been caused;
 - pay Ms B £3,000 to recognise the loss of service experienced by her and Mr C outlined above; pay Ms B £500 to recognise her distress and an additional £500 to recognise her time and trouble – making £4,000 in total; *and*
 - agree that for so long as it is needed the Council will provide Ms B with direct payments to fund respite care for Mr C, from his existing respite provider, at the same level he received before October 2019. It can withdraw this support once Mr C moves to another placement where such respite is no longer needed (we note Mr C is due to move to a supported living placement soon).
85. In addition, we note that decisions around what support Mr C needs moving forward will not only involve social care services but also education and possibly health services. Mr C has an Education, Health and Care Plan and planning for that must necessarily involve social care input. We note here also that in so much as that plan may name an education institution Ms B disagrees with, she will also have rights of appeal to an independent Special Educational Needs and Disability tribunal.
86. In addition to the actions set out above designed to remedy Ms B's and Mr C's personal injustice, the Council should want to learn lessons from this complaint. We therefore further recommend that within three months of the date of this report it should:
- carry out more work to understand why, when Mr C was a client of its children's services, the Council did not do more to search for, or record, how his respite care needs could be met between December 2019 and December 2020. The Council should undertake research to establish if this was a one-off service failure or symptomatic of any wider failings in its children's services in

identifying suitable respite placements. If it is the latter, then the Council should produce an action plan setting out measures designed to prevent a repeat which can include reference to the new framework with respite care providers it referred to in response to our draft report;

- give a commitment that it will end its practice of delaying the registration of stage two complaints made under the statutory complaint process for children's complaints to await clarification or meetings; *and*
- brief all staff in its transitions service to make it clear the Council should not seek to refuse or limit care choices on basis of cost, or through comparison with national or local averages. All staff must be reminded that decisions on the care individual clients receive must be based on their assessment of need and must be sufficient to meet those needs.

Final decision

87. We find fault by the Council causing injustice to Ms B and Mr C. We recommend the Council take the action described above to remedy that injustice.
88. We have published this report because we consider it in the public interest to do so, given the injustice caused to the complainant and the wider systemic problems the complaint has revealed.