Local Government & Social Care OMBUDSMAN

Report by the Local Government and Social Care Ombudsman

Investigation into a complaint against Lancashire County Council (reference number: 16 015 248)

7 November 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.

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

Y	The complainant
Ms X	Y's parent

Report summary

Transition to Adult Care and Education and Health Care Plans

Ms X complains the Council was failing to meet the needs of Y, who has severe learning difficulties. In particular, it has failed to find him suitable long term accommodation and has failed to meet his care needs while he lives in temporary respite care.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council's priority should be to ensure it finds Y suitable long term accommodation as soon as possible. The Council says it has now identified a property for Y. It should provide us with an action plan with timescales. This should set out what action it intends to take to ensure Y is moved to the accommodation as soon as possible. It should provide a monthly report to us until Y is placed.

We also recommend, within three months of the final report the Council:

- assesses what additional provision Y needs in the interim to make the Short Breaks Service suitable to meet his needs and put this in place;
- reviews Y's Education, Health and Care Plan. This should include a review of his educational and care needs and how best these should be met. It should then give Ms X a formal decision on whether it intends to amend or cease Y's Plan to enable her to have a right of appeal to the Tribunal;
- pays Ms X £2,500 for her to use for Y's benefit to support his educational, social, language and behavioural needs; and
- apologises to Ms X and pays her £500 to acknowledge the distress and time and trouble she has been put to by the Council's faults, for the lost opportunity to appeal to the Tribunal in 2016 and for the delay in her right to appeal in 2017.

We recommend the Council produces a detailed action plan setting out how it intends to comply with each of our recommendations with defined timescales.

The Council has accepted our recommendations.

The complaint

1. Ms X complains the Council is failing to meet Y's needs. Y has severe learning difficulties. In particular she says the Council has:

    - taken too long to find suitable long term accommodation for Y;
    - failed to meet his care needs while he lives in temporary respite care; and
    - failed to communicate with her over his care, including changes in Y's medication.

Legal and Administrative Background

The Ombudsman's role

2. 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)***

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)***

Education and Health Care Plans

4. A young person with special educational needs may have an Education, Health and Care Plan (EHC Plan). This is a legal document which sets out a description of a child's needs (what he or she can and cannot do). It says what needs to be done to meet those needs by education, health and social care. The EHC Plan can continue until a young person is aged 25 if he or she is in education or training below the level of higher education.

5. A council must not cease an EHC Plan just because a young person is aged 19 or over. It may cease the EHC Plan if it decides it is no longer necessary. It should consider whether remaining in education or training would enable the young person to progress and achieve their outcomes. The young person or their parent has a right to appeal to Tribunal if they disagree with the council's decision to cease the EHC Plan. The Special Educational Needs and Disability Chamber of the First Tier Tribunal (the Tribunal) considers appeals about special educational needs.

6. For young people with an EHC Plan the council should use the annual review prior to ceasing the EHC Plan to agree the support and specific steps needed to help the young person engage with the services and provision they will be accessing once they have left education.

7. Where a young person leaves education before the end of their course the council must not cease to maintain the EHC Plan unless it has reviewed the EHC Plan to determine whether the young person wishes to return to education or training. It should seek to re-engage the young person in education or training as soon as possible.

Care planning

8. The Care and Support Statutory Guidance sets out that if the council will meet the young person's needs under the Care Act after they have turned 18 it must undertake the care planning process as for other adults including creating a care and support plan and creating a personal budget. It states:

> *"Where young people aged 18 or over continue to have EHC plans under the Children and Families Act 2014, and they make the move to adult care and support, the care and support aspects of the EHC plan will be provided under the Care Act. The statutory care and support plan must form the basis of the care element of the EHC plan.*
>
> *Under the Children and Families Act, EHC plans must clearly set out the care and support which is reasonably required by the learning difficulties and disabilities that result in the young person having SEN. For people over 18 with a care and support plan, this will be those elements of their care and support which are directly related to their SEN. EHC plans may also include other care and support that is in the care and support plan, but the elements that are directly related to SEN should always be clearly marked out separately as they will be of particular relevance to the rest of the EHC plan.*"

How we considered this complaint

9. We have produced this report following the examination of relevant files and documents.

10. Ms X and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

What we found

What happened

11. Y is 20 years old. He has a genetic disorder resulting in severe learning difficulties. Y can display challenging, aggressive and sometimes sexually inappropriate behaviours.

Finding suitable accommodation

12. Y lived at home with his parents and siblings. He attended college during the week. In January 2016 Ms X contacted the Council raising concerns as the family were struggling to manage and she had concerns about the impact of Y's behaviour on a younger sibling. The Council arranged for Y to stay at its Short Breaks Service. This Service provides 24/7 short breaks to people with a learning or physical disability and enables carers to have a break from their caring role. Y had previously used this service for short respite breaks.

13. At the end of January 2016 the family decided Y should not return home to live due to concerns over the impact of Y's behaviour on a younger sibling. The Council carried out a capacity assessment and made a best interests decision that Y should stay at Short Breaks while it sought alternative accommodation from care providers, to be reviewed on 25 March 2016.

14. On 2 March Y was excluded from college and a Social Worker arranged for Y to attend Day Care.

15. On 9 March Care Provider 1 carried out an initial assessment. It felt it could offer Y supported living accommodation. It proposed a two bedroom flat with a view to a second person moving in. The Social Worker asked it to proceed with carrying out a full assessment of Y's needs. Care Provider 2 also advised it might be able to meet Y's needs. Ms X visited both Care Providers. She was happy with Care Provider 1 but did not feel Care Provider 2 could meet Y's needs.

16. On 28 April Care Provider 1 asked the Council if it wanted to proceed with a detailed care plan. On 12 May 2016 the Social Worker asked Care Provider 1 to carry out an assessment as a matter of urgency.

17. On 2 and 7 June 2016 the Short Breaks Service raised concerns it had to cancel other service users to accommodate Y. It advised it had previously had to move Y around different rooms to accommodate other service users who had booked/preferred particular bedrooms. Short Breaks enabled Y to stay in the same room from April 2016 onwards.

18. The Short Breaks Service contacted the Council on 13 June 2016. It was concerned Y had no up to date assessment and there had been no care planning meeting or review of his current circumstances since moving into Short Breaks in January 2016. It requested a multi disciplinary meeting to work out how best to support Y to move on from Short Breaks and to manage the cancellations associated with his prolonged stay.

19. On 5 July 2016 the Community Nurse referred Y to the Supported Living Service and Care Provider 3 agreed to assess Y.

20. On 2 August 2016 Care Provider 1 provided the Social Worker with a care plan for Y. The care plan included one to one support during the day as Y would be living on his own until it identified another person suitable to share with Y. This would be with a view to reducing the one to one support over time. Ms X visited Care Provider 3 whose care would involve Y sharing with another person. Ms X did not feel it was suitable due to the nature of the accommodation and the behaviour of the other person would not be appropriate for Y's needs.

21. The Council scheduled a best interests meeting for 29 September. This concluded it was in Y's best interests to live at Care Provider 1 but there were a number of issues that required clarifying such as staffing and sleeping arrangements. Y had also made clear to staff at the Short Breaks Service that he would like to stay at Care Provider 1.

22. In October the Social Worker approached the Head of Service about approving the placement. The Social Worker advised other properties had been explored but compatibility with other service users became a concern for most. The Head of Service required additional information about the service provided and costs of provision. In particular the Council considered Y needed less one to one support than that proposed by Care Provider 1.

23. The Council reassessed Y's needs in October 2016. It did not produce a revised support plan. The assessment recorded Y needed support from one person at all times to oversee his care needs and ensure all risks were minimised. It stated Y "*would benefit from a shared tenancy, this has now been evidenced by his stay at Short Breaks where* [Y] *is expected to share support with approximately 5 other people at any one time".* It recommended Y was supported 24/7 and could benefit from a safe shared space and support to engage in meaningful activities. Under 'support in anticipated living situation' it recorded *"supported living – 2 sharing".*

24. The Council arranged to meet with Care Provider 1 on 17 November. The Care Provider agreed to meet Y with a view to reducing the amount of one to one hours in the proposed care plan. It produced an amended breakdown of Y's assessed support needs on 2 December.

25. On 15 December 2016 the Council's complex case forum did not approve Y's placement at Care Provider 1. It felt Y was much more able to share with others, risks could be managed and compatibility considered. It suggested looking at a flexible agreement through a mini tendering process and looking at in-house options.

26. The Social Worker prepared a mini tender document for Y on 27 January 2017 with a view to awarding the tender in March 2017.

27. At the end of March 2017 Ms X and Care Provider 1 contacted the Council about a vacancy. The Social Worker did not support this option. The Social Worker advised Ms X they did not consider a two person share would meet Y's needs. The Social Worker considered Y could share with at least four others, similar to the care provided at Short Breaks. The increased staff presence in a larger accommodation would minimise the opportunities for Y to behave inappropriately to others. Y had evidenced he could share staff successfully. Ms X advised she was concerned the more people in the unit the more unsettled Y became. With noise levels and routines of a larger unit Y would retreat to his bedroom and become reclusive.

28. Ms X complained to the Council about this. It advised it considered Care Provider 1 was not suitable. It aimed to place Y in a tenancy with between two and four adults, although initially he might be on his own until other compatible people were found. In a further response it advised it felt Y could not share safely with only one other person as his behaviour could not be monitored sufficiently to keep the other person safe.

29. The Council advertised the mini tender for Y's support package on 10 April 2017. One interested care provider came forward. A panel evaluated the submission on 11 May 2017 and was satisfied it could meet Y's needs.

30. The care provider identified a potential property which already had two residents. However, following a visit by Ms X it had concerns about the compatibility of one existing resident with Y. Y remains at the Short Breaks Service.

Y's behaviour

31. The Council's Social Services records include a number of concerns regarding Y's behaviour.

- Y hit an escort in February 2016.
- In March 2016 the Short Breaks Service reported an incident where Y had refused food and thrown an object.
- In April 2016 Ms X emailed the Council as the Short Breaks Service had contacted her to advise Y had touched another resident in an intimate area and was becoming withdrawn at times. In April the Short Breaks Service advised the Council that Y had refused to get on the transport to the Day Service. Y had tried to punch the driver. It believed this might be to do with another person who was using the service.

- In May 2016 the Short Breaks Service advised the Council of an incident where Y had displayed inappropriate behaviour. It advised there was already a risk assessment in place.
- In June 2016 the Short Breaks Service advised the Social Worker Y had been accused by another guest of pinching him. Y had become upset and thrown furniture and had tried to hit staff.
- In September 2016 the Short Breaks Service reported an incident where Y broke equipment and set the fire alarm off.
- The Short Breaks Service contacted the Social Worker in November to advise Y continued to display apathy and was becoming more and more withdrawn. Later that month it reported an incident where Y pulled the hair of another service user on the transport to the Day Service.
- Ms X contacted the Council in November 2016 as there was an incident at the Short Breaks Service where Y broke a mirror and cut his foot, requiring stitches. Y was in his room and had refused lunch at 12. He was found at 3pm with his foot bleeding. Ms X was concerned about the level of supervision of Y over this period. The Council responded that the incident lasted over a few hours and Y was not left unsupervised. It was only when Y calmed down that staff noticed the injury.
- Ms X contacted the Social Worker on 1 December 2016. She advised she was concerned about Y. His mood was very low and he seemed unsettled. The Short Breaks Service contacted the Social Worker on 2 December 2016 to advise Y was unhappy and was communicating this through his behaviour. It had concerns Y would be labelled as having challenging behaviour when he was trying to express his frustration with the situation.
- On 13 January 2017 the Short Breaks Service reported further incidents where Y had thrown things and shaved his hair. It believed the incidents related to those times when another resident who Y got on with left the service. The Short Breaks Service advised Y was very withdrawn and was spending more and more time in his room.
- In May 2017 Ms X raised a safeguarding concern regarding Y being locked in his room without a monitor on. She also expressed concern Y was distressed on the last two occasions she had visited. The Council advised Y had locked himself in his room from the inside. In its safeguarding response, the Council advised there may have been a lapse in monitoring but Y did not come to any serious harm.

Communication and changes in medication

32. Ms X complained to the Council in September 2016 about the lack of progress in finding long term accommodation for Y. She also complained about the Council's failure to keep her updated. In its complaint response the Council accepted communication could have been better. It says the delay was due to difficulties in finding suitable accommodation and the pressures on the Social Worker's time. A senior officer advised they would meet with the Social Worker to ensure actions were progressed and regular communication maintained.

33. On 17 January 2017 the Social Worker met with the Short Breaks Service and Community Nurse to discuss the way forward. The Nurse advised they were looking to close the case as Y had displayed no recent behaviours which needed addressing. They said any behaviours exhibited by Y were reasonable in the circumstances and did not require specialist input. There was a discussion around Y's low mood and it was suggested Y be taken to the GP about this.

34. Short Breaks arranged for Y to see a GP the next day. It did not advise Ms X of the appointment.

35. On 21 January 2017 Ms X contacted the Council as she found out Y was prescribed anti-depressants. She did not consent to this. She complained about the lack of progress with finding Y suitable accommodation and the Council's failure to keep her updated. She referred to previous incidents where Y had cut his foot and shaved his hair.

36. Short Breaks arranged for Y to visit his usual GP who cancelled the prescription for anti-depressants. On 7 February 2017 the Council met with Ms X. It acknowledged the delay in placing Y was unacceptable but said it was doing everything it could. It offered additional support to help Y's contact with the family and agreed to update the family fortnightly on progress.

Y's EHC Plan

37. In September 2015 Y started attending a local further education college during the week. The outcomes sought from Y's educational provision within his EHC Plan were:

- to continue to develop functional literacy, numeracy and ICT skills;
- to continue to develop socially acceptable behaviour;
- to develop an awareness of his sensory sensitivities;
- to continue to develop speech and language skills; and
- to develop self-help independence and life skills.

38. In January 2016 Y moved out of the family home and into the Short Breaks Service.

39. In February 2016 the College reported Y's behaviour had deteriorated. It asked the Council if Y's Social Worker could attend a review of Y's EHC Plan.

40. The College produced a review of Y's EHC Plan on 2 March 2016. It cancelled the review meeting as the Social Worker and representative from the Council did not turn up. Under 'what is working for Y' in relation to education the college recorded "*very little. The structure of college does not suit* [Y] *and his needs are not being fully met. He needs 1:1 support and supervision.* [Y] *needs a flexible structure for the day and a fluid programme of study – this is not possible here in college*".

41. Under 'what is needed' the review recorded Y *"needs 1:1 support at college. However the college does not have the funding for this. An educational setting is not the appropriate place for him.* [Y] needs *a community based setting. A Community package for* [Y] *needs to be discussed as a matter of urgency*".

42. The review noted Y still wanted an EHC Plan. It also recorded Y required transition planning to help him prepare for adulthood and independent living.

43. Later, on the same day, the College advised the Council that due to an incident where Y threw a chair the College was looking to exclude him. The College advised the Council it would need to meet to finalise the EHC Plan review and to look at potential opportunities for Y.

44. The Social Worker arranged for Y to attend replacement day services on an indefinite basis until his accommodation was sorted out, around six weeks later.

45. On 5 April 2016 the Day Service advised Ms X that Y's behaviour had changed in the last week or two. He was refusing to do activities and was being moody with service users. Ms X emailed the Social Worker to advise of this.

46. On 3 May 2016 the Day Service raised a concern about Y's behaviour. It said his behaviour was placing him and the people at the day service at risk. There were a couple of incidents where Y had thrown small items, he had refused to come off transport or to go on transport at the end of the day and he wanted to withdraw from group sessions more frequently. It advised it was providing one to one support. It was keen to agree appropriate support levels via best interest and capacity assessments.

47. On 9 June 2016 the Day Service emailed the Social Worker with an update regarding a meeting it had with the Short Breaks Service to discuss Y. The email advised Y coped with shared support in the group setting at Short Breaks. However the longer he attended the Day Service the less inclined he was to join in group activity. The Day Service had increased Y's 1:1 support. They advised *"we could all do to meet together to move things forward* for [Y]".

48. On 15 June 2016 the Day Service contacted the Council to advise it of three incidents with Y in day care. One incident involved Y throwing IT equipment around. Another incident involved Y lying on the floor in a shop and refusing to get up. The Day Service requested a multi-disciplinary meeting to discuss the plan for the future.

49. On 17 January 2017 there was an incident at the Day Service where Y assaulted staff and damaged property. It asked for an update regarding Y's move and a meeting to discuss how to respond to Y's behaviour.

Current position

50. Y is currently still living at the Short Breaks Service. Ms X says the Social Worker believes Y has shown he can live in shared accommodation while living at the Short Breaks Service. However Ms X says Y spends most of his time at the Short Breaks Service in his room on his own. He eats in the annexe on his own and does not like being in the main lounge. The Short Breaks Service disagrees with Ms X's view. It says Y mixes with other residents and spends time in the lounge. On occasion he has chosen to eat in the annexe or his room but this is not frequent. It advises he enjoys the company of his peers.

51. Ms X says Y has now been excluded from the Day Service. A staff member from the Day Service accompanies him in the community during the day. Ms X believes he was not supported correctly at the Day Service. She considers it did not follow his care plan properly and it was not using the correct tools to manage Y's behaviour.

52. The Day Service says it could not manage the risks effectively. It says Y was not excluded but the layout of the service and volume of people using it made it difficult to effectively support Y. Following repeated incidents at the Day Service, the two services decided Y could take part in community based activities during the day between 10am and 4pm Monday to Friday instead of using the Day Centre.

53. Ms X says Y is not getting one to one supervision at the Short Breaks Service. When she visited recently there were seven residents and only two staff members. Ms X says she is still not being updated by the Council about Y's medical appointments. There was also another incident where it was believed Y behaved inappropriately towards another resident which Ms X says was as a result of Y not being properly supervised. The Short Breaks Service told us Y is supervised by a named member of staff when in communal areas of the building to provide specific observation and support where necessary.

54. A report completed in September 2017 by the Learning Disability Nurse states Y "*has been living in Short Breaks for the past 18 months and is waiting for permanent accommodation*. [Y] *was expelled from college*. [Y] *hasn't been able to attend the day centre due to the environment.* [Y's] *current placement doesn't meet his sensory or emotional needs".*

Findings

Provision of suitable accommodation

55. Y has lived at the Short Breaks Service since January 2016. The stay at the Short Breaks Service was initially planned as emergency respite and is not a suitable long term option. The Council's delay in finding him suitable long term accommodation is fault.

56. In October 2016 Y's needs assessment recorded he needs supported living with two sharing. However the Council advertised a flexible agreement for Y to share with three to four others. There was also confusion over the level of supervision Y required. The lack of consistency and failure to adhere to Y's needs assessment is fault.

57. Care Provider 1 carried out an initial assessment of Y's needs in March 2016. The Council delayed requesting a full assessment from the Care Provider until April but the Care Provider then delayed producing a full assessment until August 2016. The Council cannot be held responsible for the Care Provider's delays. However the Council allowed the situation to drift. This is fault. Y's needs did not change during this delay.

58. In September 2016 the Council held a best interests meeting which agreed it was in Y's best interests to reside at Care Provider 1 in a shared placement with one other. His needs assessment in October 2016 recorded Y needed supported living with two sharing. However by December 2016 the Council decided this option was not suitable, 11 months after Y entered the Short Breaks Services for a six week period and without any reassessment of Y's needs.

59. The Council considered Y could share support. It raised concerns about the isolated location of Care Provider 1 and that Y did not need as much one to one support as proposed by Care Provider 1's care plan. These issues were not addressed at the best interests meeting in September 2016. They were important to Y's best interests and should have been addressed at that time.

60. The Social Worker originally supported a placement for Y in a two person share. To manage risks more effectively the Social Worker then proposed a shared living option with four to five others so Y would be supervised at all times. The Social Worker considered Y had shown he could cope with sharing staff during his stay at Short Breaks. However, the Council is now pursuing the option of sharing with only one other, an option originally presented in March 2016. Y has had to manage at the Short Breaks Service but this does not mean it is a suitable option for him. The Council in its complaint response to Ms X advised it had considered a number of properties for Y but compatibility with other service users was an issue.

61. The Council is at fault. It has not considered all the relevant issues as a whole in deciding what type of property would meet Y's needs. It should weigh up all the key factors including the risk of Y behaving inappropriately, the extent to which Y needed supervision, the triggers for Y's behaviour including noise and the behaviour of others and concerns about compatibility with other residents.

62. Y has seen people regularly coming and going from the Short Breaks Service. There have been a number of incidents involving other residents. The Short Breaks Service has said Y develops a relationship with an individual and then they leave which has a negative impact on his behaviour. Y's prolonged stay has also had a significant impact on a number of other families who have had their short breaks cancelled as Y occupies accommodation they need.

63. When the Council decided Care Provider 1 was not suitable it delayed assessing other suitable options. This is fault. It agreed to pursue a flexible arrangement through a mini tendering exercise in December 2016 but this was not advertised until April 2017.

64. Through his prolonged stay in Short Breaks the Council says Y coped with shared support more than it thought he would but it also reports that Y needed constant supervision. It has provided a significant amount of support to Y for a prolonged period. However it was never meant to be a long term solution. The evidence is Y suffered a significant disadvantage due to the delays.

- Y's behaviour has deteriorated. The evidence suggests the current situation, the length of his stay in the Short Breaks Service, his day time support, the lack of support specified in his EHC Plan and the lack of long term suitable accommodation for Y has impacted on his behaviour.
- There have been several incidents at the Short Breaks Service where Y has displayed challenging behaviour from March 2016 onwards including: physical violence towards others, injury to himself, apathy, refusal to eat or engage with activities or other residents.
- Ms X also reported the incident where she found Y locked in his room.
- Poor supervision of Y compared to what is required by his needs assessment.
- Y was recently stopped from using the Day Centre due to his behaviour. Y's day time support now starts and finishes from the Short Breaks Service.

65. Ms X has also been caused a disadvantage as this delay has caused her additional worry and frustration in having to pursue the Council to find suitable long term accommodation for Y.

Communication and changes in medication

66. The Council failed to keep Ms X updated. It has failed to return calls. This is fault. Ms X was put to time and trouble in chasing the Council for updates.

67. The Short Breaks Service has always supported Y at GP and health appointments and it acted appropriately in supporting Y to visit a GP. However it failed to advise Ms X of the appointment and this is fault. The Short Breaks Service says it would usually advise the family of any medical appointments and this was an oversight. The Short Breaks Service was not at fault for administering medication prescribed by a GP.

68. The GP that Y visited was not his usual GP and it was the GP's decision to prescribe Y anti-depressants. Ms X had concerns over the potential interaction with his regular medication and sought advice from Y's usual GP who stopped the anti-depressants. Ms X says Y took the medication for four days which caused her worry and distress. Had Ms X been advised of the appointment she would have had the opportunity to express her views earlier. However we cannot say the outcome of the GP's appointment would have been different and cannot comment on the GP's decision to prescribe anti-depressants.

Y's EHC Plan

69. The record of Y's EHC Plan review meeting on 6 March 2016 stated Y's level of provision needed to be maintained, he still wanted an EHC Plan and set out short term targets for Y. Y was excluded from college later that day. Y's exclusion from college indicates the EHC Plan was not meeting Y's needs and required amending.

70. The Council failed to amend or cease his EHC Plan when he could no longer attend college. It did not hold an emergency review meeting as required by the Special Educational Needs Code of Practice 2015. The EHC Plan is therefore still in place. The law says the Council has a duty it cannot delegate to ensure Y's educational provision set out in section F of his Plan is provided to him. It has not done so and this is fault. By failing to amend or cease the Plan the Council has also denied Ms X's right to appeal to the Tribunal. This has caused Ms X and Y a further disadvantage.

71. Since Y was excluded from college in March 2016, the Council has focused entirely on finding Y appropriate accommodation. Y was placed in the Day Service when he was excluded from college, initially as a short term fix while his accommodation needs were sorted. The Day Service was not told about Y's EHC Plan and the Council did not arrange for it to provide the support required by his Plan. This is fault. The evidence from the Council's records shows several incidents of Y displaying challenging behaviour at the Day Service. Y's needs, as set out in the EHC Plan have not been met since March 2016.

72. The Council has also failed to carry out the required annual review of Y's EHC Plan in March 2017. This has again denied Ms X a right to appeal to the Tribunal and the Council lost the opportunity to reflect on Y's special educational needs and the provision needed to meet them.

73. Due to fault by the Council Y has not received the appropriate support set out in his EHC Plan. He has not received the transition planning identified as required in his EHC Plan review. Y should have received support to: develop functional literacy, numeracy and ICT skills; develop socially acceptable behaviour; develop an awareness of his sensory sensitivities; develop speech and language skills; and develop self-help independence and life skills. By failing to receive the

support he is entitled to, Y has suffered a disadvantage. There is clear evidence of problems with Y's behaviour that may have been prevented or reduced if Y had received the support he was entitled to as set out in his EHC Plan.

74. The Care and Support Statutory Guidance also states the statutory care and support plan must form the basis of the care element of the EHC Plan. The Council has failed to ensure Y's care and accommodation needs were considered in conjunction with his EHC Plan. This is fault.

Conclusions

75. The Council was at fault. It has:

- delayed finding suitable long term accommodation for Y. There was confusion and a lack of consistency in the type of living arrangement it considered suitable for Y and in particular how many people Y could share with and the level of supervision he required. It has not considered all the relevant issues as a whole when deciding what type of property would meet Y's needs and delayed assessing other suitable options when it decided Care Provider 1 was unsuitable. The Council's decisions about what was a suitable placement for Y are not supported by a reassessment of Y's needs and appear to be driven by cost considerations;
- failed to keep Ms X updated when Y's medication was changed;
- failed to amend or cease Y's EHC Plan when he could no longer attend college, failed to ensure the provision set out in Y's EHC Plan was met by the Day Service and failed to carry out an annual review of the Plan.

76. These faults have caused Y an injustice. Y has seen people come and go from the Short Breaks Service. He has developed relationships with individuals who have then left. There have also been a number of incidents involving other residents.

77. It is likely Y's behaviour has deteriorated through not living in suitable long term accommodation and not receiving appropriate support. It is likely that problems with Y's behaviour could have been prevented or reduced if Y had received the support he was entitled to under the EHC Plan.

78. Ms X has been caused worry and frustration by the delay in finding Y accommodation and by the failure to keep her updated when Y's medication was changed. The failure to amend or review Y's EHC Plan has denied her the right to appeal to Tribunal.

79. The Council has accepted our findings.

Recommended action

80. We recommend the Council's priority should be to ensure it finds Y suitable long term accommodation as soon as possible. The Council says it has now identified a property for Y. It is a two person property although there are no plans to move other people in until Y is settled. In time there will be a second tenant considered for a share with Y. Y will have one to one support at this property.

81. The Council should provide us with an action plan and timescales within one month of our final report. This should set out what action it intends to take to ensure Y is moved to the accommodation as soon as possible. It should provide a monthly report to us until Y is placed.

82. We also recommend, within three months of our final report, the Council:

- assesses what additional provision Y needs in the interim to make the Short Breaks Service suitable to meet Y's needs and put this in place;
- reviews Y's EHC Plan. This should include a review of his educational and care needs and how best these should be met. It should then give Ms X a formal decision on whether it intends to amend or cease Y's Plan to enable her to have a right of appeal to the Tribunal. In response to our recommendation the Council says its Education Department will coordinate a review. It will look to learn from the complaint and how it can improve the transfer of information when someone moves from the Transitions Service (which deals with the transition from children's to adult's services) to Adult Social Care;
- pays Ms X £2,500 for her to use for Y's benefit to support his educational, social, language and behavioural needs; and
- apologises to Ms X and pays her £500 to acknowledge the distress and time and trouble she has been put to by the Council's faults, for the lost opportunity to appeal to the Tribunal in 2016 and for the delay in her right to appeal in 2017.

83. We recommend the Council produces a detailed action plan setting out how it intends to comply with the recommendations at paragraph 82 above with defined timescales. The Council has agreed to our recommendations.

84. 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 or Cabinet and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

Decision

85. There was fault leading to injustice. The actions set out above are an appropriate way to remedy the injustice.