

Report

on an investigation into
complaint no 10 005 330 against the
London Borough of Lambeth
and complaint no 10 015 240 against
Surrey County Council

24 April 2012

Investigation into complaint no 10 005 330 against the London Borough of Lambeth and complaint no 10 015 240 against Surrey County Council

| Table of Contents | Page |
|-------------------------------------|-------------|
| Report summary | 1 |
| Introduction | 3 |
| Legal and administrative background | 3 |
| Investigation | 5 |
| Conclusions | 10 |

The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mr Hayden the complainant
Alice the complainant's daughter
Miss Page Alice's foster carer

Report summary

Children's Services and Special Educational Needs

After a first-tier Special Educational Needs Tribunal (then known as SENDIST) ruling in September 2007, 'Mr Hayden's' daughter, 'Alice', received a specific entitlement in her Statement of Special Educational Needs (SEN), to 'regular and frequent direct therapy from a qualified physiotherapist for one hour a week, either in two half hour blocks or three twenty minute sessions, to address her mobility and gross motor skills', and also 'one hour a week hydrotherapy'.

There was a delay of five months after the SENDIST ruling before the London Borough of Lambeth provided the specified physiotherapy. There was then a further gap in provision of four months (from May 2008 to September 2008) when the therapist left. In addition, there was a question as to how much hydrotherapy Alice was receiving over this time and concerns that this was not linked to the physiotherapy provision.

In August 2009, Alice moved into voluntary foster care in Surrey with 'Miss Page' and her young family. The London Borough of Lambeth sent Alice's Statement of SEN to Surrey County Council's case officer in July 2009, in preparation for the move. Surrey County Council then had the responsibility to identify a school that could meet Alice's needs as it was responsible for maintaining her Statement of SEN. Although Surrey County Council found a school that said it could meet her needs, it did not ensure that regular therapy (in accordance with the requirements in her Statement of SEN) was carried out by her school in West Sussex. Instead, it assumed that 'weekly hydrotherapy and daily physiotherapy' met that requirement even though this was specified in her Statement of SEN as being additional to the one-to-one provision. The result was that there was a further gap of provision between August 2009 and October 2010. There were also problems with equipment provision and with money given to Alice's parents for contact arrangements over this period.

The Ombudsman found that the London Borough of Lambeth failed to properly implement the physiotherapy requirement in Alice's Statement of SEN, which meant that it was not possible to align the physiotherapy with the hydrotherapy requirement, as was intended by the wording. The Ombudsman also found that there was confusion about responsibilities between the London Borough of Lambeth and Surrey County Council when Alice moved into foster care and also a lack of equity in travel arrangements to facilitate contact between Alice and her father and mother.

As a result, Alice was disadvantaged by the spasmodic delivery of the mutually beneficial treatments. Mr Hayden also suffered a great deal of distress, outrage and time and trouble to pursue this complaint and is uncertain whether, had the treatment been delivered consistently and coherently, his daughter would now be able to walk.

Finding

Maladministration causing injustice by the London Borough of Lambeth and Surrey County Council, remedy agreed.

Remedy

The London Borough of Lambeth to pay compensation totalling £10,450. Surrey County Council to pay compensation totalling £900.

Introduction

1. Mr Hayden complains that the London Borough of Lambeth failed to provide one-to-one physiotherapy and hydrotherapy for his daughter, Alice, in accordance with her Statement of Special Educational Needs (Statement of SEN) and a first-tier Tribunal ruling. Furthermore, when Alice moved into voluntary foster care in Surrey (under Section 20 of the Children Act 1989), and to a school in West Sussex, she did not receive one-to-one physiotherapy. This was meant to have been provided by Surrey County Council and paid for by the London Borough of Lambeth. In addition, disagreements and a lack of clarity about communication, as well as about responsibilities, between Miss Page (Alice's foster carer), the school, the London Borough of Lambeth, Surrey County Council and West Sussex County Council (and the related Primary Care Trusts [PCTs]) have hampered the provision of services to Alice. Therefore, the London Borough of Lambeth has failed to act as a responsible corporate parent to Alice and Surrey County Council has failed to arrange specific therapy services in accordance with its legal obligations. The London Borough of Lambeth and Surrey County Council are the subjects of this complaint.
2. Mr Hayden believed that his daughter's health and wellbeing had been seriously compromised by the failure to provide services.
3. Mr Hayden wanted his daughter to receive the treatments that were set out in her Statement of SEN, for an apology and for lessons to be learnt. He wanted additional hydrotherapy and physiotherapy sessions, to make up for those missed, if this was considered beneficial by practitioners. In addition, he wanted to ensure that, in future, his daughter received all the services to which she was entitled.

Legal and administrative background

4. The Ombudsman normally considers that a complaint should be made to her within 12 months of a complainant knowing about a problem¹. In this case, though, discretion to waive this requirement was exercised. Mr Hayden went to the first-tier Tribunal and then actively pursued the Council (to the extent of contacting Council officers up to Chief Executive level, his Councillor and his MP) to put in place the requirements specified in Alice's Statement of SEN as Alice was unable to represent herself. Also, the provision was necessary to maximise Alice's capacity for independent movement and, thus, her life chances. Therefore, discretion has been exercised to consider the matter from the time the first-tier Tribunal ruled (August 2007) and the events that took place afterwards. Actions before this have not been considered due to the amount of time that has elapsed since they took place.

1 Under Section 26B of the Local Government Act 1974

5. In addition, the Ombudsman could not consider the health service aspects to this complaint – in terms of issues raised about the PCTs – as these are the responsibility of the Office of the Parliamentary and Health Service Ombudsman.
6. Since Alice is now a ‘looked after child’², regulations determine which authority she ‘belongs’ to³ and which Council is responsible for providing services. The regulations differentiate between where a child lives and where a child is from. In this instance, as a looked after child from the London Borough of Lambeth, the London Borough of Lambeth is responsible for paying for the requirements set out in Alice’s Statement of SEN. Surrey County Council is responsible for maintaining the Statement of SEN given she is residing in its area, albeit attending a school in West Sussex. It is understood that there are similar arrangements between PCTs for health requirements.
7. In the appropriate Statutory Guidance⁴, when a child becomes looked after, the social worker ‘must ensure that the child’s needs and services to meet those needs, are documented in the Care Plan’. The personal education plan (attached to the Care Plan) should align with the Statement of SEN⁵ and be considered at the Annual Review of the Statement⁶. This means that the Care Plan and associated documents should detail what Alice needs in terms of her health and education requirements. Given Alice’s complex educational, social and health needs, it would have been both beneficial to her, and to the Councils involved, if an holistic view had been taken of these needs at the outset.
8. Other regulations⁷ require that the ‘fostering service provider’ shall ensure that ‘each child is provided with individual support, aids and equipment which he may require as a result of any particular health needs or disability he may have’ but does not specify how this should be achieved. This also has a relevance to arrangements within and between PCTs that cannot be examined here. This dovetails with wording in the appropriate legislation⁸ that ‘every local authority shall provide services designed (a) to minimize the effect on disabled children within their area of disabilities and (b) to give such children the opportunity to lead lives which are as normal as possible’. This suggests that provision of equipment is not just for medical but also social needs.

2 Under Section 20 of the Children Act 1989

3 The Belonging Regulations 1996 (as amended)

4 Statutory Guidance for Local Authorities on ‘Promoting the Educational Achievement of Looked After Children’ (2010), paragraph 70

5 Paragraph 76.2

6 Paragraph 78.3

7 Fostering Services Regulations 2002, paragraph 15

8 Children Act 1989 schedule 2, paragraph 6

9. In terms of assuring this provision, agreeing financial arrangements at the earliest stage possible of a placement is imperative. Statutory Guidance explains that 'failure to clarify financial arrangements or to reimburse carers for necessary expenditure can jeopardize the relationship between the carer and the responsible authority'⁹.
10. It is now accepted that looked after children need contact with their parents and siblings¹⁰. Guidance clarifies that such arrangements are 'a matter for negotiation between the responsible authority, the child (and) parents'. However, a later paragraph says that the agreed arrangements should be set down in the Care Plan and subject to review in case they need to be changed to 'promote contact between the child and his/her family'¹¹.

Investigation

Review of key facts

11. The complainant's daughter, Alice, was born on 11 December 1999. A diagnosis of Angelman's Syndrome was given in 2001. This condition is associated with complex needs and severe learning difficulties as well as epilepsy, delayed gross and fine motor skills, visual impairment and mobility difficulties. Sufferers of this condition need physiotherapy and hydrotherapy in order to increase the chances of them gaining mobility and they also require regular input from occupational therapists, speech and language therapists and visual impairment services. Alice is dependent on others for all aspects of daily living.
12. Although the London Borough of Lambeth issued a Statement of SEN in 2002, Mr Hayden was concerned that this did not include provision for sufficient therapy in Part Three. He also wanted the London Borough of Lambeth to consider a residential placement for Alice, at an independent school, rather than keep her at a day school (School L) with a package of care in place. As the London Borough of Lambeth disagreed, the complainant appealed to the first-tier Tribunal in August 2007 (then known as the Special Educational Needs and Disabilities Tribunal or SENDIST).

9 The Children Act Guidance and Regulations Volume 2: Care Planning, Placement and Case Review (2010), paragraph 3.138. The importance of this is also recognised in NICE's October 2012 Guidance on 'Promoting the quality of life of looked after children and young people'

10 The Children Act Guidance and Regulations Volume 2: Care Planning, Placement and Case Review (2010), paragraph 2.91

11 Paragraph 4.27

13. SENDIST ruled against the Council on the amount of therapy, concluding that Alice needed regular one-to-one physiotherapy and hydrotherapy. This was supported by her paediatric physiotherapist whose professional opinion was that Alice needed sustained intervention to enable her to walk (as around 90% of sufferers learn to do). However, SENDIST did not support the complainant's contention that residential care was appropriate so Alice remained at School L.
14. The relevant section in Part Three of Alice's Statement of SEN, as amended following the SENDIST ruling, says that she requires: 'regular and frequent direct therapy from a qualified physiotherapist for one hour a week either in two half hour blocks or three twenty minute sessions, to address her mobility and gross motor skills' and also 'one hour a week hydrotherapy' (the latter of which is not one-to-one). In addition, the physiotherapist will 'set termly targets...and will monitor and review her daily programme on a half termly basis'. The Statement of SEN also requires Alice to have 'a daily programme of physiotherapy' in addition to the one-to-one weekly physiotherapy and hydrotherapy.
15. In February 2008, Mr Hayden said that in spite of the amended Statement of SEN applying from September 2007, the London Borough of Lambeth had only just begun to supply physiotherapy and a hydrotherapist had yet to be appointed. In fact, there was a gap of provision between September 2007 and January 2008. This seems to be because Lambeth PCT was of the opinion – even after the Tribunal ruling – that Alice did not need weekly physiotherapy. Although Mr Hayden regularly emailed and wrote to the London Borough of Lambeth, it did not decide to consider his correspondence as indicative of a formal complaint.
16. A letter was sent from Lambeth PCT to the SEN officer at the London Borough of Lambeth on 21 December 2007 to say that Alice could not tolerate more than 45 minutes of direct therapy. The letter also said that the effects of the physiotherapy should be monitored to ensure it was cost effective. School L had a therapy pool so Alice received hydrotherapy as part of her educational package although this was not aligned to any one-to-one land work. It is unclear whether Alice had a full hour of hydrotherapy each week.
17. Alice received the provision as set out in her Statement of SEN from January 2008 but then there was a further gap between May and September 2008 as the therapist left and had to be replaced. Alice then began receiving the treatment again consistently until August 2009. The delay and lack of consistency is one of the key reasons why Mr Hayden came to the Ombudsman. Although Mr Hayden had tried to pursue this with the London Borough of Lambeth, he felt they were not taking his concerns seriously and they failed to rectify the problem.

18. On 23 August 2009, Alice was moved into voluntary accommodation in Surrey, with Miss Page (an agency foster carer) and her young family. She spent alternate weekends with each parent.
19. Further to paragraph 5, under the appropriate regulations¹², the London Borough of Lambeth is responsible for paying for the services specified in Alice's Statement of SEN (in terms of educational services) but Surrey County Council is responsible for sourcing the provision and ensuring the requirements are met. Lambeth and Surrey PCTs also, we understand, have such arrangements.
20. The London Borough of Lambeth sent Alice's Statement of SEN to Surrey County Council's case officer on 22 July 2009 (which was acknowledged) and then followed up by asking the officer to attend the child's Annual Review which was scheduled to take place at School L in Lambeth. The London Borough of Lambeth was informed that staff members of Surrey County Council did not usually attend Annual Reviews although, apparently, an educational psychologist from Surrey was preparing to attend. As it was, though, Alice's Annual Review did not take place because her school was closed due to swine 'flu.
21. Surrey County Council could not find a suitable school for Alice in Surrey so it contacted neighbouring boroughs on 13 August 2009. On 18 August 2009, it advised the London Borough of Lambeth that if there were no schools that could take Alice, it would have to look in the independent sector. The London Borough of Lambeth did not wish Surrey County Council to do this because of the potentially significant cost implications. Recognising the difficulties, though, the London Borough of Lambeth sent a letter on 20 August 2009 suggesting three possible schools for Alice (one of which was, in fact, an independent school and another, which was a secondary school). It was also agreed, between both Councils, that Surrey County Council would perform the administrative functions necessary for ensuring the provision of Alice's Statement of SEN.
22. Following notification on 9 September 2009 from a West Sussex school (School M) that it could meet Alice's needs, Surrey County Council confirmed to the London Borough of Lambeth on 22 September 2009, that it had identified an appropriate school. The London Borough of Lambeth agreed to pay transport costs the following day and, further to this, on 1 October 2010, agreed to supply an interim vehicle to transport Alice to school as Surrey County Council did not have anything suitable available.
23. It was agreed between Surrey and West Sussex County Councils that West Sussex County Council would invoice the London Borough of Lambeth for the school fees and a letter was sent by Surrey County Council to Miss Page on

12 The Belonging Regulations 1996 (as amended)

23 September 2009 to say that this would happen (but that Surrey would be invoicing the London Borough of Lambeth for transport). This meant, in effect, that the London Borough of Lambeth was agreeing to a school, and ensuring transport was in place, without having seen any detail of fees. It had also not been involved in the negotiations about which Council would invoice for the school fees and there is no evidence that it was formally told of the outcome of discussions between Surrey County Council and West Sussex County Council.

24. An email was sent from West Sussex County Council to Surrey County Council on 12 February 2010 asking about funding and recoupment for 'a specified physio allocation', which the headteacher of School M was seeking advice about. The reply email of 18 February 2010 does not mention physiotherapy but noted that West Sussex County Council should advise the London Borough of Lambeth about the placement as there was no record that it had formally agreed to the school (although this should have been Surrey County Council's responsibility). The Annual Review report from the meeting of 11 May 2010 records, also, that a letter was needed from the London Borough of Lambeth regarding the 'financial support' for Alice's physiotherapy (even though this was clearly in her Statement of SEN meaning there was a legal duty to provide).
25. Although Surrey County Council confirmed that Alice's Statement of SEN had been sent to School M, it claimed it was unaware until Miss Page telephoned in June 2010 that Alice was not receiving one-to-one physiotherapy (Alice was, though, receiving some level of hydrotherapy as part of her educational package). Once Surrey County Council became aware of this, it took steps to identify a suitably qualified person to deliver the therapy required. The London Borough of Lambeth was, meanwhile, contacted about the lack of therapy by Alice's maternal grandmother on 9 May 2010 (which did not appear to provoke a response) and by School M in July 2010 to say it would be sending a breakdown of the fees (although under the terms of the agreement detailed in paragraph 23, this should have been sent to them by West Sussex County Council). The London Borough of Lambeth informed the school that it could add the physiotherapy costs to the invoice and those would be recouped in the usual way.
26. Surrey County Council wrote to the London Borough of Lambeth on 5 July 2010 to say it had agreed fees of £3,100 for the one-to-one physiotherapy. The London Borough of Lambeth responded by letter on 28 July 2010 to say it was happy with this and noted that it could be recouped directly. However, Miss Page contacted the London Borough of Lambeth on 2 September 2010 to say that the physiotherapy was still not being provided and the London Borough of Lambeth, appropriately, asked for immediate clarification from Surrey County Council.
27. Alice's one-to-one physiotherapy (which is conducted in one hourly sessions) began on 1 October 2010, after nearly a 14 month gap. Although, as referred to in paragraph 24, Alice was receiving hydrotherapy as part of her educational

package, there is a question as to how much she was receiving at the school (according to the foster carer's report of 16 March 2011). Unfortunately this has not been followed up in further reports to date and my investigator has been unable to clarify the amount of hydrotherapy received.

28. When the physiotherapist began in post she was apparently told (by West Sussex PCT) that she would be responsible for all the child's needs. This included seeing company representatives in order to source equipment, measure and fit equipment and provide input to Annual Reviews even though she was only engaged for an hour each week for the purposes of hands-on physiotherapy. West Sussex PCT, in effect, appears to have withdrawn its physiotherapy services to Alice.
29. However, when the physiotherapist measured Alice for gaiters and splints in October 2010 and asked Surrey PCT to pay for them, she was told that Lambeth PCT was responsible but not how to contact them. She was not given a copy of Alice's Statement of SEN as School M apparently told her it was with the London Borough of Lambeth and not them. Surrey County Council was emailing Surrey PCT in February 2011 asking whether it would provide the care previously given by West Sussex PCT (i.e. for the provision of orthotics) but when the physiotherapist chased a decision in December 2011 she was told it was not the responsibility of Surrey PCT but that of Lambeth PCT.
30. At the same time, Alice needed a new chair to enable her to sit at the dinner table and participate in family life with Miss Page's family (rather than using her wheelchair with a tray) and a new sleep system along with an adapted wet room or bathroom. It was also noted at an occupational therapy visit in March 2011 that the slings in Miss Page's house were too small, the bath seat was too small and the sliding sheets were too big. There were problems with hoists being broken and no one taking responsibility for replacement or repair. With the hoist, the London Borough of Lambeth said it was not responsible for the hoist repairs and that it would only pay if Miss Page's agency paid and then invoiced it. Part of this is the subject of a separate complaint being pursued with Lambeth PCT.
31. A request for a chair was first turned down (over the telephone) and then agreed by the London Borough of Lambeth. The hoists and bed were fixed (on or before 16 March 2011) but the email from the child's social worker (from the London Borough of Lambeth) of that date reads 'The outstanding issue that remains is what department is responsible for the maintenance of the bed, which is likely to be the originating PCT'. The sleep system contract is now, we understand, in place but the bathroom arrangements have yet to be resolved (as Miss Page believes that a bath would be more appropriate for Alice than a wet room).
32. Neither equipment needs, nor therapy needs, are detailed in the Care Plan. Alice's social worker pointed out in an email of 14 March 2011 that, 'as she gets bigger, her equipment may change due to her needs' dependent upon 'what

assessment physio/OT may carry out'. However, this means that the Care Plan is not a useful tool to ascertain what services Alice requires now and how these services should be delivered.

33. Since Alice has been in foster care, she has visited each parent on alternate weekends. However, her social worker informed Alice's mother that the London Borough of Lambeth was withdrawing funding for travel costs. Notice of a review of transport costs was given at a Looked After Review on 5 October 2010 but notice of withdrawal appears to have been given verbally and followed by a letter to the London Borough of Lambeth from Alice's mother on 12 October 2010. The Looked After Review on 5 October 2010 concluded that 'it was the view of those (present) that any decrease in the frequency of contact which may result as a change of transport arrangements is likely to have a negative impact on the long term stability of the placement'. However, prior to withdrawal of funding, the Council had paid for Alice to visit her mother but not Mr Hayden, which caused Mr Hayden financial hardship.
34. Alice is transitioning to a Surrey school (School N) for Year 7. School M has apparently held an Annual Review inviting School N in order to ensure that Alice's therapies are available from her start date there and that there is no further delay.

Conclusions

35. From the evidence available to me, and as Mr Hayden has also noted, there were significant gaps in Alice's physiotherapy provision as set out in her Statement of SEN. The London Borough of Lambeth should have made every effort to ensure that delivery of the one-to-one physiotherapy (and an hour of hydrotherapy) took place as soon as possible after the SENDIST ruling. In view of the nature of this provision as a legal obligation, I am surprised by the discussion about the adequacy of the proposed treatment between the London Borough of Lambeth and Lambeth PCT even after the ruling. Furthermore, Surrey County Council should have made sure that the therapy was being delivered after Alice moved to Surrey.
36. In fact, the gaps in provision of one-to-one physiotherapy total 24 months (September 2007 to February 2008, May 2008 to September 2008 and August 2009 to October 2010). Furthermore, it is unclear whether Alice was consistently receiving one hour a week of hydrotherapy throughout this time. Although the meeting Mr Hayden had with the London Borough of Lambeth on 13 May 2011 would suggest that 'catch up' therapy was not required (despite the London Borough of Lambeth having agreed in principle to pay for catch up sessions), there was a need to ensure that Alice's therapy could be consistently delivered at home. I am of the opinion that the delay of provision was maladministration causing injustice for Alice and significant uncertainty, distress and outrage for

Mr Hayden who does not know whether the possibility for Alice's independent mobility was sacrificed because of that delay.

37. Although hydrotherapy was taking place as part of Alice's educational package since (and before) the SENDIST ruling, it is likely to have been less effective because it was not delivered simultaneously with the one-to-one land based therapy that Alice should have been receiving throughout. There are still questions about how much hydrotherapy Alice should have on a weekly basis to the extent that, as of March 2011, she seemed to be having only half an hour rather than an hour each week. This is maladministration leading to injustice for Alice because the amount of treatment specified was not delivered. Also, the lack of alignment between the mutually beneficial hydrotherapy and physiotherapy caused Alice injustice and Mr Hayden understandable distress and outrage as he will never know what the effects might have been had Alice received the full package of consistent therapy envisaged.
38. In terms of the arrangements made once Alice moved to Surrey, Surrey County Council was aware of her Statement of SEN, because it received it from the London Borough of Lambeth on 22 July 2009. It had an obligation to make sure that the requirements of the Statement of SEN were being adhered to by School M and to make arrangements for the London Borough of Lambeth to pay appropriately. Furthermore, although Surrey County Council was then told by West Sussex County Council on 12 February 2010 that there was a 'specified physio allocation', which needed addressing, it did not take steps to identify and arrange this. This caused further delay to the provision, which is maladministration leading to injustice for Alice. Surrey County Council has also failed to ensure that Alice consistently received the hour of hydrotherapy in accordance with her Statement of SEN, which is also maladministration leading to injustice for Alice and distress to Mr Hayden.
39. One reason why the delay in provision was not addressed earlier was because of the inadequacy of the Care Plan. This does not set out any specifications for Alice's care, the equipment she needs or who is responsible. This goes against the existing Statutory Guidance¹³ and questions the London Borough of Lambeth acting as a responsible corporate parent. The London Borough of Lambeth has accepted that this was maladministration given that the Care Plan did not meet the expected standards and I agree. There is still a question of how the bathroom equipment that is necessary for Alice should be funded and there is a duty on the London Borough of Lambeth to resolve this as soon as possible.
40. Another reason why the delay in provision was not addressed at an early stage was because the London Borough of Lambeth failed to consider Mr Hayden's correspondence as a formal complaint. It is possible that had the complaint's

13 The Children Act Guidance and Regulations Volume 2: Care Planning, Placement and Case Review (2010) section 2.36

procedure been invoked earlier, the problems could have been addressed more quickly.

41. It is clear that different arrangements were made for Alice to visit Mr Hayden and her mother. Visits to her mother (at her maternal grandmother's house) were paid for by the London Borough of Lambeth but visits to Mr Hayden were not. Both parents should have been treated equally¹⁴ and details of contact should have been set out in the Care Plan. It was noted at the meeting Mr Hayden had with the London Borough of Lambeth on 13 May 2011 that there had been no equity in these different arrangements, which I consider to be maladministration on the part of the London Borough of Lambeth. I understand that there has been an agreement to convert an allowance into a petty cash equivalent, to be shared equally between Alice's parents, but this does not take into account the lack of allowances previously paid to Mr Hayden.
42. It is desirable for Councils to work together and to ensure their communication is open and transparent. This is best practice under any circumstance but especially for a looked after child with complex and multiple needs. It would have been advisable for all three Councils (and PCTs) to have taken an holistic view at the outset of Alice's placement in order to put the child at the forefront of their planning. This would have made it clear who was responsible for providing services to Alice as a London Borough of Lambeth looked after child. This would have benefitted Alice herself, the Councils and PCTs, the school, Miss Page and Mr Hayden (as well as Alice's mother, grandmother and siblings). The London Borough of Lambeth has failed in its corporate parenting to Alice because it did not appreciate, or catalogue in the Care Plan, the range of services she required from a number of different agencies. This is maladministration.

Finding

43. Maladministration causing injustice by the London Borough of Lambeth and Surrey County Council, remedy agreed.

Remedy

The London Borough of Lambeth

44. The London Borough of Lambeth has agreed to apologise to Mr Hayden for the amount of time and trouble he spent pursuing the complaint (which was never formalised). It will also apologise for the outrage and distress experienced by him due to the London Borough of Lambeth's failure to provide therapies to Alice in a consistent, coherent and timely fashion, which was maladministration. A payment of £1,000 for exceptional time and trouble and £1,000 for outrage and distress has also been agreed.

¹⁴ The Children Act Guidance and Regulations Volume 2: Care Planning, Placement and Case Review (2010) section 2.44

45. It has been accepted by the London Borough of Lambeth that the cost of £3,100 provides one hour of physiotherapy per week over a school year by a qualified therapist. As the gaps in provision total 24 months (September 2007 to February 2008, May 2008 to September 2008 and August 2009 to October 2010), the London Borough of Lambeth will pay the complainant £6,200 for Alice's educational and social benefit for the provision not made. Necessary arrangements to ensure Alice's treatment can be consistently delivered at home will be expedited.
46. The London Borough of Lambeth is also making a further payment of £1,000 for Alice's educational and social needs for the uncertainty which results from failing to ensure that the land and water therapies were delivered simultaneously. This uncertainty results from the likely negative effects on Alice's development and reflects the contention by Mr Hayden that Alice would have had a better chance of walking unaided had the two treatments been delivered consistently since 2007.
47. The London Borough of Lambeth accept that it also failed to act as a responsible corporate parent because the Care Plan did not detail the responsibilities of each authority. This resulted in lengthy discussions to clarify service entitlement and provision and meant that Alice was not given the equipment she needed when she moved to Surrey. For this, a payment of £1,000 will be given to the complainant for the purpose of Alice's educational and social needs.
48. It has been agreed that monies paid by the London Borough of Lambeth to facilitate contact between Alice and her parents will now be converted into a petty cash allowance, which they can both access. The London Borough of Lambeth has accepted there was lack of equity in the previous arrangements (whereby money was paid to Alice's mother but not the complainant), which is maladministration causing the complainant injustice. The London Borough of Lambeth will make a payment of £250 as a contribution towards the complainant's travel costs that were incurred over that time.
49. The total compensation recommended is £8,200 for Alice's specific needs and £2,250 for Mr Hayden.

Surrey County Council

50. Surrey County Council did not ensure that the requirements of Alice's Statement of SEN were being met, in accordance with its statutory duties, which is maladministration. It has agreed to pay the complainant the sum of £900 (for his daughter's educational and social needs) to remedy the injustice caused to Alice. This is calculated at £100 per month for the period between February 2010 and October 2010.

51. Surrey County Council will also give the complainant (on Alice's behalf) and Miss Page an apology for its failing here.

**Dr Jane Martin
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB**

24 April 2012