

Report

on an investigation into
complaint no 10 021 572 against
Warrington Borough Council

7 November 2013

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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 and Mrs R - the complainants
T - Mr and Mrs R's son

Report summary

Special educational needs

Mr and Mrs R complained that the Council failed to ensure their son T, who has Autistic Spectrum Disorder (ASD), received the speech and language therapy that was written as an educational need in his Statement of Special Educational Needs, for three years.

The Ombudsman finds that the Council:

- failed to arrange the specified educational provision for speech and language therapy in T's Statement from 2009 to 2012. The Council had ultimate responsibility in law to ensure the educational provision in T's Statement of Special Educational Needs was made;
- failed to act on the views and recommendations of an Independent Speech and Language Therapist who had assessed T in 2011;
- was not effective in assessing the overall level of special educational speech and language therapy need in its area, or in planning to ensure that it could meet those needs;
- did not monitor or have an effective dialogue with the Primary Care Trust (PCT) or review its funding to the PCT about providing specialist speech and language therapy support to children in its secondary schools with ASD and a Statement of Special Educational Needs until 2012;
- continued to write speech and language therapy support by Speech and Language Therapists into children's Statements without clear planning around who would provide that support and how it would be funded;
- failed to properly notify or consult with Mr and Mrs R about the removal of the speech and language therapy service once it was aware in 2010. It also failed to tell Mr and Mrs R that the Council, not the PCT, had the ultimate responsibility to ensure the speech and language therapy in T's Statement was provided to him.

The Council has fully accepted the findings and recommendations made in this report. It says it is committed to learning lessons from the report's findings as a council and in its joint working with the health service.

The Ombudsman has decided to publish this report due to its wider public interest and the lessons that other councils could learn from this investigation.

Finding

Maladministration and injustice, remedy agreed.

Agreed remedy

To remedy the injustice caused to Mr and Mrs R and their son T the Council has agreed to pay:

- Mr and Mrs R, for the benefit of T's education, £5,000 to acknowledge failing to provide the educational provision required by his Statement for three years;
- T an additional £750 for his own benefit to acknowledge the disruption caused to him and his education for three years.

The Council has also agreed to apologise to Mr and Mrs R and T for the disruption to T's education and for the lack of communication regarding the removal of a Speech and Language Therapist service.

There are further recommendations about the Council's overall duty to ensure the provision specified in part 3 of a Statement is provided, in a joint report published by the Local Government Ombudsman and the Health Service Ombudsman.

Introduction

1. Mr and Mrs R complain that the Council failed, from 2009 to 2012, to ensure the speech and language therapy, named in their son T's Statement of Special Educational Needs, was provided. As a result they say this has had a detrimental effect on their son's difficulties with communication and understanding.
2. They also complain the Council failed to notify them of this decision.

Legal and administrative background

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this report, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and if it has, she may suggest a remedy. (**Local Government Act 1974, sections 26(1) and 26A(1)**)
4. Part IV of the Education Act 1996 sets out the duties of local education authorities and other bodies for meeting the special educational needs of children. Warrington Borough Council (the Council) is the local education authority in this case.
5. Section 324 states that when a child has a Statement of Special Educational Needs, the responsible local authority must arrange to provide what is specified in the statement. This does not apply if the parents have made alternative arrangements.
6. The Special Educational Needs Code of Practice 2001 (the Code) gives guidance on policies and procedures for those supporting and identifying children with special educational needs. There is a statutory duty on councils, schools and health authorities to have regard to this Code.
7. Paragraph 8.50 of the Code states:

“Prime responsibility for the provision of speech and language therapy services to children rests with the NHS. This applies generally and also to any specification of such services in a Statement of Special Educational Needs, whether in Part 3 as educational provision or in Part 6 as non-educational provision, or in both parts...”
8. Paragraph 8.51 of the Code states:

“Where the NHS does not provide speech and language therapy for a child whose statement specifies such therapy as educational provision, ultimate responsibility for ensuring that the provision is made rests with the LEA, unless the child's parents have made appropriate alternative arrangements. Schools, LEAs and the NHS should cooperate closely in meeting the needs of children with communication difficulties.”

9. The Code also highlights that councils should examine carefully the provision required for individual children and should give full consideration to how such provision should be delivered. The Code notes school staff may deliver language programmes for some children but these programmes may require regular monitoring and evaluation by a Speech and Language Therapist. The Code states collaborative practice between health authorities and councils is essential for successful intervention with children and young people with speech and language difficulties.
10. Councils can commission the services of Speech and Language Therapists from the NHS or from an independent source. It is common for councils to use NHS Speech and Language Therapists.
11. In the case of *R v London Borough of Harrow ex parte M [1997]* the judge confirmed the duty of local education authorities to arrange the provision set out in Part 3 of a Statement (special educational provision). In this case the Council had asked the PCT to arrange the therapy and the PCT had not done so due to a lack of resources. In the case *R (N) v North Tyneside Borough Council [2010]* it was confirmed that a local authority's view that it was not obliged to provide group speech and language sessions in accordance with a Statement was found to be unlawful as the provision was mandatory under the Education Act 1996 s324(5).
12. A 2008 national review into the provision of speech and language therapy (the Bercow Review of Services for Children and Young People (0-19) with Speech, Language and Communication Needs) said communication is crucial, joint working is critical and as a result local authorities and health services should work together.

Investigation

Background and circumstances

13. Mr and Mrs R's son, T, is 17 years old and has Autistic Spectrum Disorder (ASD). This is a lifelong developmental disability affecting how he would communicate and interact with other people. Since he was four years old he has had a Statement and been receiving speech and language therapy.
14. Until July 2012, when T was 16 years old, he attended a mainstream high school with a special unit for children with ASD. Since 2009 this special unit has been called a Designated Provision. Pupils in the Designated Provision are educated both in the Provision and in the mainstream parts of the school.
15. From September 2012, T has attended a college with the support of Learning Difficulty Assessment (under section 139A of the Learning and Skills Act 2000). This makes no specific requirement for support for communication needs or speech and language therapy. The Educational Psychologist's assessment in

September 2011 reported T needed support with social skills and voice modulation work.

16. The Local Government Ombudsman and the Health Service Ombudsman have jointly investigated a similar complaint. This involved a child of the same age as T who also had ASD and who attended the same Designated Provision at the mainstream high school with T. As a result I am aware of the PCT's actions and decisions on its provision of speech and language therapy in the Warrington area.

T's Statement of Special Educational Needs

17. In March 2007 T's Statement was amended. The amended Statement included:

Part 2 special educational needs

[T] continues to exhibit the social communication difficulties associated with a child with Autistic Spectrum Disorder. His special educational needs include:

- *Difficulties with receptive and expressive language.*
- *Poor development of social and interaction skills.*

Part 3a the special educational provision objectives

Continue to improve his communication skills both expressive and language skills transferring these skills outside of the classroom environment.

Part 3b educational provision

(iii) In drawing up an IEP ... the school should consult with the appropriate professionals such as the Educational Psychologist and the Speech and Language Therapist.

(iv) School should ensure [T] has an individual language programme devised by a speech and language therapist and carried out in school.

Provision of speech and language therapy

18. T had been receiving speech and language therapy support since primary school. Since attending the Designated Provision at a mainstream high school, the Speech and Language Therapist visited T once or twice a year. The Speech and Language Therapist carried out an assessment of T and updated his programme of support for school staff to deliver. A Speech and Language Therapist from the local PCT last visited T at his school in May 2009. The Therapist wrote that the next visit would take place, as usual, in the next term:

“[T]’s communication skills should be reviewed in full in the Autumn Term with a view to setting new targets or discharging him from the service if no further input is required.”

19. Mr and Mrs R say no one told them this was to be the last visit by the Speech and Language Therapist. All the signals were that the service would continue as before. They only became aware T was not receiving his speech and language assessments and updated programme during the meeting for the Annual Review of his Statement in June 2010.
20. The Council has had a service level agreement with the PCT since 2005 to provide speech and language therapy support for 40 children with ASD. From 2009 to 2012 the Council paid the PCT £60,000 to £65,000 for this service. However the PCT said it cost much more to provide the service for the 40 children covered by the service level agreement with the Council and there were many more than 40 children to support.
21. The Council says it does not know why the limit was set at 40 pupils. Those who would have set this limit no longer work for the Council and there is no record of why they set the limit at 40.
22. I am aware that by June 2010 the PCT had decided it could no longer fund speech and language therapy to children in the Designated Provisions in secondary schools. The PCT believed the Council was not paying the PCT for that specific service. It would only agree to provide a service to 40 children with ASD in primary schools and others with ASD who had had no previous support from a Speech and Language Therapist.
23. The PCT said there had been an increase in demand for speech and language therapy:
 - following an increase in diagnoses of ASD in children; and
 - for children at secondary schools.

Annual Reviews of T’s Statement

24. In the first Annual Review of T’s Statement after the removal of the speech and language therapy service, in June 2010, one of the issues noted by the School was the lack of speech and language therapy provision for T. The School said it was still delivering general skills support to T but not a specific programme for his individual needs. However, it said there was evidence of some improvement in his language development, such as less echoing of others and repetition of his own questions. Mrs R says this was the first time she was aware that a Speech and Language Therapist was no longer visiting T.
25. Mr and Mrs R made a complaint to the Health Service Ombudsman in 2010 about the removal of the speech and language therapy service. Because of that

complaint the PCT provided T with an independent assessment of his speech and language needs in February 2011. However Mr and Mrs R say this did not result in:

- any changes to T's Individual Education Plan (IEP); and
- the production of an individual programme of speech and language therapy that his school could deliver.

26. At the following Annual Review, held in March 2011, the School declared that T's Statement was not effective as there was no speech and language therapy provision for him. It accepted that in February 2011 the PCT had sent a Speech and Language Therapist for an assessment of T. However the School stated it still needed an individual programme to follow, and the assessment did not provide this. The School noted that once a Speech and Language Therapist had developed a programme its staff would follow it.

The Independent Speech and Language Therapist's report of February 2011

27. Following Mr and Mrs R's complaint to the Health Service Ombudsman, the Independent Speech and Language Therapist made eight recommendations following her assessment of T. Four of those recommended the use of a Speech and Language Therapist. Those recommendations were:

- staff should be trained in the development of speech and language skills by a Speech and Language Therapist as a matter of urgency;
- a Speech and Language Therapist and staff in the Designated Provision should provide all staff in contact with T with information on his needs and strategies;
- T needed specific one-to-one support once a week to develop his verbal reasoning skills. This work should be initially supported by a Speech and Language Therapist;
- T should have a named Speech and Language Therapist.

28. In response to our enquiries the Council said:

- the school staff had not received training from a Speech and Language Therapist but the staff could get advice from the teacher in the Designated Provision;
- the staff in the Designated Provision had provided information to other staff in the School about T's needs via what the School calls a 'pen picture';
- developing T's verbal reasoning skills had not been a specific target since 2009. However the Council said the School had incorporated suggestions

from T's previous Therapist's report into the general curriculum. The Council admitted this work is not supported or checked by a Speech and Language Therapist;

- the Council accepted T did not have a named Speech and Language Therapist.

The Council's view

29. In response to our enquiries the Council said:

- it was meeting its duty to ensure T received support for his communication needs by arranging his education through its Designated Provision at the mainstream high school. It said the need to develop language, comprehension and reasoning skills was a need for all the 12 people in the Designated Provision at the school. It said it addresses this need through a total communication approach. The Council believed this is in line with the objectives in part 3 of T's Statement which said: *"Continue to improve his communication skills both expressive and receptive language skills transferring these skills outside of the classroom environment"*;
- the Speech and Language Therapist oversaw the delivery in school until 2009. More experienced staff trained new staff joining the School after then. It said staff at the Designated Provision were confident they had the skills to deliver the thinking and communication programme as part of Personal Social Health & Economic Education (PSHE). One to one provision to develop his language and comprehension occurred several times per week. It said the staff at the School assessed whether the new approach was meeting T's needs;
- it was unaware the PCT had decided not to provide a speech and language therapy service to pupils in the two Designated Provisions. It had assumed any delay in provision was because of the high levels of maternity leave in the speech and language therapy workforce and a recruitment freeze by the PCT;
- it decided to rewrite its service level agreement with the PCT in 2012. It has increased the funding it provides to the PCT (now a Clinical Commissioning Group) to £104,000 to ensure all those who require support from a Speech and Language Therapist in their Statements now receive it.

Mr and Mrs R's view

30. Mr and Mrs R say:

- T did not speak until he was nearly eight years old and he has a form of verbal dyspraxia;

- they wanted a Speech and Language Therapist to continue to assess T as had happened up to May 2009. They wanted this to be once or twice a year and for the assessment to result in a programme that staff at his mainstream secondary school could have followed;
- they supported the work of the School staff who they thought were wonderful but were still concerned that they were not trained Speech and Language Therapists. The staff were not qualified to make an assessment;
- the programmes the School used for T between 2009 and July 2012 were out of date or were not specifically designed to meet T's individual needs;
- they received funding of £500 from a charity in 2012 to pay for speech and language therapy support for T until the end of July 2012. They had found this support so useful they decided to continue to pay privately for this Therapist to support T.

The View of the Head of the Designated Provision

31. The Head of the Designated Provision said the staff had the confidence to deliver a general programme of speech and language support but could not write an individual programme for a child. She said the School needed a Speech and Language Therapist to visit the children.

Findings

The provision of speech and language therapy support by a Speech and Language Therapist specified in T's Statement

32. The Council has a statutory duty to arrange for the specified educational needs provision in part 3 of T's Statement. Case law has confirmed it is the ultimate responsibility of the Council to ensure the provision named in a Statement is delivered. T did not receive support from a Speech and Language Therapist for three years. The Council's failure to arrange the specified educational provision in T's Statement was maladministration. It failed to properly consider its duties under s324 of the Education Act 1996. A failure to do so from 2009 to 2012 is significant and serious maladministration by the Council.
33. After the service was withdrawn in 2009 the next qualified Speech and Language Therapist to assess T was in February 2011 following a complaint to the Health Service Ombudsman. The Council failed to meet four of the eight recommendations made by the Independent Speech and Language Therapist, all requiring the use of a Speech and Language Therapist. No new targets or programme of work were set for T. The assessment was clear: T continued to need the support of a Speech and Language Therapist he should have had a named Therapist.

34. Some speech and language support was delivered by the staff at the Designated Provision via programmes last updated by a Speech and Language Therapist in 2009. However it is also clear from the Head of the Designated Provision that the staff recognised this was not satisfactory. The views and recommendations of the Independent Speech and Language Therapist from 2011 do not support the Council's view that the school staff were trained and happy to deliver this service.
35. This was also contrary to the guidance in paragraph 8.51 of the Code. The Code states ultimate responsibility for ensuring the provision is made rests with the LEA. Therefore the Council must arrange the provision if the PCT fails to provide speech and language therapy specified in part 3 of a child's Statement. The Council has a duty to have regard to this Code and the failure to do so was maladministration.
36. I also find the Council:
- was not effective in assessing the overall level of special educational speech and language therapy need in its area, or in planning to ensure that it could meet those needs when the use of Speech and Language Therapists was required;
 - did not monitor or have an effective dialogue with the PCT about the Service Level Agreement for providing specialist speech and language therapy support to children in its secondary schools with ASD and a Statement requiring speech and language therapy support;
 - did not understand or respond quickly enough to the increased demand and need for speech and language therapy for pupils in secondary schools, particularly those with ASD;
 - did not review its funding to the PCT to ensure that it could provide a service to all those children who had speech and language therapy support from a Speech and Language Therapist specified in their Statements until late 2012;
 - failed to plan who would provide support and how it would be funded while continuing to write speech and language therapy support by Speech and Language Therapists into children's Statements.
37. It appears the PCT provided speech and language therapy support to 40 children with ASD, the number stated in the service level agreements with the Council. However this did not cover all the children with ASD who had Statements that included the need for support from a Speech and Language Therapist. That is why the PCT says it took the decision to not provide support to the Designated Provisions in secondary schools. The Courts have determined that it is the Council that has the statutory duty to arrange for the special educational provision to be made in accordance with s324 of the Education Act 1996.

38. It is not good enough to blame previous officers of the Council for poor record keeping of why the Council decided in previous years' discussion with the PCT to only commission a service for 40 children with ASD and to continue to maintain the funding at a level of 40 children in 2009. A failure to have adequate systems, procedures and records to guide staff in deciding how to set such levels was maladministration.
39. The Council failed to ensure it had relevant knowledge about how many children with ASD, via a check on what it had written in Statements, needed the support of a Speech and Language Therapist. Without that knowledge it then commissioned insufficient services from the PCT, deciding again to set the level at 40 children in 2009. That was maladministration.
40. The Council failed to properly notify or consult with Mr and Mrs R about the removal of the speech and language therapy service once it was aware in 2010. The Council says it was not aware the service had stopped until June 2010 and at that point thought it was a temporary problem with staffing levels at the PCT. However it should have discussed the problems with Mr and Mrs R and made them aware that the Council, not the PCT, had the ultimate responsibility to ensure the speech and language therapy in T's Statement was provided to him.

Injustice as a result of maladministration by the Council

41. For three years T was without the speech and language therapy support he was assessed as needing to meet his special educational needs. In 2011 his school declared his Statement was not effective as he had no provision of speech and language therapy support. He had an updated assessment in 2011 which clearly indicated he still needed the support of a Speech and Language Therapist. I conclude that by not having this educational need met it is likely to have impeded T's educational development as well as his social development.
42. Having not received any speech and language therapy support, despite the 2011 assessment recommending it, Mr and Mrs R felt compelled to commission their own Speech and Language Therapist, by using funds from a charity.
43. Mr and Mrs R were left in the dark as to what was happening with T's speech and language therapy. This is not acceptable and has caused them an injustice. It led to unnecessary distress and uncertainty.

Agreed remedy

44. I welcome the news that the Council and the PCT agreed a funding level since 2012 that is sufficient to provide a service to all children with ASD who have support by a Speech and Language Therapist written into their Statements. However as the Council (as local education authority) has ultimate responsibility for ensuring that the provision is made, I recommended a remedy to the Council and it has agreed to:

- pay Mr and Mrs R, for the benefit of T's education, £5,000 to acknowledge failing to provide the educational provision required by his Statement for three years;
 - pay T an additional £750 for his own benefit to acknowledge the disruption caused to him and his education for three years.
45. The Council has also agreed to apologise to Mr and Mrs R and T for the disruption to T's education and for the lack of communication regarding the removal of a Speech and Language Therapist service.
46. Further recommendations were made to the Council, and accepted, within a joint report published by the Local Government Ombudsman and the Health Service Ombudsman, regarding its overall duty to ensure the provision specified in part 3 of a Statement is provided to the child.
47. The Council has fully accepted the findings and recommendations made in this report. It says it is committed to learning lessons from the report's findings as a council and in its joint working with the health service. I welcome the Council's acceptance of fault and its agreement to provide a remedy to Mr and Mrs R and T.
48. I have decided to publish my findings as the failure of councils to provide what is written in a child's Statement as an educational need, in particular speech and language therapy, is an all too common cause of complaint to the Ombudsman. Wider lessons also need to be learned about communication between councils and health authorities on these matters. These organisations have been aware since the Bercow report in 2008 of the need for effective joint working to ensure speech and language therapy is delivered to those children for whom it is a special educational need.



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