

**Report
on an investigation into
complaint number 13 002 982 against
Birmingham City Council**

12 March 2014

**Investigation into complaint reference number 13 002 982
against Birmingham City Council**

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

Key to names used

Ms B the complainant
X Ms B’s daughter

Report summary

Children's Services: Disabled child

The Council identified X as a disabled child with severe learning difficulties and Autism in January 2004, and provided 10 hours a month in direct payments. The Council then lost sight of this child between November 2006 and March 2011. There was no assessment of X's needs, or consideration given to whether the 10 hours a month was adequate to meet her needs, and the needs of Ms B, her mother.

The Council contacted Ms B in 2011 and assessed X's needs later that year. This assessment contains errors and was not discussed with Ms B. This assessment was said by the Head of Service to be inadequate, but was used by the Resource Panel to decide the 10 hours of direct payments continued to meet X's needs.

Ms B complained, but the Council took nearly two years to progress her complaint through its complaints process and to comply with the recommendations of the Investigating Officer and the Ombudsman.

The new assessment completed as a result of the complaint contains errors and still does not fully consider X's needs and the needs of Ms B as her carer. It has not been discussed with Ms B. The Council therefore cannot say with any certainty that the current level of support meets X's needs. There is no care plan to say what need the 10 hours of direct payments is to address, and what outcome is expected from providing this support.

Finding

Fault found causing injustice and recommendations made.

Recommended remedy

To remedy the injustice caused, I recommend the Council should:

- pay Ms B £4,000 for the injustice caused by its failure to properly assess Ms B and her care of X to establish their support needs from November 2006 to August 2011;
- pay Ms B a remedy of £1,000 for the injustice of stress and anxiety caused due to the Council's significant delay in completing the Core Assessment when it agreed to do so and for her time and trouble in bringing the complaint;
- appoint an independent social worker to assess X's needs, and Ms B's needs as her carer. This appointment to be made within 28 days of publication of this Report. The social worker to complete the assessment, and to discuss the assessment with Ms B and add her views, within 45 days of appointment. The independent social worker to also produce a proposed care plan, if s/he identifies needs which require support, for the Resource Panel to consider.
- reimburse Ms B for up to three days unpaid leave from work to enable her to fully engage with the independent social worker to complete the assessments within the time scale allowed;

- provide the Ombudsman with copies of the independent assessment, the proposed care plan and the outcome of the consideration by the Resources Panel within four months of publication of this Report;
- make a further payment to Ms B, at a level the Ombudsman will decide, following the independent assessment of X's needs. This is for any shortfall in services received from August 2011 onwards;
- review the way it assesses children with disabilities and their families and how these assessments relate to its Short Break Statement and Eligibility Criteria.

The complaint

1. Ms B complains about the support the Council provides to enable her to care for her disabled daughter X. Specifically Ms B complains the Council:
 - failed to contact her for over four years;
 - repeatedly failed to properly assess X's needs;
 - failed to properly consider Ms B's needs as X's carer;
 - delayed in properly investigating Ms B's complaints; and
 - failed to complete recommendations from the complaint process when it agreed to do so.

Legal and administrative background

2. 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 remedy¹.
3. The Council has a statutory duty to assess the needs of disabled children and their families. The Government has issued statutory guidance which sets out the assessment process in detail².
4. From April 2013 the timescale for completion of a core assessment is a maximum of 45 working days³. Before this change, the time allowed was 35 working days⁴. As part of the assessment the social worker should check and discuss information gathered with the child and their parents, and record differences in views.
5. Following the assessment, the Council must produce a care plan which sets out the nature and extent of the services it will provide. The care plan must clearly identify the child's needs, what is to be done about them, by whom and when⁵. Children's Services should review plans for children in need in the community at least every six months⁶.
6. There is an expectation in the legislation and government guidance that where the Council assess a disabled child as having substantial needs, those needs will be met through the provision of services. The Council must follow a rational process for deciding which children are eligible for services and which are not. The criteria must be clear, transparent and take account of the impact of disability on children and their families.

¹ Local Government Act 1974, sections 26(1) and 26A(1)

² Framework for the assessment of children in need and their families, Department of Health, Department for Education and Employment, Home Office, 2000; Working Together to Safeguard Children, Department for Education, April 2013.

³ Working Together to Safeguard Children (A guide to inter-agency working to safeguard and promote welfare of children), March 2013

⁴ Framework for the assessment of children in need and their families

⁵ R(AB and SB) v Nottingham CC[2001]EWHC 235 (Admin)

⁶ Framework for the assessment of children in need and their families

7. Most services needed by disabled children and their families are provided under the Chronically Sick and Disabled Persons Act 1970⁷. Services required under this Act must be provided. They include practical assistance in the home such as help with bathing, using the toilet, moving, feeding and routine household chores. Recreational activities, educational facilities, travel, home adaptations, holidays and home-based respite care can also be provided under this Act.
8. Other services, such as residential short breaks, can be provided under the Children Act 1989⁸. The Breaks for Carers of Disabled Children Regulations⁹ place a duty on Local Authorities to have regard to the needs of carers who would be unable to continue to care for their disabled child without a short break or would be able to care more effectively if breaks are given. Care can be provided to enable carers to take part in training, education or leisure activities, or to carry out day to day tasks in running the household.
9. The Council has to produce a Short Breaks Services Statement so families know what services are available, the eligibility criteria for these services, and how the range of services is designed to meet the needs of carers with disabled children in their area.
10. Cabinet approved Birmingham City Council's eligibility criteria for Disabled Children's Social Care in February 2012. The eligibility criteria state that some children may have higher levels of need requiring statutory or specialist services, and for these children a Core Assessment may be completed. The assessment will result in an analysis of needs, whether intervention is required, and if so a relevant support plan which is outcomes focussed will be produced. Following assessment, categories of need will be used to determine eligibility for social care resources. The eligibility criteria take account of indicators to help the Council to understand how the child's disability affects their daily circumstances. The indicators include Statements of Special Educational Needs and receipt of Disability Living Allowance.
11. Parents have a right to request support by way of 'direct payment' from the Council which they can then use to buy services themselves. Provision of support by direct payments is subject to regulations¹⁰ and guidance¹¹.
12. The Council has to deal with complaints considered under the Children Act complaints process¹² within timescales set out in the Guidance¹³. The regulations place a duty on the Council to act expeditiously through the procedure. The Adjudicating Officer should ensure that any recommendations contained in their response to the Stage 2 report are implemented.

⁷ Chronically Sick and Disabled Persons Act 1970, S2

⁸ Children Act 1989, Schedule 2 Part 1 section 6

⁹ The Breaks for Carers of Disabled Children Regulations 2011 (from April 2011)

¹⁰ Community Care, Services for Carers and Children's Services (Direct payments)(England) Regulations 2009

¹¹ Guidance on direct payments for community care, services for carers and children's services England, 2009, Department of Health

¹² Children Act 1989 Representations Procedure (Children) Regulations 1991

¹³ Getting the Best from Complaints

How we considered this complaint

13. This report has been produced after considering Ms B's written complaints both to the Council and to the Ombudsman. The Investigator also examined relevant documents and considered the Council's response to her enquiries.
14. The complainant 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 happened

Lack of contact from Disabled Children's Services

15. Ms B's daughter X was five years old when first referred to Disabled Children's Services in January 2004. She presented with severe learning difficulties and Autism. In March 2004 the Council allocated Ms B 10 hours of support a month through direct payments.
16. In October 2005 Ms B requested an increase to 12 hours of support a month. The Council continued its allocation of 10 hours a month.
17. Disabled Children's Services visited X in November 2006 and completed an initial assessment. The Council agreed to continue the existing direct payments for a further six months.
18. Following the Council's appointment of a new Head of Service to Disabled Children's Services it carried out an audit of children who Disabled Children's Services had not seen for some time. A Social Work Assistant contacted Ms B in February 2011 and visited her in March 2011. He recommended the case should be re-assessed.
19. There was no contact, and Disabled Children's Services did not see X, between November 2006 and March 2011. The Council has accepted that the service provided to Ms B and her daughter was not only poor but unsupportive and not focussed on an outcome for X. During the complaints process the Council later offered a full and frank apology for its lack of contact and communication.

Core assessment completed August 2011

20. A Social Worker arranged to visit Ms B and X in April 2011. The Social Worker intended to visit again to complete the Core Assessment, but Ms B pressed for the Social Worker to complete the assessment during that visit. Ms B explained that visits to assess are disruptive to X due to her anxiety and need for routine. They are also inconvenient for Ms B due to her need to take time off from her full time work. The Social Worker told Ms B she would be recommending an increase in her support hours.
21. Although the assessment was started in April 2011, the Social Worker entered the start date of this assessment on records as June 2011 to ensure the assessment appeared to have been completed within the 35 days allowed at that time.
22. The assessment identifies that X is 12 years old and diagnosed with Autistic Spectrum Disorder, Attention Deficit and Hyperactivity Disorder and Dyspraxia (global). She has moderate learning disability and experiences high levels of anxiety. X has communication problems and rarely sleeps well, often for only between one and five hours each night and sometimes remaining awake for several days. She is

very demanding of her mother's attention and her behaviour is becoming less manageable due to her age. X has few self care skills; she needs to be bathed or showered, and to have her teeth cleaned. She can feed herself but only with a spoon and is a messy eater. X can dress herself but needs help with fasteners. X has a placement at a special school in accordance with her Statement of Special Educational Needs, and Ms B uses the 10 hours of direct payments she receives to fund breakfast/after school club so she can work.

23. The assessment finds that Ms B is a lone parent in full time paid employment. She experiences extreme exhaustion due to X's sleep problems as she needs constant supervision when awake. Ms B has little family support for her care of her daughter, and when she experiences health needs of her own they limit her parenting capacity.
24. The assessment concludes that X has complex needs and displays a high level of anxiety and behaviours which make daily life and functioning difficult for her and her carer. It says that change is needed if the level of risk is to be reduced, and recommends an increase in direct payments.
25. The Social Worker recommended a doubling of the level of direct payments. Although her Team Manager initially noted on the file that she agreed with this request, she later noted that further use of community resources should be made prior to a request for increased direct payments.
26. The Social Worker did not show Ms B the assessment, and she therefore did not have the opportunity to correct errors or to add her views, before submission to the Resource Panel.
27. The Head of Disabled Children's Care, who was a member of the Resource Panel, had email contact with Ms B in August 2011 due to her service complaint. He told the Resource Panel he felt she was 'ambivalent' about the request for additional resources.
28. Ms B disagrees she is ambivalent about the level of support she needs to care for X. However, she is angry that Disabled Children's Services have ignored her and her daughter for so long. Ms B is an independent working mother who is proud of her ability to provide her daughter with the loving, stable environment she needs in order to thrive. Ms B considers the Council should assess X's needs, and her needs as X's carer, and provide appropriate services to meet those needs. The Council considers that as Ms B is not asking for additional services, no additional services are needed.
29. In September 2011 Ms B received a letter to tell her the Community Resource Panel had considered her case and decided to continue with direct payments for 10 hours a month. The panel considered that Ms B needed help to find a child minder or child care provider as X would not be able to continue to attend breakfast/after school club due to her age. The panel also provided information about Family Information Services which provides families of children with disabilities with information about activities and support services across Birmingham. There is no record of Disabled Children's Services producing a care plan.
30. The Head of Service confirmed in discussion with the Stage 2 Investigating Officer that the assessment placed before the panel was inadequate, but he considers the resources allocated met X's needs at that time.

31. Ms B considers the Council cannot know that the resources allocated will meet X's needs when the panel based its decision on an incomplete and inaccurate Core Assessment and nonexistent eligibility criteria.
32. The Council considers there are eligibility criteria, and X has always met them. However, as explained in paragraph 10 these were only in draft form prior to February 2012 and not shared with Ms B.

The complaint process

33. In August 2011 Ms B complained to the Head of Disabled Children Service about the delay in completing the assessment. She also complained about the failure by the Social Worker to share the contents of the assessment with her and a lack of clarity in the process of allocating direct payments for children with disabilities.
34. Following the Resource Panel meeting Ms B did receive a copy of the Core Assessment. This document contains basic errors such as reporting that X communicates verbally, which is not the case.
35. In December 2011 the Council responded to Ms B's complaint. She was unhappy with the response.
36. In January 2012 Ms B made a complaint to the Council using the Children's Services Complaints Procedure. The Investigating Officer completed a Stage 2 investigation on 4 June 2012, and the Adjudicating Officer responded nearly two months later on 30 July 2012. Most of her complaint was upheld. The Council accepted the findings and recommendations of the Independent Investigator.
37. The Independent Investigator's recommendations included that Disabled Children's Services should complete a full re-assessment of X's needs. This should include issues of financial support, community resources, activities and carer respite.
38. There is no evidence the Council started a new assessment of X's needs. The Council now says that Ms B was offered and declined a new assessment of X's needs in March 2012. This was when she was looking for after school provision and school holiday support while she was at work.
39. Ms B says she has no recollection of a conversation with Disabled Children's Services in March 2012. She does recall telling the Investigating Officer that repeating the Core Assessment was not necessarily required; proper consideration of her daughter's needs from the information already available was required. Ms B has continued to pursue her complaint about assessment of X, and delay in re-assessing her needs.
40. Ms B wanted further explanations of the Council's actions and decisions and so a Stage 3 Independent Panel considered her complaints further in September 2012. A Council Officer told the panel that a full re-assessment of X's needs was being carried out at that time. There is no evidence that Children's Disabled Services had started the assessment at that time. The Directorate's response in October 2012 to the Independent Review Panel Report accepted the findings and confirmed it would re-assess X's needs.
41. There is no evidence the Council started a new assessment of X's needs.
42. Mrs B complained to the Ombudsman in December 2012. The Ombudsman closed her complaint in March 2013 when the Council agreed to complete the Core

Assessment. This would allow Ms B, and the Ombudsman if necessary, to consider the level of injustice to the family caused by the Council's failure to properly assess X's needs.

43. There is no evidence the Council started a new assessment of X's needs.
44. In May 2013 Ms B complained once again to the Ombudsman that the Council had failed to undertake the agreed assessment.

Core Assessment completed September 2013

45. The Council says the delay in starting this Assessment was due to a decision to wait for the Disabled Children Team to appoint an experienced Social Worker. The Council also says it was waiting for Ms B's complaint to complete the complaints process.
46. The Council told the investigator
"Whilst the complaint has been dealt with under the statutory complaints procedure, Child X has continued to receive a service from the Council, as she has done for a number of years. Child X's needs are paramount and there was never a question of her not receiving a service, rather that a fresh assessment was agreed. Whilst Core Assessments are undertaken periodically, there was no statutory requirement to undertake it. This was a result of the earlier complaint."
47. The new Core Assessment began in July 2013. The assessment requested at the outcome of the complaint investigation, as agreed by the Council, was to assess X's needs and also other specific issues. These were issues of financial support, community resources, activities and carer respite.
48. X is 15 and now has a diagnosis of moderate to severe learning disability, and difficulties with her core posture and stability. She is also experiencing sensory difficulties which present as her constantly wearing several layers of clothing whatever the weather. These problems are in addition to her autism and other disabilities.
49. The Core Assessment describes X's problems with sleeping and toileting, with impaired communication and sensory difficulties, with bathing and dressing. It explains she is not able to meet her own self-care, but says nothing about how her needs are to be met other than by Ms B. The assessment does not consider the impact on Ms B of caring for X, and does not consider her needs. Disabled Children's Services has not completed or offered a separate carer's assessment.
50. Although the Council continues to provide 10 hours a month of direct payments, there is no indication to show which of X's needs this is to meet, and why this level of payment is considered appropriate. There is no care plan to identify what Ms B should use the direct payment for, and the proposed outcome from providing this service.
51. Ms B says the Core Assessment contains significant errors about X's method of communication and sensory needs. She also considers it greatly understates the difficulties faced by 15 year old X due to her lack of self care skills. She also questions the source of statements attributed to X's Paediatrician. Ms B says she discussed with the Social Worker during the assessment the community resources available to X. She pointed out that most are for younger children, and she could not

identify anything appropriate for a 15 year old girl with autism. The assessment does not identify any suitable community resources.

52. The Council says the process it follows is to assess the child's needs, go to the Resource Panel, and then plan how to meet the identified need. The Social Worker discussed with Ms B a range of providers of services under its short breaks service. The Family Information Service has been commissioned by the Council to provide a pack of information, advice and guidance to parents. Two levels of packs are available, a general pack and tailored packs to meet specific needs.
53. Ms B says she has been given more copies of the Family Information Service Pack than she can count. She has not found anything suitable for X that was available when she contacted the providers.
54. The Team Manager wrote when signing off the assessment that if Ms B did not consider the suggested activities would meet X's needs, the provision would change from direct payments. Ms B would receive instead supported care provision, where identified carers would take X out to local activities.
55. The Council published its Eligibility Criteria for Disabled Children's Social Care services in February 2012. These provide a guide to aid understanding of the four levels of need. X has a Statement of Special Educational Needs and is placed at a special school. Ms B receives higher level Disability Living Allowance for X. These indicators may mean X's needs fall within the level 4 Critical category of the Council's Eligibility Criteria. The Resource Panel decides how to allocate resources to meet identified needs.
56. The Social Worker did not give Ms B the opportunity to discuss the assessment, or to correct any errors or add her views, prior to the Team Manager's decision that current provision is adequate to meet X's needs. The Council posted a copy of the Core Assessment through Ms B's door with no covering letter. The Resource Panel did not see the new assessment.
57. The Resource Panel decided in October 2013 to agree to continue the 10 hours a month support by direct payments. Ms B was sent a copy of a letter confirming this in December 2013. This letter says 'It is important to note that the package offered is intended to support and encourage identified improvements and to assist in the achievement of goals for your child'. There is no care plan to say what these are.

Findings

58. I do not consider the Core Assessment of September 2013 is fit for purpose.
59. X is completely dependent on Ms B to meet her complex needs outside school hours. The Council has failed to provide evidence that it knows what X's needs are, what the impact of her disability is on Ms B, or whether X's and Ms B's needs can continue to be met into the future.
60. The Council has failed to properly assess X's needs and the needs of Ms B as her carer in line with its statutory duties. The Council cannot therefore say whether direct payments for 10 hours a month are sufficient to meet X's needs.

Failure to assess X's needs

61. The Council failed to assess X's needs, and the needs of Ms B as her carer, in line with its statutory duties for an extended period of time.

62. When social workers completed assessments they did not record what help and support X and Ms B needed, or which agencies may be best placed to provide it.
63. The assessments do not consider X's needs in accordance with Birmingham City Council's eligibility criteria for services provided under its Short Breaks Services Statement.

Failure to produce a care plan

64. The Council's assessments are essentially descriptive documents rather than assessments. They lack detail about X's needs as a 15 year old with few self care skills. They take no account of Ms B's needs as her carer.
65. The Council has failed to produce a care plan to identify X's needs, what is to be done about these needs, by whom and when.
66. The Council continues to support X with 10 hours a month in direct payments. There is no indication of what need these payments are intended to meet, why this level of payment is considered appropriate, or what outcome this will result in.

Failure to respond to Ms B's complaint in a timely manner

67. The Council failed to progress Ms B's complaint through the Children Act complaint process expeditiously. This meant the process took 14 months to complete.
68. Although most of Ms B's complaints were upheld throughout the complaint process, the Council repeatedly failed to re-assess X's needs.
69. The Ombudsman became involved in the complaint in December 2012, but the Council continued to delay until September 2013 to complete the new Core Assessment.

The injustice

Lack of contact from Children with Disabilities Service

70. The Council lost sight of X, a severely disabled child, for over four years. Ms B received no contact from Disabled Children's Services, and so lost the opportunity to engage in the assessment process. It is therefore not clear whether she received enough support. The injustice was that she was in effect left to cope with bringing up her daughter alone and without help.
71. Ms B did continue to receive a service from the Council of 10 hours a month in direct payments. However, there was no up to date assessment of X's needs and no focus on outcomes from this funding. The Council cannot say what need this payment was to meet, what the expected outcome from providing this funding was, or whether the level of payment was enough.

The complaint process

72. Ms B's experience of the complaints process has been stressful and time consuming. The Council conceded that the Core Assessment of August 2011 was inadequate, but then failed to undertake a fresh assessment for a significant period of time. Ms B rightly feels that as a working mum and single parent carer her time is better spent with her daughter, rather than complaining to the Council and the Ombudsman. The injustice was the stress and anxiety Ms B suffered following the time consuming complaint process.

Core assessments

73. Although the Head of Service said the assessment of August 2011 was inadequate, it clearly indicates a range of needs. It identifies that Ms B is a single parent carer with little family support, and that she works full time. Ms B told the social worker that X rarely sleeps and she has to supervise her at all times. This results in Ms B suffering from exhaustion but still having to go to work and maintain the household. Ms B told the social worker that X has few self care skills so she has to wash and dress her, clean her teeth and supervise her meals. The social worker noted how demanding X is of Ms B's attention, and how she disrupts conversations and can become agitated. Ms B explained that although she does not feel isolated, she needs some additional support to care for her daughter. It concludes that X has complex needs with high levels of anxiety, and that change is needed if the level of risk is to be reduced.
74. The later assessment, which is also incomplete as it does not properly consider Ms B's role as X's carer, also fails to properly consider the impact of X's disability on the family unit. The focus of this assessment seems to be on advising Ms B to access community resources. However, it does not identify any suitable community resources to meet X's needs.
75. There is no evidence the Council properly considered how X's disability affects her daily life and the impact her additional needs due to disability have on both X and Ms B.
76. Following an assessment of needs there is an expectation that identified needs will be met by the provision of services. The Council still has no clear and comprehensive assessment of X's needs, and Ms B's needs as her carer. This may mean Ms B has missed out on services she and X should have received. The injustice is that this uncertainty has caused Ms B a great deal of stress over a long period of time. Things could have been better for the family if Disabled Children's Services had identified even one community activity to meet X's needs, and made arrangements for her to attend.
77. The Ombudsman cannot say what level of support Disabled Children's Services should provide to a family. However, I have seen no evidence the Council has properly considered providing the services identified in the Council's Short Break Statement 2012 to X and Ms B.

Recommended Remedy

78. To remedy the injustice caused, I recommend the Council should:
- pay Ms B £4,000 for the injustice caused by its failure to properly assess Ms B and her care of X to establish their support needs from November 2006 to August 2011;
 - pay Ms B a remedy of £1,000 for the injustice of stress and anxiety due to the Council's significant delay in completing the Core Assessment when it agreed to do so and for her time and trouble in bringing the complaint;
 - appoint an independent social worker to assess X's needs, and Ms B's needs as her carer. This appointment to be made within 28 days of publication of this Report. The social worker to complete the assessment, and to discuss the assessment with Ms B and add her views, within 45 days of appointment. The

independent social worker to also produce a proposed care plan, if s/he identifies needs which require support, for the Resource Panel to consider.

- reimburse Ms B for up to three days unpaid leave from work to enable her to fully engage with the independent social worker to complete the assessments within the time scale allowed;
- provide the Ombudsman with copies of the independent assessment, the proposed care plan and the outcome of the consideration by the Resource Panel within four months of publication of this Report;
- make a further payment to Ms B, at a level the Ombudsman will decide, following the independent assessment of X's needs. This is for any shortfall in services received from August 2011 onwards;
- review the way it assesses children with disabilities and their families and how these assessments relate to its Short Break Statement and Eligibility Criteria.

I welcome that the Council has considered my findings and agreed to my recommendations to remedy the complaint.



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12 March 2014