

Report

on an investigation into
complaint no 08 014 844 about
Leeds City Council

July 2011

Investigation into complaint no 08 014 844 against Leeds City Council

Table of contents	Page
Report summary	1
The complaint	4
Support for Mrs E	4
Legal and administrative background	5
Special Educational Needs Duties	5
The Council's statutory duties as corporate parent	5
Background	7
Recent developments	14
Findings	15
The Council's duties to D as a child with special educational needs	15
The Council's duties to D as his corporate parent	16
Findings - D's social integration and planning	18
Complaint: Support for Mrs E	19
The Council's comments – support for Mrs E	20
Finding – support for Mrs E	20
Summary of findings	21
Injustice	22
Recommendations	22

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.

This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Council.

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.

Report summary

Subject

D has been in the care of Leeds City Council for most of his life and is now in his late teens. Mrs E has fostered him since he was 20 months old. She complains that the Council failed as his corporate parent to safeguard and promote D's welfare and educational development. She also complains about the impact the Council's failure has had on her and her family.

D was diagnosed at an early age as having Reactive Attachment Disorder. This means that he finds it difficult to cope with changes in routine and likely to respond to any threat to his security with challenging and aggressive behaviour. From being five D had a Statement of Special Educational Needs (SEN).

The Council had duties to D as a child with special educational needs and additional duties to him as his corporate parent. The Ombudsman found serious and extensive failings in fulfilling these duties.

Finding

The Ombudsman found in relation to D's education that:

- The Statement of D's Special Education Needs barely altered over some 8 years including his transition from primary to secondary school.
- Throughout that time D made little progress with reading and at age 14 was, effectively, illiterate. Only then did the Council revise his Statement.
- Despite clear specialist advice about the impact of D's reactive attachment disorder and need for security and stability he was placed in a Special School that operated from two sites and changed his timetable frequently.
- Although the School specialised in children with social, emotional and behavioural difficulties, D was frequently withdrawn from full-time education and often taught off the School site because of his behaviour.
- There is no evidence that the Council ever questioned whether the methods specified to address D's special needs were appropriate, adequate or effective nor did it address the clear inter-relationship between his difficulties with reading and his behaviour.

She also found that the Council's statement of D's special educational needs did not fulfil the requirement to specify *'clearly'* and *'in detail'* the provision necessary to meet D's identified educational needs and to specify the quality of that provision.

The Ombudsman found that Leeds City Council ‘signally and dismally’ failed to promote D’s educational achievement and that it:

- paid no heed to a psychotherapist’s advice that ‘*any perceived threat to his felt security is reacted to with challenging and aggressive behaviour. Any change in routine at home or at school...is reacted to by D by heightened acting out behaviour*’;
- did not consider D’s known psychological need for stability and the opportunity to build firm trusting relationships when making decisions about his education;
- carried out many of D’s looked after child reviews without input from his School - School representatives did not always attend and there were several instances where they did not submit reports either so that important decisions had no proper educational input;
- did not regularly monitor whether the special secondary school was the best placement for D and whether it was dealing with him appropriately in accordance with the relevant professional advice;
- did not properly consider whether D’s needs were being met at the School with a changeable and inconsistent timetable, prolonged periods when he was sent off-site and other periods when he did not have full-time education;
- took no account of the School being placed in ‘special measures’;
- failed to explore options for increasing stability and consistency for D;
- failed to monitor whether D’s Statement of SEN was an effective tool for the delivery of a good standard of education;
- did not properly establish and maintain a Personal Education Plan for D.

She said that it is inexplicable and inexcusable that these failures could persist over a long period despite Mrs E’s frequent and persistent representations.

One of the professionals involved with D recorded that Mr and Ms E’s “*commitment to and devotion to D has been heroic*”. The Ombudsman found significant evidence of the time and effort that Mrs E put into promoting D’s education and that she had been the ‘driving force’ in any improvements to the provision made for him. She found that the Council’s failings meant that Mrs and Mr E felt obliged to do far more than would be expected of a foster parent.

Recommended remedy

To remedy the substantial injustice to Mrs and Mr E she recommends that the Council should:

- Fund specialist provision up to a value of £2,500 to improve D’s reading ability and educational attainment and encourage him to take up this provision. This funding should be over and above what would normally be provided for a care leaver and should be kept in trust, available for D until he reaches the age of 30.

- Continue to try to identify an appropriate mentor for D.
- Apologise to Mr and Mrs E for the stress and anxiety caused them by the maladministration identified above and, in recognition of this and the extraordinary efforts they have made on D's behalf, pay them the sum of £3,000 and
- Request officers to report to the Executive or an appropriate Scrutiny Committee summarising the changes in services, policy and procedures since the events described in this complaint and provide a copy to Mr and Mrs E to reassure them that the problems they have faced have been properly addressed.
- The Ombudsman recognises that the Council had reviewed and reorganised its education and children's services and therefore does not recommend further review.

The complaint

2. Mrs E complains that the Council has failed in its duties¹ as a corporate parent to safeguard and promote the welfare and educational attainment her foster son, D, who is a looked after child.
3. Mrs E complains in particular that the Council has failed in the following areas:
D's education:
 - To ensure that D has access to appropriate and full-time education
 - To pay sufficient regard to his need to learn to read
 - To make proper and timely assessments to establish the nature of D's learning difficulties
 - To act when D's skills (particularly in reading) did not improve and the gap between him and his peers widened
 - To adequately address D's behavioural problems to allow him to benefit from full-time education
D's social integration and planning
 - To provide support and mentoring for D as a black child in a predominantly white environment
4. Mrs E says that, as a result, D has not been able to achieve his educational and social potential and is in danger of being unnecessarily disadvantaged in his adult life.

Support for Mrs E

5. Mrs E complains on her own behalf that, as foster parents, she and her husband have had:
 - insufficient support to care for D during periods of exclusion and have had to make extra provision for D when he has not been provided with full time education;
 - to spend far more time than is reasonable both in taking the initiative to try and secure measures to protect D's interests.

¹ Section 22(3) (a) Children Act 1989 as amended by Section 52 of the Children Act 2004

Legal and administrative background

Special Educational Needs Duties

6. If any child in its area has a learning difficulty², a council can assess the child to establish whether any special educational provision could be made to help the child. A council may issue a Statement of Special Educational Needs (SEN) setting out the child's needs and the provision that will be made to meet those needs. A council then has a duty to ensure that the child receives the provision specified in the Statement of SEN.³ A Statement of SEN must be reviewed annually.
7. A parent who objects to the contents of a Statement of SEN can appeal to a First Tier tribunal for Special Educational Needs and Disability (SEND). The law⁴ says that I should not investigate a matter if the person affected has the right to appeal to a Tribunal unless I think it is unreasonable to expect that right to be used. There is evidence that neither the education officers nor social workers involved with D appreciated initially that, as his foster parent, Mrs E could appeal to the tribunal. The Council could not therefore properly advise Mrs E of the options open to her. In these circumstances I do not think that it is reasonable to expect her to have used that right. Also, the Council's duties to promote D's educational attainment as a looked after child are so bound up in the issue of his special educational needs that I cannot practically investigate the one without touching on the other.
8. There is extensive guidance about the assessment process and the requirements of a good and effective statement in the Special Educational Needs Code of Practice.⁵ Essentially, a Statement of SEN should be clear and unambiguous and should specify as precisely as possible what provision should be made for the child: everyone involved should have no doubt as to the nature and frequency of the proposed intervention.

The Council's statutory duties as corporate parent

² Section 312 (2)(a) Education Act 1996 says that a child has a learning difficulty if 'he has significantly greater difficulty in learning than the majority of children of his age'.

³ S324(1), Education Act 1996

⁴ S26(6)(a) Local Government Act 1974

⁵ S313(1) Education Act provides for the Secretary of State to issue guidance. S313(2) gives local education authorities the duty to 'have regard' to such guidance.

9. The Children Act 1989 sets out a council's duty to safeguard and promote the welfare of 'looked after' children. The Children Act 2004 gave councils a further particular duty *'to promote the child's educational achievement'*⁶
10. Statutory Guidance on this duty was issued in 2005.⁷ Councils have a strategic role in ensuring that policies and structures are in place to promote the education of looked after children.
11. The Council must produce a Personal Education Plan. In conjunction with the child's Statement of SEN and regular looked after child reviews, the PEP should identify the child's educational needs; provide a record of achievement; set and monitor objectives (including for behaviour and out of school activities) and address the child's long term needs and aspirations. It should identify actions and timescales for particular people involved with working with the child.⁸
12. The guidance says that:
*'Discharging the duty on a day to day basis means that a local authority should do at least what any good parent would do to promote their child's educational aspirations and support their achievement.'*⁹

This means:

*'Ensuring that all looked after children of compulsory school age have an effective and high quality Personal Education Plan'*¹⁰

*'Ensuring that in partnership with relevant educational; professional there is a robust assessment of the child's learning styles'*¹¹

*'Mediating on behalf of a looked after child when he or she faces problems at school.'*¹²

The Guidance defines a PEP as:

*'a record of what needs to happen for looked after children to enable them to fulfil their potential and reflects any existing education plans, such as a statement of special educational needs and Individual Education Plan (IEP). The PEP should reflect the importance of a personalised approach to learning which secures good basic skills, stretches aspirations and builds life chances.'*¹³

⁶ S22(3A) of Children Act 1989 as amended by S52 of Children Act 2004

⁷ 'Statutory guidance on the duty on local authorities to promote the educational achievement of looked after children under section 52 of the Children Act 2004' (2005)

⁸ Paragraphs 42 to 52 of the guidance

⁹ Ibid, paragraph 30

¹⁰ Ibid, paragraph 31.3

¹¹ Ibid paragraph 31.4

¹² Ibid paragraph 31.8

¹³ Ibid paragraph 44

13. The child's social worker is responsible for ensuring that PEPs are in place and that all relevant professionals contribute effectively and in a coordinated way.¹⁴
14. The general thrust of the guidance is that a council, and in particular, the child's social worker, needs to be proactive in ensuring that the child has the best possible educational opportunities to maximise his/her educational achievements and future life chances.
15. When a council places a child with foster parents it retains responsibility for the child's welfare and makes the key decisions. Day-to-day care of the child is devolved to the foster parents but the council remains the 'corporate parent' with parental responsibility.

Background

16. D is of mixed race and is now 16. Mr & Mrs E have fostered him since he was 20 months old. From a very young age D was diagnosed with Reactive Attachment Disorder (RAD). This arises from a failure to form normal attachments to primary caregivers in early childhood. Such a failure could result from severe early experiences of [neglect](#), [abuse](#), abrupt separation from caregivers between the ages of six months and three years, frequent change of caregivers, or a lack of caregiver responsiveness to a child's communicative efforts, and behavioural problems.
17. D has also been diagnosed with Attention Deficit Hyperactivity Disorder (an inability to concentrate properly characterised by inattention and general restlessness) and has been prescribed medication for this for a number of years.
18. D has learning difficulties and it has never been established whether these are generalised or specific. General Learning Difficulties are characterised as a low level of attainment across all areas of learning. Specific Learning Difficulties are those where a specific area of learning is affected by a condition such as dyslexia. The appropriate educational provision for children is often very different according to whether they have generalised or specific learning difficulties.
19. D's first Statement of SEN was issued in February 2000 when he was five. It describes D:
'...he can present as a bright and affectionate boy with a good sense of humour. Much of the time however [D] presents a major management problem for his school with examples of non-compliance and aggression to

¹⁴ Ibid, paragraph 42 onwards

both adults and peers.'

20. The Statement of SEN set out six objectives related to D's behavioural, social and emotional development. As might be expected for a child age 5 there is no reference to emerging literacy problems. D's Statement of SEN does specify '*in class support from a full time special needs assistant.*'
21. The provision specified to address the objectives related to D's behavioural, social and emotional development remained essentially unchanged between 2001 and 2009. Between 2001 and 2005 the specified provision included '*in class support from a special needs assistant [...] to ensure D can access the curriculum and to give supervision in unstructured situations.*'
22. In 2004 as part of the Annual Review of his Statement of SEN when D was 10, senior educational psychologist 1 wrote:

'School based assessment would place [D] at level 1 of the National Curriculum for literacy but at level 2A in maths. There were no other subject levels presented to me but this would indicate some discrepancy which ought to be explored further. The possibility of specific difficulties needs to be ascertained or ruled out'
23. Senior educational psychologist 1 indicated that D found it more difficult to obey rules and routines in literacy than in other areas of the curriculum. D's behaviour was identified as a barrier preventing him from fully accessing the curriculum. She said that '*he has negative perceptions of himself as a learner focus on maths, reading and writing.*' and identified that the forthcoming review meeting should result in '*further assessment of possible specific learning difficulties followed by a review of IEPs and approaches to teaching literacy.*'
24. Educational psychologist 2 tried to assess D in school in November 2004 focussing on literacy skills but said that D refused to talk to him or take part in any assessments. He was told that recent reading tests at school when D was 10 years 2 months had indicated that his reading age was 6 years 6 months¹⁵. D's reading age had improved by 5 months in over two years of education.
25. The main purpose of the assessment by educational psychologist 2 was to make recommendations about D's future school placement and also '*to consider whether or not [D] might have a specific learning difficulty/dyslexia and to make recommendations in this area.*' He reported his findings in January 2005 that D had made '*very little or no progress*' since the summer term in 2004 and his behaviour was a barrier to his learning. He said the evidence showed that D had

¹⁵ For comparison, the same tests in Autumn 2002, when D was 8 years and 3 months, gave him a reading age of 6 years 1 month. That is, his reading age had improved by just 5 months in over two years.

'severe and persistent difficulties with literacy learning at the 'word level' and the impact of D's severe emotional and behavioural problems made it difficult to be sure whether these problems were the result of a specific learning difficulty.

26. Educational psychologist 2 said that:

'To be clear that D had a specific learning difficulty/dyslexia it would be necessary to provide appropriate learning opportunities over a period of time and demonstrate that any progress had been made only as a result of much additional instruction and support.'
27. He pointed out that D 'will find it very hard to access the Year 7 curriculum without significant levels of support with literacy across the curriculum.' He made a number of recommendations including that D would benefit from being in a school where he could be taught by staff experienced in dealing with children with behavioural and emotional difficulties and where he should receive an individual programme in literacy 'using a multi-sensory approach'.
28. In January 2005 the Special Educational Needs Co-ordinator (SENCO) of the school D was then attending confirmed that *'D is making some progress in all areas but this progress is limited and he remains behind his peers especially in Literacy'*. She said he *'becomes frustrated by his poor literacy skills'*.
29. D's behaviour was cited in his looked after child reviews as a significant factor in his learning problems.
30. The Council's Specialist Placement Panel considered an appropriate secondary school for D in February 2005. A handwritten note of the Panel's discussions comments that *'Not a lot appears to have been done to address D's literacy'*
31. In early March 2005, D's social worker left. In her transfer report for D's incoming social worker she wrote:

'It has been agreed that a formal assessment should be made in relation to D's ability to learn. (This has been proposed for 18 months but has never been carried out.)'
32. She also commented: 'D has a high profile both in Leeds SSD and Education, due to his problems and lack of resources in Leeds to meet his needs.'
33. Part of D's behavioural problems, linked to his attachment disorder, is a difficulty in coping with change. As part of a report for D's Statement of SEN review in 2005, a psychotherapist involved with the family wrote:

'As would be expected with his diagnosis [Reactive Attachment Disorder], any perceived threat to his felt security is reacted to with challenging and aggressive behaviour. Any change in routine at home or at school, any change involving staff at school or the moving on of other foster children at

home, relationships with peers and also, typically, any changes in his carer's emotional state is reacted to by D by heightened acting out behaviour. This makes D very hard to live with both at home and in school.'

and

'I believe that D is humiliated by his difficulties and slow progress with school work and he now knows he can throw his weight around and triumph over grown ups and that reduced time at school and exclusions also play into his longing to be at home with his carers and to avoid the difficult reality of school.'

34. At around the same time, educational psychologist 2 stated:
'In literacy his behaviour was relatively good and this was felt to be related to the fact that the teacher was familiar to D from year 5. In numeracy, by contrast, D's behaviour was more difficult. The trigger for many of D's difficulties seems to be the change of class teacher he had experienced at the start of year 6.'
35. There was clear professional advice at D's transfer to secondary school of his need for stability, the importance of 'bonding' with staff and the inter-relationship of his reading difficulties and behaviour.
36. D's Statement of SEN was amended In March 2005 to reflect that he was transferring at the end of primary school to a special school. The requirement for in class support from a full-time, special needs assistant who would also 'give supervision in unstructured situation' was removed from the SSE and it had no specific objectives for progress in reading. The Statement of SEN reflected the type of support D would receive as a pupil at a special school including:
- *Access to the National Curriculum with materials and teaching styles differentiated to an appropriate level*
 - *An individual education plan which includes structured programmes designed to meet each of the statement's objectives*
 - *Daily individual and/or small group teaching by staff experienced in working with pupils with behavioural emotional and social difficulties*
 - *Continued close liaison between home and school and any other agencies involved with D*
37. After he transferred to the special secondary school, in late in 2005 and early in 2006 D's behaviour became increasingly problematic, with much of his time spent being taught off site elsewhere (TOE). During this period, D did not follow the national curriculum and did not receive 24 hours per week full-time education¹⁶.

¹⁶ DfES Circular 7/90 Management of the School Day

38. D's looked after child review of 20 September 2005 states that 'A PEP will be drawn up to detail support and communication'. His looked after child review of 13 March 2006 focussed largely on education but did not mention the PEP.
39. The Council's records show that from his primary school years his behaviour was linked to the rapport he had with his teachers and the stability of his relationships. For example, in his last year at primary school, a school report stated that:
'Due to the changes in circumstances, it was clearly evident that D was struggling. The changes being a new class teacher (D had been with his previous teacher for three years). ...To attempt to address the situation, we put in place a timetable which enables D time out of class into a smaller group with familiar adults.'
40. In September 2006, when D had been at secondary school for a year, his looked after child review identified that:
'Academically [D] is engaging with staff and will attempt to read. However this is progressing as an integrated part of his subjects as D's literacy remains sensitive for him.' It was recommended that *'the social worker will speak to the Education Psychologist regarding an assessment for Dyslexia'*
- 'A PEP is required within this school....PEP to be progressed by social worker with carers, school and D'*
41. D's Statement of SEN was amended in November 2006 to include an additional objective: *'To further develop literacy skills'*. No measures to help meet this objective or specifically address his literacy problems were added to the Statement of SEN other than: *'[D] needs a highly structured environment with supervision by staff members at all times. He will also require a set daily routine and firm boundaries.'*
42. In February 2007 D's special school went into special measures. The Ofsted inspector at the time noted that most English lessons were being taught by teachers who had *'limited knowledge'* of the subject and wrote:
'Overall, pupils are ready in their personal development for life after school, though too little is done to ensure functional literacy and numeracy by the time pupils leave [the school].'
43. The school operated from two sites four miles apart. D had a number of key workers through his time at school. His timetable changed frequently and often at short notice. A variety of programmes were delivered away from either school site. He was excluded for periods of various lengths and did not receive full-time education during other periods (some weeks, his timetable would be from 11:00 to 3:00 – probably only 15 hours actual teaching).

44. D's looked after child review of March 2007 when he was 13 reported *'there are discussions regarding a request for another assessment by the educational psychologist.'* It proposed that D's social worker and the school should liaise *'regarding a referral to the Educational Psychologist'*. The records state that D's PEP was completed on 13 November 2006 and would be updated as required.
45. D's annual Statement of SEN review in April 2007 did not propose any changes to his statement.
46. The next looked after child review in June 2007 reported that D had been referred and *'is part of work that is being done within the school by the Dyslexia Association'*. It is recorded that D's PEP needed updating. There was no report from the school for this meeting and it is not clear what input the Dyslexia Association had and how it impacted on D. The records I have seen contain no evidence that the Association ever assessed D.
47. A looked after child review of 19 December 2007 reports that D's PEP needed to be completed and circulated.
48. D's education was disrupted in May 2008 by an incident that restricted the amount of time he spent at school.
49. A note of D's looked after child review on 17 June 2008 records *'The educational psychologist will be requested to review D'*. Mrs E believes that this was the result of her repeated representations by her and would not have been agreed without her campaigning.
50. Educational psychologist 3 visited D at home in August 2008. She found him willing to engage in an assessment. She reported D's views:

'He wants to be normal and his one main wish is to be able to read and write. He feels his learning is a bigger issue than his behaviour. He admits to 'kicking off' when he can't do the work. Also as he is validated by his peers when he is acting out he believes that he would rather do that and get into trouble than struggle at reading and writing.'
51. Educational psychologist 3 found that D's reading accuracy age was 6 years 9 months (i.e. he had improved by only 3 months in almost four years from when he had been tested in November 2004). Educational psychologist 3 found that, at home, D could work on task for a prolonged period, was willing to attempt areas that he found difficult and demonstrated a number of skills he had not exhibited in school.

52. Educational psychologist 3 noted that she did not have access to any current teacher assessments and said that:
- ‘To be clear that D had a specific learning difficulty/dyslexia it would be necessary to provide appropriate learning opportunities over a period of time and to demonstrate that any progress had been made only as a result of much additional instruction and support¹⁷. This was difficult to know as [there were] no opportunities to measure any of D’s ‘progress’. However it is clear that the difficulties are persistent as D is performing several years below his chronological age.’*
53. Educational psychologist 3 pointed to a number of factors that indicated D did not have a specific learning difficulty.
54. For D’s Statement of SEN annual review, senior educational psychologist 4 produced a report in September 2008 informed by educational psychologist 3’s report. Educational psychologist 4 wrote that D had undertaken a special one-to-one literacy programme in the summer term 2008 and *‘his reading age had risen by a year within a period of 6 weeks – albeit at a concerning low level of a little over 7 years’*
55. Educational psychologist 4 pointed out that ‘although D’s IQ test puts him below the 10th percentile – ie out of 100 people 90 would score more highly, this doesn’t wholly account for his low literacy levels.’
56. Educational psychologist 4 summarised D’s situation as that he ‘clearly responds to programmes which are designed and delivered on an individual basis, possibly away from the distractions of other students, that are closely allied to his talents and interests....It is imperative that his literacy reaches a level which means he can access opportunities in his adult life.’
57. The Council proposed significant changes to D’s Statement of SEN in December 2008 including a number of specific and focussed initiatives designed to address D’s reading and other educational problems e.g. a 1:1 literacy programme, regular support with written work, strategies to assist concentration and input from a Speech and Language Therapist. Following further representations from Mrs. E, the final Statement of SEN issued in February 2009 also specified: *‘Additional adult support will be available to support D on a 1:1 basis to enable him to access his educational opportunities and minimise the risk he poses to himself and others as a result of his social, emotional and behavioural difficulties’*

¹⁷ This is the standard definition of specific learning difficulties

58. D's PEP was updated at this point. The update is one sheet of brief details setting out D's progress (citing that there had been an improvement in his performance following one to one support); the changes to be made to the PEP (minimal) and five targets and objectives which related primarily to planning for D once he reached 16 and reviewing his current provision. The rest of the form, particularly the part to be completed by the school, was only minimally completed. The section relating to D's own thoughts and aspirations comprised fewer than 30 words.
59. At Mrs E's request, educational psychologist 4 assessed D again in May 2009. This assessment showed that D, then 14 years 9 months old, had a word reading age of 7; a reading comprehension age of 6; and a numerical operations level of 9 years 4 months. Educational psychologist 4 commented: '*D's reading levels have changed very little since the assessment by [educational psychologist 3]. Clearly the progress he has made is not adequate.*'
60. Mrs E did not feel that the provision specified in D's Statement of SEN of February 2009 was extensive or specific enough. Now with greater awareness of the appeal process and of what a Statement of SEN should contain, she appealed to a Tribunal in May 2009. The Council eventually agreed to many of Mrs E's requests for extensive and specific support for D and she withdrew her appeal.

Recent developments

61. The Council has a Virtual School to address the needs of looked after children. Concerns about the educational progress of children like D can be referred to the Head of the Virtual School. After copying him in on significant amounts of correspondence, Mrs E wrote to him directly in spring 2009 and he became involved with D. No one in the Council referred D -Mrs E acted on her own initiative.
62. In autumn 2009 the Council appointed an independent consultant head teacher to draw up a bespoke education plan for D – although Mrs E says that an effective plan was never put in place.
63. A transitional plan was developed to help D make the transition between school and college and/or employment.
64. Mrs E says that D has not consistently received the educational provision specified in his Statement of SEN and has complained to the Council.
65. The Council has also put in place a more co-ordinated approach towards synchronising the Statement of SEN review and PEP processes.

66. The Council says that it regrets the fact that Mrs E has felt the need to make so many representations about D and has offered her £500 in recognition of her time and trouble in attempting to resolve the complaint.

Findings

The Council's duties to D as a child with special educational needs

67. Despite D having had a Statement of Special Education Needs for more than 10 years, from being 5, and despite numerous educational and other psychological assessments, the Council did not establish whether he has a general or a specific learning difficulty.
68. A series of educational psychologists assessed D without information from his school that would enable his progress or lack of progress to be measured. There was a gap of nearly 4 years between the abortive assessment in November 2004 and the assessment in D's home of August 2008. In addition, although Statements of SEN should be reviewed annually, there was no formal review in 2008.
69. D's Statement of SEN did not mention a literacy objective until November 2006 when he was already at secondary school and had a reading age of about 6.5 years. Until then his Statement of SEN merely said '*further develop literacy skills*' and did not specify the provision needed to address that objective.
70. The bare facts are that:
- The Statement of D's Special Education Needs barely altered over some 8 years including his transition from primary to secondary school.
 - Throughout that time D made little progress with reading and at age 14 was, effectively, illiterate. Only then did the Council revise his Statement.
 - Despite clear specialist advice about the impact of D's reactive attachment disorder and need for security and stability he was placed in the School that operated from two sites and changed his timetable frequently.
 - Although the School specialised in children with social, emotional and behavioural difficulties D was frequently withdrawn from full-time education and often taught off the School site because of his behaviour.
 - There is no evidence that the Council ever questioned whether the methods specified to address D's special needs were appropriate, adequate or effective nor did it address the clear inter-relationship between his difficulties with reading and his behaviour.

71. The Code of Practice stresses that a Statement of SEN should express 'clearly' and 'in detail' the provision necessary to meet each identified need and the provision should be quantified.¹⁸ It also states that the purpose of the Annual Review should be to ensure that the provision is in place and that it is achieving the desired outcomes¹⁹. Between 2001 and 2009 the Council did not fulfil these requirements.

The Council's duties to D as his corporate parent

72. The Council signally and dismally failed to promote D's educational achievement and to 'do at least what any good parent would do to promote their child's educational aspirations and support their achievement'.

It:

- paid no heed to the psychotherapist's advice that '*any perceived threat to his felt security is reacted to with challenging and aggressive behaviour. Any change in routine at home or at school...is reacted to by D by heightened acting out behaviour*';
- did not consider D's known psychological need for stability and the opportunity to build firm trusting relationships when making decisions about his education;
- carried out many of D's looked after child reviews without input from his School - School representatives did not always attend and there were several instances where they did not submit reports either so that important decisions had no proper educational input;
- did not regularly monitor whether the special secondary school was the best placement for D and whether it was dealing with him appropriately in accordance with the relevant professional advice;
- did not properly consider whether D's needs were being met at the School with a changeable and inconsistent timetable, prolonged periods when he was sent off-site and other periods when he did not have full-time education;
- took no account of the School being placed in 'special measures';
- failed to explore options for increasing stability and consistency for D;
- failed to monitor whether D's Statement of SEN was an effective tool for the delivery of a good standard of education;
- did not properly establish and maintain a Personal Education Plan for D.

¹⁸ Paragraphs 8.33 to 8:38, Code of Practice 2001.

¹⁹ Paragraph 9.7, Ibid

73. It is inexplicable and inexcusable that these failures could persist over a long period and despite Mrs E's frequent and pertinent representations.

Complaint: D's social integration and planning

74. D is of mixed race and his foster family is white. They live in a predominantly white area and D has attended schools that are also predominantly white. The Ofsted report of February 2007 says that about one in six of the pupils at his special secondary school came from ethnic minority backgrounds. The report of April 2009 said that 'almost all' pupils were white British in origin.

75. In March 2005, D's looked after child review stated:

'D's ethnicity and his increasing awareness of this is also an area of life where attempts have been made to provide individual resources but these have never really materialised to a consistent arrangement which addressed the need.'

76. Early in 2005 the psychotherapist supporting Mrs E and D advised that D 'has been in almost all-white educational settings and that he should also be somewhere with a larger proportion of black and ethnic minority children.'

77. Following his looked after child review of 20 September 2005, it was reported that:

'There is an outstanding issue relating to D's sense of identity and his ethnicity. The social worker continues to give consideration as to how to assist D in this area when most enquiries for support from outside agencies have proven fruitless'

'Further consideration of D's need for individualised support from a source consistent with his ethnic group and his gender is required.'

The minutes did not specify how, when or by whom this issue should be considered.

78. D's looked after child review of 14 March 2006 said much the same. Social worker records show that a potential female mentor had visited D in January 2006 but had decided not to work with him. She felt that a male role model would be more appropriate.

79. A possible male (white) support worker was identified in May 2006. Sessions were arranged for D to go out with him twice a week during school times as D was not receiving full-time education. The contact was initially irregular to accommodate changes in D's timetable. Mrs E told the social worker that she thought the sessions went well. The sessions continued until September when D would be back on a full school timetable.

80. On 12 September 2006 it was reported that: 'There is ongoing consideration of ways to help D access activities and support from others of his ethnic group. The social worker and the fostering officer have approached a worker from the YOS team who initially appeared interested in mentoring but at the time of the Review he had been unable to commit to this.'
81. D's looked after child review of 6 March 2007 reported that:
'There is an outstanding issue relating to D's sense of identity and his ethnicity. The social worker continues to give consideration as to how to assist D in this area when most enquiries for support from outside agencies have proven fruitless.'
82. The issue was not mentioned in D's looked after child review of 4 July 2007 or 19 December 2007. D's social worker changed in October 2007. The outgoing social worker wrote:
'The one area of D's care plan that has proved difficult to progress has been supporting D in exploring his ethnicity and developing his own identity as he has lived in a white placement in a predominantly white area all of his life. I have made numerous unsuccessful attempts to identify a black support worker for D'
83. The social work records no evidence of such attempts.
84. D's looked after child review of 17 June 2008 reported that the education coordinator for Looked After Children had hoped to find a black mentor for D but had been '*unable to identify a consistent resource.*' The white male support worker resumed providing some sporadic support at D's request after they had met by chance.
85. In mid-November 2008, D started having visits from a black male independent visitor. This proved short-lived as they had no common interests. The independent visitor's employers agreed that he was not a suitable match for D.
86. The issue of a suitable mentor was mentioned in D's December 2008 looked after child review although the focus of that meeting was much more a review of the PEP. It was agreed to provide D with 1:1 support in school.

Findings - D's social integration and planning

87. The purpose of a mentor for D was to provide him with a positive role model and someone responsible to confide in outside the 'system'. It is hard to see how appointing a black worker in the school environment fulfils this purpose.

88. The need for a mentor featured in D's looked after child reviews as a significant issue for over four years. There is no evidence of consistent attempts to find someone. In a large, metropolitan, multi-cultural city such as Leeds it is hard to believe that there was no suitable mentor.
89. There was no meaningful advice or support to Mrs E about how she might address some of the issues identified by Council workers as significant to D's ethnicity.
90. The Council acted with maladministration by failing to provide for one of D's key assessed needs.

Complaint: Support for Mrs E

91. Mrs E says that she and her family take their responsibilities towards D very seriously and recognise that dealing on a day to day basis with his complex needs would always be time-consuming, difficult and tiring. She says that she has always accepted that part of the foster parent role is to act as an advocate for D, much as she and her husband would if they were acting for their own child. She feels that the Council as corporate parent has effectively left her to deal with issues that were its responsibility.
92. Mrs E says the impact on her includes:
 - providing additional care for D when he has been on a less than full-time timetable, in particular when he has been on various non-school based schemes
 - arranging her time to cope with D's regular exclusions;
 - not being supported in her attempts to secure a good education for D;
 - not being properly supported in her role as foster carer with regard to D's Statement of SEN and her efforts to make it fit for purpose;
 - providing the impetus for many of the changes which have been made to D's educational provision (and which have contributed to systemic changes in the Council's SEN procedures) ;
 - writing very many letters and emails to Council officers about the type of education and specific courses which could be provided to D.
93. She says that it should not have been left to her to pursue the best for D - the Council was also responsible, as his corporate parent, for promoting his best interests. She says that she has been left feeling stressed, anxious, frustrated and depressed and worried about D's future prospects.
94. As early as January 2005, the Psychotherapist who is extremely familiar with the family circumstances recorded that Mr and Mrs E's '*commitment to and devotion to D has been **heroic***'[my emphasis].

95. D's looked after child review of 14 March 2006 discussed problems of D not engaging with support workers. It reported that:
'Clearly there was much concern that D's education would be further disrupted and his carers and placement would be placed under strain by any reduction in hours.'
96. Subsequent looked after child reviews record significant changes in D's School timetable that was delivered on a variety of sites, latterly in response to D's own need to avoid the main school building as much as possible after an incident in May 2008.

The Council's comments – support for Mrs E

97. The Council says that:
- there has always been considerable dialogue between children's services and the education department.
 - Mrs E has probably taken it more upon herself to champion D than most foster carers would.
 - if Mrs E had referred concerns back to social workers, they would have dealt with the issues themselves.
 - D's social worker has a much greater than average input into his education.
 - When it had had notice of D being excluded it tried to provide day care support but this is not an appropriate use of this resource and it did not usually know in advance when D would be excluded.
 - it has put in a considerable amount of support for D including, very unusually, putting in occasional one to one support for him at his special school.
 - Mrs E has not been forced to take on some of the roles that it should have undertaken as D's corporate parent.

Finding – support for Mrs E

98. There is significant evidence of Mrs E's time and effort in promoting D's education including:
- researching and identifying possible courses for D;
 - making herself fully aware of D's specific difficulties;
 - challenging the content of his final statement and ensuring that it was a much more specific and useful document than his previous ones;
 - dealing with the effect on family life of D's difficulties at school; and
 - generally been extremely proactive in seeking the best for D and 'fighting his corner' at the highest possible level.

99. The Council is D's corporate parent and has specific and clear duties in relation to this. It has to safeguard children in its care and **promote** their welfare and, in particular, their educational attainment.
100. Mrs E has been the driving force behind any improvements in D's provision and she has worked tirelessly to do her best for him. She has felt obliged to do far more than a foster parent would usually do because of the Council's failure to address D's problems properly.
101. There are key points at which the Council has failed to support Mrs E properly. In particular:
- it did not provide enough additional support to reflect the fact that D's timetable often provided him with less than full-time education;
 - it did not properly advise her or support her so that she could appeal to a Tribunal about D's Statement of SEN (and did not itself properly understand her role or its own as corporate parent in this matter);
 - it failed to make key information available for strategy meetings and reviews which she faithfully attended;
 - it failed to properly establish and respond to D's learning difficulties which in turn exacerbated stress within the family.
102. The result was that the same issues were raised time and time again at meetings with no apparent action and progress between the various looked after child reviews. I have no doubt that this contributed significantly to the stress and anxiety which Mrs E experienced over a prolonged period.

Summary of findings

103. The Council failed as D's corporate parent to fulfil its statutory duties to promote his welfare and educational attainment. It did not heed professional advice about the interaction of D's psychological diagnosis, his learning difficulties and his behaviour – either in its role as D's parent or as an education authority. As a result it placed a child whom it knew could not cope with change and insecurity in a school that operated from two sites and frequently excluded him or tried to educate him off-site. It did not revise his statement of special educational needs or review his placement at a school that was clearly failing to meet them and failing to manage his emotional and behavioural problems, even when the school went into 'special measures'.
104. D's foster mother has been the driving force in the recent improvements to D's educational provision. She has felt obliged to do far more than would be expected of a foster parent because of the Council's failures.

105. The Council assessed D as needing 'individualised support from a source consistent with his ethnic group and gender' and failed to meet that need.

Injustice

106. The Council failed in its duties to provide for D's special educational needs and to promote his education and welfare. In response to this failure Mrs E assumed responsibility for D that should have been discharged by Council employees.

107. It is difficult to say what the difference would have been to D if the Council had fulfilled its responsibilities. Mrs E believes that he should by now be functionally literate and that effectively the Council's failure to achieve this has had a serious detrimental effect on his future.

108. I consider that the Council's failure to fulfil its responsibilities and address D's various needs in a proactive and strategic way has caused him the injustice of a detrimental impact on his education and future wellbeing that is difficult to quantify.

109. The injustice to Mr & Mrs E is that they, rather than the Council – D's corporate parent - have felt obliged to devote considerable time and effort towards promoting D's best interests educationally and socially. There is a possibility that, had the Council's input been more coordinated and systematic, D would not have felt so frustrated and family life at the E's home might have been less stressful. Mrs E says that she is certain she would have suffered considerably less stress, anxiety and frustration.

Recommendations

110. I recognise that the Council has taken significant steps since receiving this complaint both to improve D's educational prospects and to improve the Personal Education Plans for looked after children and Statements of Special Education Needs.

111. I am aware of the major reorganisation of education and children's services that has brought them together in a unified management structure. This integration programme should be fully implemented by the end of 2011 and will provide a single integrated service for the most challenged families. I met with senior officers to discuss the serious concerns arising from this case. They assured me that measures were being taken that ought to mean that the problems experienced by D would not happen now. I was struck by their commitment to improving services and the scale of the challenge that they face.

112. Additional training has been put in place to improve the quality of Care Plans.
113. In addition, special schools are now and will in future be, subject to more monitoring and scrutiny.
114. The Council says that it is in the process of reviewing and improving the quality of all Statements although it will take some time for this task to be accomplished for all children. The most complex cases are being revised first. The Council says that it is working with the DfE on this: it has voluntarily asked the DfE to review the Council's monitoring systems.
115. In addition to these administrative changes, to remedy the injustice caused to D and to Mr & Mrs E, the Council should now:
- Fund specialist provision up to a value of £2,500 to improve D's reading ability and educational attainment and encourage him to take up this provision. This funding should be over and above what would normally be provided for a care leaver and should be kept in trust, available for D until he reaches the age of 30.
 - Continue to try to identify an appropriate mentor for D.
 - Apologise to Mr and Mrs E for the stress and anxiety caused them by the maladministration identified above and, in recognition of this and the extraordinary efforts they have made on D's behalf, pay them the sum of £3,000 and
 - Request officers to report to the Executive or an appropriate Scrutiny Committee summarising the changes in services, policy and procedures since the events described in this complaint and provide a copy to Mr and Mrs E to reassure them that the problems they have faced have been properly addressed.

Anne Seex
Local Government Ombudsman
Beverley House
17 Shipton Road
York
YO30 5FZ

July 2011