

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
Somerset Council
(reference number: 23 017 883)**

22 January 2025

The Ombudsman's role

We independently and impartially investigate complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

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

Mrs X The complainant

Report summary

Education and children's services – special educational needs personal budgets and direct payments

Mrs X complained about the Council's failure to release funds for her family to access specialist provision in Section F of their children's Education, Health and Care (EHC) Plans. She also complained the Council failed to respond to requests, provided incorrect information and that its complaint handling was poor. Mrs X says she suffered anxiety and frustration, and her children's placement was at risk due to them not being able to access the specialist provision.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)

To remedy the injustice to Mrs X from the faults identified, we recommend within three months of the date of this report the Council should:

- write to Mrs X to apologise. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The Council should consider this guidance in making the apology we have recommended in our findings;
- reconsider its decision on how to deliver the personal budget for Mrs X to ensure the agreed payments are made a term in advance;
- repay Mrs X the funds outstanding to her which she has paid to access the provision set out in Section F of her children's EHC Plans;
- pay Mrs X £1,000 to recognise the significant and avoidable distress, financial worry and uncertainty caused over a prolonged period;
- review its direct payments agreements to ensure clarity on when the agreed payments are made to individuals;
- ensure training is provided to the Special Educational Needs and Disabilities (SEND) staff on Personal Budgets referring to our Focus report "[Parent power: learning from complaints about personal budgets](#)" and the Council's policy; and
- issue guidance setting out the criteria for deciding which of the personal delivery options should be selected and clarifying there is discretion available to use a different method if the original one is not working.

The complaint

1. Mrs X complained about the Council's failure to release funds for her family to access specialist provision in Section F of their children's Education, Health and Care (EHC) Plans. She also complained the Council failed to respond to requests, provided incorrect information and its complaint handling was poor.
2. Mrs X says she suffered anxiety and frustration, and her children's placement was at risk due to them not being able to access the specialist provision. She had to use her own funds to pay for the provision, and at times, having run out of credit, could not afford to access the provision.

Legal and administrative background

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

How we considered this complaint

5. We have produced this report following the examination of relevant files and documents.
6. We have considered our Focus report "[Parent power: learning from complaints about personal budgets](#)".
7. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

Law and guidance

8. A child or young person with special educational needs may have an Education, Health and Care (EHC) Plan. This document sets out the child's needs and what arrangements should be made to meet them. The EHC Plan is set out in sections.
9. A Personal Budget is the amount of money the council has identified it needs to pay to secure the provision in a child or young person's EHC Plan. One way that councils can deliver a Personal Budget is through direct payments. These are cash payments made to the child's parent or the young person so they can commission the provision in the EHC Plan themselves.
10. A child's parent or the young person has the right to request a Personal Budget when the council has completed an EHC needs assessment and confirmed it will

prepare an EHC Plan. They may also request a Personal Budget during a statutory review of an existing EHC Plan.

11. The final allocation of a Personal Budget must be sufficient to secure the agreed provision specified in the EHC Plan and must be set out as part of that provision.
12. If the council refuses a request for a direct payment, it must set out the reasons in writing and inform the child's parent or the young person of their right to request a formal review of the decision.
13. The Council's personal budget and direct payment policy says a personal budget can be delivered in four ways.
 - An arrangement where the Council holds the funds and commissions the support specified in the EHC Plan.
 - Direct payments – where the recipient receives the cash to contract, manage and purchase services themselves.
 - Third party arrangements – where funds are paid and managed by an individual or organisation on behalf of the beneficiary.
 - A combination of the above.

The policy goes on to say direct payments will be made termly in advance and the agreement will state how payments are made in an individual case.

What happened

14. Mrs X's children, Y and Z, both have extensive special needs. The Council issued final EHC Plans for both children. Section F of the Plans had several items of support to be provided. This included a type of therapy which could only be sourced outside of the family's local area. It was important for the children they received this therapy.
15. In early November 2023 the SEND Placement and Travel Panel at the Council received a request for additional funding from Mrs X. This included a request for the costs associated with attending the provision set out in Section F of the children's EHC Plans such as travel and accommodation to allow the children to receive the therapy.
16. The Council agreed funding should be made available to the family to allow them to attend the children's therapy.
17. By late November 2023 Mrs X had not received any funding to allow her and her family to access the therapy, so she complained to the Council.
18. In response the Council emailed Mrs X to say it had agreed a direct payment for funding the family's associated costs to allow them to attend therapy.
19. Mrs X asked the Council if all funds could be paid into an account she could access to pay for expenses. She also asked the Council to reimburse her for the costs she had already incurred.
20. The Council responded in December 2023 to say it preferred to use a third party to manage direct payments. Mrs X replied the same day to say she had signed the agreement the Council had sent her to agree the budget. Mrs X asked again if

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- she could be reimbursed for the costs she had already incurred and asked if the amount could be paid into a personal budget account.
21. The Special Educational Needs and Disability (SEND) Direct Payment Agreement says Mrs X is the recipient of the agreement and states the account is to be managed by a third party. The agreement breaks down what costs are likely to be incurred under the section which says how payments will be made but does not say when amounts will be paid.
 22. The Council told Mrs X on 7 December 2023 it was transferring some of the agreed funds to the third party. Mrs X told the Council a few days later that she did not have funds to allow her and her children to access therapy the following week.
 23. The Council responded to Mrs X's complaint in early December 2023 to say funds had now been released to the third party and the funds had been allocated to Mrs X's account.
 24. It made a payment to Mrs X in mid-December which it said was for expenses for 28 November 2023 to 16 January 2024.
 25. Mrs X asked the third party to release funds to her for January and February sessions in mid-January 2024. Mrs X has had to repeatedly chase the third party and the Council to release funds to her.
 26. Mrs X also raised a further complaint in February 2024 as she was still experiencing problems with receiving funds to allow her children to access the provision outlined in their EHC Plans.
 27. The Council sent a stage two complaint response in late February 2024 and said it had arranged a meeting with the third party who was managing Mrs X's direct payment account to understand the delays.
 28. The Council emailed Mrs X in March 2024 to say it had agreed the third party would send copies of receipts to it and the Council would then approve payments to re-imburse Mrs X.
 29. Mrs X emailed the Council in April 2024 to say she was owed £7,581.80 in expenses at that point, and she was extremely concerned about the financial stress and worry the Council were putting her under.
 30. The Council agreed to consider a different way of managing a personal budget for her two children in April 2024. Mrs X chased this up several times but has not yet received a response as to whether this will be set up. Mrs X has continued to chase for funds to be released to allow her to book travel and accommodation and to try to get reimbursement of costs she has incurred.
 31. The third party managing the account emailed both Mrs X and the Council in June 2024 to say Mrs X needed to complete a claim form for expenses she was claiming back to allow the reimbursements to be made and funds to be released in advance of booking travel and accommodation.
 32. In July 2024 the third party sent a further email to the Council to say the process was not working.

Analysis

33. The Council's personal budget and direct payment policy says that funds can be delivered in four ways. In Mrs X's case the Council has said the direct payment

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- must be administered through a third party; practically this means Mrs X has to pay for the provision out of her own funds and claim back the expenditure. There is no mention in the policy of the costs of the provision having to be paid by Mrs X and then reclaimed once receipts have been approved.
34. The Council has not explained why it has decided a third party must manage the account. Nor has it explained why Mrs X is having to pay for costs and then claim them. The Council do not appear to have any set criteria for deciding how a direct payment should be managed. It also does not appear to be exercising its discretion to use a different payment method if the one originally chosen does not work.
 35. The policy states that direct payments will be made termly in advance which does not appear to be happening in Mrs X's case. The direct payment agreement does not show when funds will be released to Mrs X.
 36. Mrs X incurred costs, paid out of her own resources, of over £7,000 without receiving any repayment. It is not acceptable to allow costs to reach such an amount when the Council had agreed to fund the cost of the children accessing the provision set out in Section F.
 37. Although the Council said it would look into a different way of managing personal budgets for Mrs X's children in April 2024, the situation has not changed even after the third party said the current agreement was not working.
 38. We have seen multiple examples where Mrs X has contacted the Council to request funds to be released to allow her to book travel and/or accommodation. Mrs X has also had to contact the Council to request a refund of funds already paid out.
 39. Mrs X has also had to chase the Council for a response to queries or requests for payments.
 40. Mrs X says the Council's complaint handling was poor. The Council responded to complaints within an acceptable timeframe. However, as is clear from the above account, it has not recognised it is at fault or taken any action to remedy the injustice caused to Mrs X.

Conclusions

41. The Council is at fault for:
 - failing to explain why it made the decision to use a third party to manage the funds associated with Mrs X's children accessing their Section F provision;
 - failing to release the funds to Mrs X to allow her to book travel and/or accommodation to allow her children to access the provision set out in Section F of their EHC Plans;
 - making Mrs X pay for travel and/or accommodation to access her children's Section F provision and delaying in repaying this; and
 - failing to respond to requests for repayment and queries raised by Mrs X.
42. These faults caused Mrs X a significant and avoidable amount of distress and financial worry. Mrs X has been forced to pay large sums without knowing when they would be returned to allow her children to access the Section F provision outlined in their EHC Plans. Mrs X did so for fear if she did not her children would

lose out on this element of the provision which they needed. At times her children have not been able to access the provision as she had no funds to pay for it.

43. In addition, the Council failed to take any action when they were aware the current arrangement for direct payments was not working. This would have caused additional distress and frustration for Mrs X and her family.

Recommendations

44. To remedy the injustice to Mrs X from the faults identified, we recommend the Council:
- writes to Mrs X to apologise. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The Council should consider this guidance in making the apology we have recommended in our findings;
 - reconsiders its decision on how to deliver the personal budget for Mrs X to ensure the agreed payments are made a term in advance;
 - repays Mrs X the funds outstanding to her which she has paid to access the provision set out in Section F of her children's EHC Plans;
 - pays Mrs X £1,000 to recognise the significant and avoidable distress, financial worry and uncertainty caused over a prolonged period;
 - review its direct payments agreements to ensure clarity on when the agreed payments are made to individuals;
 - ensures training is provided to the SEND staff on Personal Budgets referring to our Focus report "[Parent power: learning from complaints about personal budgets](#)" and the Council's policy; and
 - issues guidance setting out the criteria for deciding which of the personal delivery options should be selected and clarifying there is discretion available to use a different method if the original one is not working.
45. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)

Decision

We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mrs X. The Council should take the action identified in paragraphs 44 and 45 to remedy that injustice.