

Report

on an investigation into
complaint no 09 004 278 and
09 011 462 about
Leeds City Council

July 2011

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Table of contents	Page
Report summary	1
The Complaints	5
Background	5
General administrative notes	8
The Ombudsman	8
Special Educational Needs	8
Children's Service	9
PART 1: The complaint against the Education Service.	10
1:1 signer	10
Toileting	14
The Cochlear implant	17
Standing Frame	22
Mainstream integration	22
Annual Reviews	23
The Council's comments	23
Findings	24
The Injustice	27
PART 2: The complaint against Leeds Children's Services	28
Background	29
Before 2006	30
The period July 2006 – December 2007	30
The period December 2007 - June 2008	31
Findings	31
Injustice	32
Remedies and recommendations	32

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

H was born with cerebral palsy, is deaf, has poor sight, learning difficulties and a range of physical and medical conditions. Caring for her can be time consuming and exhausting. For most of her life H has lived at home and been cared for mainly by her mother. H's mother complains that Leeds City Council:

- failed as an education authority to make the educational provision specified in H's statement of special educational needs and placed her in a school that was not equipped to meet those needs;
- failed as a children's services authority to assess H's needs and those of her family and failed to provide respite care.

H's Statement of Special Educational Needs specified that she should have *"...full-time support on a 1:1 basis from a teaching assistant proficient in British Sign Language (BSL) at level 2....to support [H's] daily personal care and communication needs and also that she should be taught in an environment that minimised background noise. This was important for H to be able to adapt to and use a cochlear implant."*

From 2005 the school did not have someone with BSL at level 2 present full-time and H did not have 1:1 support. This meant that:

- there were times when there was no-one at the school who could communicate effectively with H;
- there were not enough staff to help H to use the toilet so she returned home in wet trousers, developed blisters and broken skin and suffered urinary tract infections;
- H was not assisted to use her standing frame.

In addition no action was taken after the education service's audiologist twice reported that the room where H was educated was unsuitable for learning and listening. This meant that H did not get the benefit of a cochlear implant - fitted at some cost to the NHS and with some risk to her

Finding

The Ombudsman found that H, a severely disabled child, was left in a situation where, for a significant proportion of the school week, the people caring for and educating her were unable to communicate with her because none of the available staff was competent in BSL. There were not enough staff to help H to use the toilet so she lost previously acquired skills and continence. The unsuitable and noisy environment meant that H had only very limited use of a cochlear implant – fitted at some cost to the NHS and with some risk to her.

The Ombudsman does not have the power to investigate the actions of the school and so could not give a complete and comprehensive account of how the situation arose or was allowed to continue. She found that the Council had information from various sources that H's needs were not being met. It neither made further enquiries nor took any action and cannot use its failure to properly inform itself as an excuse for its failure to fulfil its statutory duty.

In relation to the complaint about the Council's failings as children's services authority the Ombudsman found that the Council failed to assess H's needs and those of her family and failed to provide adequate respite care.

The Ombudsman summarised the injustice to H and her family as:

- having to struggle through and hold together under enormous strain without access to adequate respite care;
- the opportunity, that can never be replaced, for H to develop her use of the cochlear implant whilst she was a young child;
- the impact, that cannot be assessed, on H's ability to learn and develop of not having 1:1 support from a teaching assistant with BSL at level 2;
- H suffering sores on her flesh from being left in wet or soiled pads during the school day, exacerbating her tendency to urinary tract infections.

Mindful that many reports describe H as a happy child and that it is clear that her teachers and other professionals regarded her with affection, the Ombudsman also noted that one document recorded:

'When [H] is happy she has a lovely smile and laugh which is infectious for others around. [H] has been known to bite her hand in frustration, she has done this to a degree where she has caused herself open wounds and pain. This behaviour has stopped recently it is felt by those who know [H] that this was [H's] way of managing any discomfort or frustration. [H's] recent difficulties with chronic diarrhoea have stopped and her health and well being has improved noticeable since leaving school in May 2008. Dr ... has commented on the improvement in [H's] health...'

Recommended remedy

To remedy the injustice caused to H and her family by the Council's maladministration, the Ombudsman recommends that the Council should:

- arrange for a suitably senior representative of the Council to apologise in person to H and her mother for its failings;
- pay the family the amount it would have paid for the respite care that H missed;
- arrange for H to be assessed by someone skilled and experienced in assessing the educational potential and needs of children who are deaf with the specific brief to establish H's potential and to recommend the educational provision that would enable her to achieve it;
- make the educational provision recommended by the skilled and experienced person;

- pay H's mother £50 per day for every day that H did not attend school because there would be no-one there able to communicate with her in BSL (this does not mean every day that H missed school as many days were lost because of illness etc);
- pay £1,000 to H in recognition of the pain, discomfort and indignity caused to her by the lack of provision to enable her to use the toilet or to change her incontinence pads sufficiently frequently.
- discuss this case with the senior staff and the Governors of the Special School to understand the factors that resulted in the Governors deciding not to pay a competitive salary to Teaching Assistants with the specialist qualification of BSL level 2;
- produce a statement setting out how H's experiences would have been different if the proposed new arrangements for Integrated Services for Children with Complex Needs had then been in place;
- produce a statement setting out the governance arrangements for its proposed Integrated Services for Children with Complex Needs, the Special Inclusive Learning Centres, and its maintained special schools and how those arrangements relate to each other.

The Complaints

1. A mother complains on behalf of her daughter H, herself and her two other children that:
 - the Education Service failed to meet the provision in H's Statement of Special Educational Needs (SEN) and in particular it placed H in a school which was not equipped to meet her needs; and
 - the Children's Service failed to assess H's needs and those of her family and failed, over many years, to provide appropriate respite care for them all.

Background

2. As a result of congenital cytomegalovirus, H was born with cerebral palsy which has led to loss of hearing, poor sight, learning difficulties and a range of physical and medical conditions. H is now 14 years old. She has an elder sister who is 15 and a younger brother aged 10. For most of her life, H has lived at home and been cared for mainly by her mother. Caring for H can be time-consuming and exhausting.
3. In May 2000, at age 4, H was fitted with a cochlear implant. This procedure involves the surgical insertion of tiny electrodes which, together with an externally worn processor, enable the brain to receive certain sounds. To have a reasonable expectation of success, the procedure must be carried out on a young child (the optimum age is 2 or 3 with age 5 considered almost too late) whose parents or carers must undertake to ensure the processor is worn 'all waking hours.'
4. Although known to Leeds Social Services since an infant, there was no proper assessment of H's needs and those of her family until 2008. Until then there was no Carer's Assessment for H's mother. Social workers recognised a need for H and her family to have short breaks apart. The Council says it has struggled to find a placement or carers competent to meet H's physical needs and to communicate with her because of her deafness. The combination of deafness with other disabilities presents a challenge in terms of H's care. H's mother says the absence of breaks has left her exhausted and put enormous strain on family relationships.
5. H's general health was also poor throughout the period covered by this report. She has undergone major surgery on her hip, an operation on her ankle, and had scoliosis (curvature) of the spine diagnosed. All have, at different times, caused her excruciating pain. She has also suffered repeated urinary tract infections. During periods of ill-health H could not go to school. Nor could she enjoy a family

placement break¹ during those times because the Council's policy says that children who go on family placements must be in generally good health.

6. H's mother complained to the Council about its long-term failure to provide the family with any respite and her complaint was largely upheld. Measures were put in place for the future but no remedy for the past was provided. H's mother asks the Ombudsman to re-investigate the part of her complaint that the Council did not uphold and to consider whether any remedy for the past would be appropriate.
7. In 2001, when H was 4, she began to attend a special school for children with complex learning needs, including multi-sensory impairments and physical disabilities. The school had no special facility for the deaf and, throughout her time there, H was the only deaf child in the School.
8. H communicates through British Sign Language (BSL). She has been deaf since she was one and has never developed spoken language. Not only can she not hear, she can neither speak nor read.
9. Because H was the only deaf child at the Special School, her mother asked the Education Service to amend her Statement of SEN to specify 1:1 support from a teaching assistant proficient in BSL. This was so that H could understand the activities at school, and children and staff could communicate with her. She also asked if, just as other children are taught English, H could have some lessons from a teacher of the deaf².
10. H's mother approached the National Deaf Children's Society (NDCS) for support and its Regional Officer attended the 2003 annual review of H's Statement of SEN. According to the NDCS records *'most in meeting were in agreement that [H] needed more signing input'* but *'the issue is where will the funds come from. Education Service have delegated to school so claiming that even if it is written into her statement, the Education Service are not bound to pay any extra money'*.
11. The Regional Officer's notes also suggest that a recommendation for additional 1:1 support was to go to the Education Service but no recommendation for additional support was made. The Special Education Code of Practice³ makes it clear that following an Annual Review a school is responsible for making any

1 A family placement is where the child is placed with another family, usually in the same area, for a short break.

2 A teacher of the deaf is a specialist teacher of BSL and other non-verbal communications for the deaf.

3 This is a statutory Code so schools and local authorities must have regard to and follow its content unless they have good reason to depart from it.

requests to the local authority for any additional resources needed to meet a child's needs.

12. H's mother complained to the Education Service. She said the report of H's 2003 annual review did not reflect what had been said during the meeting and she wanted to pursue additional 1:1 support for H. The Education Service did not agree so H's mother appealed to the Special Educational Needs and Disability Tribunal (SENDIST.) A hearing was scheduled for 26 July 2004. On 9 July the Education Service sent H's mother an amended Statement of SEN offering full-time 1:1 support and input from a teacher of the deaf. H's mother withdrew her appeal.
13. H's Statement of SEN, issued in July 2004, specified that:
 - a) H should have *'full-time support on a 1:1 basis from a teaching assistant proficient in BSL at level 2 or equivalent, to support H's daily personal care and communication needs'*;
 - b) H's cochlear implant should be checked daily by *'an experienced member of staff and (its) daily use (should be) managed in conjunction with a programme and advice from Nottingham Cochlear Implant Centre.'* In addition H was to be *'taught in an environment that minimises background noise'*;
 - c) *'all staff working with (H) were to be aware of her...daily need with regard to the use of her standing frame'*; and
 - d) H should have *'opportunities for possible increase in attendance in a mainstream setting with appropriate support...'*
14. In 2005 H's Statement of SEN was amended to also specify daily use of audiological equipment. H's mother says the sort of audiological equipment envisaged was Radio Aid and possibly a software programme called Voice Line.
15. Almost as soon as H's Statement of SEN was amended, changes took place at the Special School. It became, along with two other Special Schools, one of five Special Inclusive Learning Centres (SILCs) in the City and provided the site at which the SILC was based. At the same time a £380,000 budget deficit forced the Special School governors to make significant staff reductions. For H, the size of her class grew from 4 to 10 children and her 1:1 signer was frequently called upon to help with other children in the class.
16. The Council says that the sites were overstaffed and measures were taken to rationalise staffing to the 'correct' level.

General administrative notes

The Ombudsman

17. The Ombudsman's power under the Local Government Act 1974 is to consider complaints of '*injustice in consequence of*' maladministration or failings in service on the part of the Council.
18. Schedule 5 of the 1974 Act specifically prevents the Ombudsman from investigating complaints relating to teaching in schools or a school's conduct, curriculum, internal organisation, management or discipline. The Apprenticeship, Skills, Children and Learning Act 2009 gave the Ombudsmen jurisdiction to consider complaints by parents or pupils about schools. This jurisdiction was to be brought into force in phases and currently applies in 14 local authority areas in England. Leeds is not one of these areas.
19. The Ombudsman cannot investigate the actions of the School but can obtain information and evidence from it in connection with her investigation into the complaint that the Education Service failed in its statutory responsibility to ensure the provisions in H's Statement of SEN were being met.

Special Educational Needs

20. Once a child has been assessed as having a special educational need and a decision is made to provide for those needs in a statement, the Education Service has a statutory duty⁴ which it must meet and which it cannot vary unilaterally or informally. It can ask a school or the Health Service or another agency to make the provision on its behalf, but it cannot divest itself of its statutory responsibility.
21. If s council considers that provision in a statement of special educational need may no longer be necessary, it must follow a procedure prescribed by law.
22. All statements of special educational needs must be reviewed at least annually. The purpose of the review is to integrate the perspectives of all those working with the child, consider what progress has been made over the previous 12 months and whether the statement should be maintained or amended.

4 Education Act 1996, Part IV.

23. The Head Teacher is responsible for arranging the annual reviews. S/he must request written advice from the child's parents and all health and education professionals working with the child and their reports must be circulated amongst all those invited to the review at least 14 days beforehand.
24. There is no requirement for a council's Named Officer⁵ to attend annual reviews personally but s/he must ensure those reviews are carried out promptly and properly.
25. After the annual review meeting the Head Teacher must, within 10 days, send a report to the Education Service and to all those who attended. The report need not be a verbatim account but it must summarise the outcomes of the meeting and, in the Head Teacher's view, what the main issues and recommendations were. The council must consider any recommendations and decide whether to accept them, sending a copy of its decision to the School and to the child's parents.

Children's Service

26. The Council's statutory duties to a disabled child arise from:
 - the Children Act, that creates a duty to promote the welfare of children in an authority's area who are in need, if possible by supporting their families through a range and level of services appropriate to the child's needs⁶; and
 - the Chronically Sick and Disabled Persons Act, that creates a duty to discover whether any disabled person within the authority's area has a need for care arrangements and a further duty to make those arrangements if there is no other satisfactory way of meeting the disabled person's needs⁷.
27. Councils also have a statutory duty to assess the needs of carers, who provide substantial care on a regular basis and to support them if they need support, if necessary, by the provision of respite⁸.
28. A council's first duty is to carry out an assessment. Once assessed, the duty is to meet eligible assessed needs. If there is more than one way of meeting the need, the authority may, quite properly, offer the cheapest and it may, quite properly, take account of assistance available from family and friends⁹.

5 The Named Officer is the person from the Education Service who liaises with the parents over all the arrangements relating to statutory assessment and the making of a S of SEN. Parents of a child with a S of SEN must be informed of the identify of their Named Officer.

6 Children Act 1989, section 17

7 Chronically Sick and Disabled Persons Act 1970, sections 1 and 2.

8 Carers (Recognition and Services) Act 1995

9 R v Gloucestershire County Council ex parte Barry 1997.

29. In assessing whether a child is in need and how to respond to that need, the Council must also consider other children in the family and the general circumstances of the family as a whole. Although the law does not require councils to assess the needs of carers other than those over 16 who are caring for an adult, young children are not expected to care for a sibling to the point where their own life chances are affected¹⁰.

PART 1: The complaint against the Education Service.

30. The essence of the complaint is that when H was placed at the Special School, on the site of the North West SILC between 2004 and 2009 her Special Educational Needs were not met because the provision specified in her Statement of SEN was not made. In particular:
- from 2007 onwards H frequently had no 1:1 support and a teaching assistant able to sign was not available throughout the week,
 - throughout 2006 part of 2007 and 2008 H was denied use of the toilet at School,
 - from 2005 onwards H was unable to use her cochlear implant because she was placed in a noisy environment and no measures were taken to moderate the noise;
 - from 2006 onwards H's opportunity to integrate in mainstream schooling was limited;
 - in 2008 H's daily exercise with a standing frame was discontinued.

1:1 signer

31. H's Statement of SEN specified that she should have '*full-time support on a 1:1 basis from a teaching assistant proficient in BSL at level 2 or equivalent.*' As well as the essential role in communicating with H, the assistant was to ensure H was clean and comfortable.
32. The Principal of the SILC says it was difficult to recruit BSL level 2 qualified staff prepared to work for a teaching assistant's pay and to undertake a child's personal care. Their BSL qualification could be more profitably employed elsewhere.
33. H's mother says H initially had full-time support from an appropriately-qualified signer, B, but in 2005 B, dissatisfied with her teaching assistant's rate of pay,

10 Framework for the Assessment of Children in Need and their Families 2000.

reduced her working hours to 4 days a week. For a time there was no Friday support, then a male assistant was found but he was not qualified to the BSL level specified in H's statement and, because he was also deaf, he could not communicate with others in the school.

34. There were two annual reviews of H's Statement in 2005: one in March and the other in November. H's mother's contribution to the March review says that the support H had received from a full-time signer '*...has been hugely beneficial...*' and that they were '*very encouraged by her progress*'. She asked that the review should work through a number of issues including '*Provision of a full-time support on a 1:1 basis from a teaching assistant proficient in BSL at level 2 or equivalent on Fridays, to support [H's] daily personal care and communication needs since [B's] reduction in working hours...*'.
35. The NDCS Regional Officer's notes describe the meeting as '*a difficult one*'. She says the Education Service named officer '*talked at length about the Education Service no longer having specific additional funding to provide this type of 1:1 support*' and said that it was the Principal of the SILC's '*responsibility to manage his budget and to provide for [H's] needs within the Statement and that if he decided he needed to make someone redundant in order to do so that would be what he would do*'.
36. Eventually B's pay was revised and she returned briefly to a five-day working week. However, H's mother says she was never able to dedicate her time to H 1:1 because of demands of other children in the class.
37. Although H's mother says that B was not able to devote all her time to H, there is nothing either in the Head Teacher's reports of the November 2005 review or the review the following year to indicate that H's 1:1 support was a cause of any significant concern. The class teacher's report to the review on the details of provision made for H during the previous year records '*Access to a teaching assistant giving sign supported English (BSL level 2)*'.

H's mother says that in 2007 B was only working for 21 hours a week, over 3 days from Tuesday – Thursday morning. A second assistant, P, was employed to job-share with B but P was often absent. H's mother says that, during these frequent and lengthy periods, there was never anyone who could sign available to communicate with and support H. H's mother says the School records will show many letters from her to the School about this. She often came into School to support H on Fridays or didn't send H to school on the days when there was no teaching assistant for her. She says the School even asked her to complete a form so she could be paid for coming in on Fridays (she says she did but was

never paid.) The Principal of the SILC says he recalls H's mother coming into School when H had no teaching assistant or anyone with level 2 BSL.

38. In response to my enquiries, the Education Service at first professed no knowledge of this. Responding to my initial letter of enquiry, it said:
'[H] has had full-time support during all lessons from a teaching assistant (Level 2 BSL signing) to ensure that the curriculum and ALL classroom communications were interpreted and delivered to [H] using BSL.'
'The only disruption to the availability of this provision has been when [H] assigned Teaching Assistant broke her leg on 24th June 2008 and was not expected to return until January 2009.'
39. The record does not support the Education Service's claims. Although the Head Teacher's 'official' review reports submitted to the Education Service do not mention concern about 1:1 cover, the NDCS Regional Officer's records say that the Head Teacher acknowledged it was *'Impossible to address [H]'s individual programme as laid out by [Teacher of the Deaf] due to demands within the class.'*
40. H's mother approached solicitors in 2008 with a view to taking legal action against the Education Service. The Education Service, in response to the solicitor's letter, acknowledged that, during the academic year 2006/7 H only had 1:1 support for 4 days each week – (when B had reduced her hours and before a second assistant, P, had been found.)
41. Entries in H's home / school diaries for 2007 include: Monday 14 January – 'no P****'; Friday 18th – 'P**** not in again'; Monday 28th January – 'no P****'; Monday 4th February – 'no P**** today'; Monday 25th February – 'no-one in for [H] today, She has been in hysterics¹¹ at our signing'; Monday 17th March – 'we don't know what will happen about P****.' Monday 14th April - 'fits of giggles at attempts to sign.'
42. P had long stretches of sickness absence. There is no evidence of the School and the Education Service managing this and no indication that any back-up was put in place to support H during P's absences.
43. The Principal of the SILC acknowledges there was a management failure. He says the Education Service paid £15,226 for H's placement and it is a 'fallacy' to assume this money was dedicated only to meet H's special needs. The School's income went into a fund out of which all salaries, including his own, were paid. There was no surplus for back-up staff and the School's Governors would not

11 laughter

fund higher rates of pay for teaching assistants with special expertise such as BSL.

44. One year later, in 2008, nothing had changed. By this time H's mother had referred the family to the NHS Community Nurse who met H for the first time at the Special School on 4 February 2008. Her notes of that visit say: '[P], ... 1:1 worker on Mondays is off sick. [B] usually does Tues, Weds, Thurs.' This entry, together with the home / school diary entries, suggest P was only ever intended to cover on Mondays.
45. The Community Nurse records another visit on Tuesday 26 February 2008 when neither B nor P was at school. The person attempting to teach H commented '*on not having the sign language skills to communicate effectively with [H].*'
46. Meanwhile within Children's Services, a new Service Delivery Manager had noticed that H had never had a proper assessment (for social care purposes) and in April 2008 one was begun. Concerns about H's schooling came to light in reports collected for that assessment. For example:

'[H] has a one-to-one worker, [B], who is a BSL signer, on Tuesday, Wednesday and Thursday morning. [H's] other one-to-one worker, [P], has been absent from work for around four months so on Monday, Thursday afternoons and Friday [H] does not have a one-to-one worker (although school are trying to find a temporary replacement)' and

H needed 'carers in all environments to use BSL when communicating with her' and that 'the issue of one-to-one worker on Monday/Thursday afternoon and Friday needs resolving' and

'[H's] 1:1 support for part of the week is on long-term sick which can make some things in class more difficult' and

'[H] does not have access to a BSL signer for half the school week. This needs to be addressed through Education Leeds...it is not sufficient to leave [H] in a situation within a specialist inclusive learning centre where she is excluded due to a disability.'
47. All the above reports are on the Education Service's files.
48. The (then) Children's Service Delivery Manager says that, sometime during 2008, she met a senior Education Service officer together with H's Named Officer and put these concerns to them. She was assured that, according to the annual reviews of H's Statement, all within the school was well. She made no further enquiries.

49. P's extended absences were not addressed until April 2008. On 15 April 2008, the Head Teacher wrote to H's mother: *'One piece of good news is that we have found someone to support [H] all day Monday and Friday mornings until [P] returns... she is a BSL level 2 signer. Also I now understand that [P] is much better and hopefully will be back at work before half term.'*
50. H's mother says that, when the new signer, M, did start, there was confusion over her role as yet again she was required to divide her time amongst other children and not available to support H 1:1.
51. When I asked what efforts had been made to find another signer for H, the Education Service produced one advertisement placed on 25 September 2008 for a BSL signer to work 30 hours a week. The applicant was to support a deaf child and *'to support other classroom staff and undertake general classroom duties.'*
52. The Principal says *'we didn't speak directly to the Education Service about the 1:1 signers and I accept this was unacceptable.'* However he says that ultimately the Education Service knew because the Deaf and Hearing Impaired Service (which is part of the Education Service) was approached to see if it could help. They knew, he says, that the School was *'desperate'*.

Toileting

53. H's teaching assistant had a dual role: to help H with communication and to help with her daily personal care, including helping her go to the toilet.
54. H's mother says H has always been continent at home during the day, provided she has some help. The only equipment she needs is a 'banana board'¹² – although there is a hoist in the house if H is ever too ill to help herself.
55. The records show H used the toilet at school *'with a minimum of help'* until 2005. Towards the end of 2005 her specially adapted toilet chair was no longer available (for reasons unknown) and this situation persisted throughout the whole of 2006. The annual review of H's Statement in December 2006 says: *'[H] is no longer continent at school due to lack of appropriate equipment.'* H's mother says it took 15 months (until the beginning of 2007) to order, fund and fit her new chair, during which period H lost skills and an independence she had previously enjoyed.

12 A banana board is a curved board which, when slipped beneath someone and tilted, enables them to slide easily from one surface to another of approximately the same height.

56. The Education Service offers no explanation for this failure in provision although the Principal of the SILC recalls the problem, describing it as bizarre.
57. H's mother says that over time, a combination of insufficient staff and inadequate equipment led to H not using the toilet at school and becoming incontinent. She developed urinary tract infections, said by her medical consultant to be probably caused by sitting all day in soiled and wet pads.
58. The December 2007 annual review report says: *'When [H] first joined the class there were issues regarding her toileting because of lack of appropriate facilities. This has now been rectified and [H] uses the toilet with support.'*
59. Early in 2008 there was an accident. According to the records, whilst using the toilet H *'pulled the down pipe from the toilet cistern away from the wall (she held on to this to pull herself up) and her toilet chair knocked the waste pipe off.'* H's mother says the bathroom flooded and H was quite traumatised by the experience. Staff stopped taking H to the toilet.
60. H's mother asked the NHS Community Nurse to intervene. She told the Nurse that H often returned from School with two pairs of wet trousers and sometimes had painful blisters and broken skin on her bottom. The Community Nurse (who says blisters and broken skin are evidence of poor care management) engaged immediately with Children's Services and with H's School. She witnessed H using the toilet at home and noted the process took an average of 15 minutes. She acknowledges that, whilst family and friends can help H individually, professionals must generally work in pairs.
61. The Community Nurse says a major problem at School was that the position of the bathroom made manoeuvring the banana board awkward and unsafe. As a result, staff did not like to use it. Following a visit to H at school on 26 February 2008 she noted: *'I did not see [H] go to the toilet during the morning session.'*
62. The Community Nurse contacted H's (NHS) physiotherapy worker and together they devised a safe programme for staff to follow to enable H to use the toilet. They were confident this programme was suitable and safe for H and put no staff at risk. It involved the use of a hoist that required two members of staff to assist H.
63. Accompanying the programme was a care plan. H was to be taken to the toilet four times whilst at school: on arrival, during break, after lunch and before going home. Staff were to record not only that H had been to the toilet but whether she was wet or dry beforehand.

64. From the start, the charts were not routinely completed. The Community Nurse records a telephone call from H's mother on 17 March 2008. She says H's charts had not been completed on some days (the charts on record confirm this) and [H] *has not been supported to use the toilet on some occasions due to other children in her class having seizures.* The Nurse's own observation records for 4 February 2008 show she had been left alone with H and three other children during one visit whilst the teacher and assistant had to leave the room to get help for a child who had suffered a seizure.
65. On 28 March 2008 the Community Nurse's records say: *'The charts were not always completed at school, particularly if it was on Monday or Friday when [B] was off work.'*
66. The Community Nurse met H's class teacher and B to discuss the problem. They suggested the hoist was undignified. When challenged, H's class teacher said the issue was time. Taking H to the toilet took too long. The Community Nurse concluded that the School was not resourced and staff were not willing to give time to enabling H to use the toilet. She describes the culture in the School as *'pessimistic.'*
67. In April 2008 Children's Services undertook what it describes as a *'holistic health care assessment.'* Information on that assessment corroborates the Community Nurse's reports. The assessment says that H's classroom assistants *'report they are finding it hard to assist [H] in regular toileting regime due to the high level of support needed for [H] and the other children in the class.'*
68. The records show the toileting plan was discontinued on 2 May 2008.
69. On 15 July 2008 the Community Nurse records a telephone conversation she has had with H's occupational therapist. The therapist recounts to the Community Nurse a conversation she has had with H's Head Teacher at the Special School. The record says the Head Teacher *'...explained that with regard to [H's] toileting needs the school are short-staffed and that they had decided not to employ 'care teams' to facilitate the changing /toileting of children due to the continuity and rapport with the learning support assistants and the dignity of the children. Although on [H's] Statement it states that she has 1:1 support this is also counted in the numbers for the class.'*
70. The Community Nurse says: *'In my opinion changing of pads and toileting are basic human rights and the education staff need to address their staffing levels if this cannot be managed.'*

71. A senior Education Service officer says the Service knew nothing of the early problems with taking H to the toilet. The Service, she says, *'only knew [H] was no longer being toileted because of an accident.'*

The Cochlear implant

72. H had cochlear implant in May 2000 when she was 4 years old. The surgery was carried out at the Queens Medical Centre, University Hospitals NHS Trust in Nottingham. Her after-care was monitored by the Nottingham Cochlear Implant Centre. H started at the Special School the year after her surgery and reportedly used the processor regularly.
73. H's Statement specifies that she should be taught in an environment that minimises background noise. It also requires daily checking of her cochlear implant by an experienced member of staff and daily management of its use in conjunction with a programme and advice from Nottingham Cochlear Implant Centre.
74. The March 2005 review of H's Statement specifies that she *'...now wears her Cochlear Implant system every day and there are obvious signs to indicate that she benefits from this. She will 'still' to sounds in the environment, or move her eyes or head in the direction of the sounds. She sometimes appears to be listening and experimenting with 'sound' and 'no sound' by lifting the coil¹³ from her head and replacing it...[H's] use and tolerance of the CI system has improved dramatically since September 2004.'*
75. This was around the period of change at the Special School. H's class size increased making the environment around her noisier and, at the same time, space into which she had previously withdrawn for small group work was no longer available. Use of the cochlear implant became very difficult and H began to reject it.
76. In October 2005 H's mother wrote to the School to say that the Language Therapist from the Nottingham Cochlear Implant programme (responsible for the annual monitoring of the implant) had expressed concern about the acoustics in H's classroom. In H's mother's view, the size of the class, the insufficient space for small-group work, the physical attributes of the building and the inexperience of its staff were all conspiring against H's use of the processor.

13 The processor

77. When H's Statement was reviewed again in November 2005, H was said to be still *'wearing her cochlear implant well'* but getting sometimes *'frustrated and agitated.'* She preferred *'to play with her Implant rather than wear it.'*
78. H's class teacher observed: *'[H] currently uses [the implant] in a very irregular way, [H] appears to test its effectiveness by taking the coil¹⁴ on and off. At other times she rejects it and appears calmer without it. The busy classroom would perhaps be a contributing factor and the increased noise level a distraction.'*
79. H's Statement was reviewed twice in 2005, in March and November. In the course of the November 2005 review, concerns were raised (and recorded in the class teacher's hand-written notes although not in the Head Teacher's official review report) about *'the acoustics in [H's] classroom and the suitability of the accommodation provided for individual work'*. As a result H's Teacher of the Deaf was to *'approach her team to assess the classroom acoustics'*. The Teacher of the Deaf worked for the Education Service.
80. As a result the Education Service's audiologist visited the School on 18 November 2005 to assess whether the Special School was able to meet H's needs. He reported that H was in a class of 10 children aged between 9 and 13 with a child to adult ratio of 3:1. H was the only child with confirmed, permanent hearing loss. His report notes that all the surfaces in the classroom are hard and reflective, as a result he concludes the room is unsuitable for learning and listening and therefore unsuitable for H's needs. The audiologist recommended that the Education Service:
- a) consider reducing the room volume by lowering the ceiling;
 - b) carpet the floor;
 - c) fit acoustic tiles on the walls; and
 - d) replace rubber stoppers on chairs etc that are worn away.
81. The Education Service sent the report to the Principal of the SILC at the Special School. No action was taken.
82. In September 2006 H's mother asked the deaf / blind charity SENSE if it would assess H's needs in light of her sensory impairment, motor difficulties and developmental needs. A report, recommending a range of interventions to help H, was sent to her Teacher of the Deaf in December 2007 but I have found no evidence that any action was taken.

83. H's annual review for (December) 2006 notes that *'she has not used her Cochlear Implant since September' and the Head Teacher again records: 'audiologist to visit [H's] classroom and advise about how to manage noise levels.'*
84. The Education Service's audiologist came back on 19 June 2007. His conclusions were the same as those he had reached in 2005. Again his report was passed from the Education Service back to the Head of the SILC at the Special School and again no action was taken.
85. I asked the Principal of the SILC what consideration had been given to concerns raised and recommendations made by the Education Service's audiologist. He says: -
'I have to state truthfully that no action was taken. Implementing many of the actions, bearing in mind the generic and wide-ranging needs of the pupils, would have represented an inefficient use of the SILC's resources as major capital work was required such as lowering ceilings. Furthermore, I recall discussion that wondered if such expenditure would be questioned without there being clarity regarding the effectiveness of [H's] cochlear implant. One of the minor recommendations, regarding the use of carpet, was dismissed because we also have to consider hygiene factors.'
86. The Principal says, however, that he definitely sent a copy of the audiologist's report back to the Head of SEN and Psychology¹⁵ at the Education Service in the hope that he might be able to access funds to undertake some of the work. The Head of SEN and Psychology did not, apparently, respond. The Principal says that a copy of the report may also have been sent to the Team Leader, Special Educational Needs Development¹⁶, at the Education Service too.
87. The Principal says: *'We did fall short (but) the Education Service knew. [Head of SEN and Psychology] was made aware of the audiologist's report. The Education Service knew about the 1:1 signer. They knew when we were asking for help that it was getting desperate.'*
88. H's mother says she was denied a copy of the Audiologist's report, despite asking both the School and the Education Service for a copy. It was eventually given to her only after she made a Freedom of Information Act request.

89. The records show that in 2007 H had started wearing her cochlear implant again for hour-long speaking and listening sessions in a small, soundproof room. She was reported to be highly responsive during these sessions and kept the processor on. H's Teacher of the Deaf observed one session and *'agreed that there was a marked improvement in her functioning'*. H would, however, remove the processor on re-entering the classroom.
90. In 2008, H's mother approached solicitors with a view to taking legal action against the Education Service. Her solicitor commissioned an independent assessment of the Special School's suitability to meet H's needs. Flowers Associates¹⁷ noted the generally high noise levels in H's class *'as these was a linoleum floor and the sounds tended to bounce off the ceiling resulting in a slight echo in the room, and there was no obvious soundproofing'*. They noted *'large vocalisations from certain pupils and chairs being scraped across the floor, which would make it difficult for students with a hearing aid.'* The Flowers' report concluded that the Special School was not meeting H's needs and that *'difficulties with managing the noise levels and difficulties maintaining educational resources'* made it unlikely it would ever be capable of doing so.
91. Travelling to Nottingham was sometimes painful for H and so her after-care was transferred from Nottingham to the York Cochlear Implant Service (YCIS). In response to appeals for advice and practical help from H's teachers, the YCIS sent a Specialist Advisory Teacher for the Deaf to the Special School to assess H and offer what help she could to her teachers.
92. This was late in 2007, when H had not been using her implant for nearly 2 years. The Specialist Advisory Teacher for the Deaf says, because of this lapse, she carried out a base-line assessment in conjunction with H's peripatetic teacher for the deaf.
93. The report of that base-line assessment is on the Education Service's files. It concludes that *'there are few benefits from the cochlear implant because [H] has other issues'*.
94. It says that *'using YCIS (Yorkshire Cochlear Implant Service) criteria, we filled in the chip'¹⁸. There are 5 great concerns and in most cases this would mean that the child would not receive an implant.'*

17 Dirk Flower, Chartered Psychologist, holds a Masters degree in Education from the University of Auckland, New Zealand and a post honours degree in Educational Psychology. Now working in full-time private practice in the UK, he is a member of the British Psychological Society and has acted as an expert witness to the family courts and Educational Tribunals since 1993.

18 **Children's implant profile**

95. The Specialist Advisory Teacher for the Deaf clarified what she meant by these comments. She says:
- (a) Age is really important for an implant. Ideally a child would be 2 or 3 when fitted and age 5 was 'a big concern.' At the time of this assessment, (which was effectively about re-introducing H to the implant) H was 11.
 - (b) H lost her hearing at age 1 so the length of time she had been without hearing was against her.
 - (c) H had not used her implant for 2 years. A two year functional loss was another significant concern.
 - (d) The most significant concern was the differential between H's chronological age and her language development. Even assessing H's speech using BSL, there was greater than a 4 year gap between her chronological age and her language development.
 - (e) The complexity of H's other medical needs was a major concern.
96. The YCIS Specialist Advisory Teacher for the Deaf says that, although the Special School might not be an ideal setting for a child with a cochlear implant, it is not significantly different from other mainstream schools in the area where children with cochlear implants manage, *provided they have a quiet area to which they can withdraw*. H, however, has a unique range of problems.
97. The Principal of the SILC does not dispute that a quiet room was not found for H to use her implant daily and says he cannot understand why.
98. Having worked with H's family and the Special School to try to re-established H's use of the implant, the YCIS Specialist Advisory Teacher for the Deaf began a programme of visits. Initially progress was encouraging although H's clinic appointment, scheduled for May 2008, was cancelled. In June, H was reported as responding to some sound when the processor was on.
99. A clinic appointment for October was cancelled because H's displaced hip made travel impossible. At that time, H's teaching assistant reported that '[H] wears her coil¹⁹ when she is in the mood.' Another appointment in December was cancelled following a break-in at the family home and in January 2009 a letter was sent to H's mother asking if, because she had cancelled the previous two appointments, she would make contact to arrange the next.
100. H's mother says she never missed appointments if it was possible for H to travel. H's health during 2008 became so poor that her cochlear implant had ceased to be a priority.

101. H's mother says that audiological equipment, which H should have had access to following the 2005 amendment to her Statement of SEN, was never provided.

Standing Frame

102. H's Statement of SEN provides: *'All staff working with [H] are to be aware of her...daily need with regard to the use of her standing frame.'*
103. H's daily exercise was interrupted when she had surgery on her left ankle in 2007. The old standing frame did not offer sufficient support afterwards and, when a new frame was acquired, H's mother says the physiotherapists were so involved with other children with high level care needs that it was decided she should take the frame home for H to carry out her exercises there. H was too tired at the end of the day to do this.
104. The 2007 annual review records that H's mother was *'concerned about H's physical needs and wants her to stand in her stander'*. There is no evidence that the Education Service took any action.
105. The Principal of the SILC says he believed H's mother *'was quite happy to do this exercise at home'*. He acknowledges the School was not entitled to stop provision for using the standing frame.

Mainstream integration

106. H's Statement of SEN says she was to have opportunities for possible increase in attendance in a mainstream setting.
107. During H's early years at the Special School she spent one afternoon a week attending an art class at a local primary school. According to her reviews, this was a very positive experience but, when the primary school began to prepare H's peer group for SATS, it was no longer able to meet H's needs and her placement was discontinued.
108. From January 2006 an alternative afternoon placement was found at another primary school – the only one with a deaf facility but located on the other side of the City. H managed only a few sessions before the placement broke down owing, the record says, to a combination of factors such as taxis failing to turn up, turning up late or lacking proper equipment to transport H. On one or two occasions, the session conflicted with other School events.

109. The Principal of the SILC suggests that a whole day's placement would have been easier to manage than an afternoon.
110. The 2007 annual review records that H's mother '*was concerned that [H] has no inclusion in mainstream*'. No recommendation was made to the Education Service.

Annual Reviews

111. H's mother says that after 2005, when things started to go wrong, the School never sent her copies of H's annual review report and she had no means of knowing what information was being passed back to the Education Service.
112. The Education Service has a comprehensive record of all the papers submitted to H's annual reviews. The reports submitted by the Head Teachers contain minimal information and it is necessary to refer to attached documents to get a full picture.
113. H's social worker had a duty to attend her reviews too and, from the record, (with one exception) she did. Children's Services does not, however, have a complete copy of all the review reports.
114. All those attending the reviews are entitled to copies of the reports. The Regional Officer of the NDCS attended some of H's reviews. She retains records of all her notes but she says that she was not sent any of the formal reports.

The Council's comments

115. The Council and Mrs S were given an opportunity to comment on a draft of this report. The Council says that when a local authority specifies provision in a child's Statement of SEN it enters into a relationship of trust with the child's school and other agencies. Everyone who contributes to the statutory statementing process receives a copy of the proposed statement and are consulted about whether it is accurate. Anyone of those involved can request that a Statement of SEN is amended. If any amendments are suggested a second proposed Statement of SEN is issued. It says that
- 'Education follow this process as they believe that it enables all parties an opportunity to challenge any interventions that they consider inappropriate or that they are unable to provide. On the basis of this a relationship of trust is founded. There is a clear expectation that once agreed all professionals deliver the provision as specified and in circumstances where that ceases to be appropriate or possible they request an interim review*

meeting for the issues to be fully considered. This is the foundation of statutory work and the process that has been established through the Code of Practice since 1st January 2002.

The Local authority believes that the Code places a responsibility on those making provision to follow the Code of Practice and use the Annual Review process to keep the Local Authority informed. In this case it would appear that the Local Authority has followed the Code of Practice and has applied the statutory processes and as such believes that Leeds City Council was diligent in this regard.'

116. The Council also says that:

- The reasons that H did not receive 1:1 signing at her Special School and that she was not able to use the toilet '*... were not made explicit at the time and the Education service concluded that this was due to the accident and H's health issues at this time. There are circumstances when it is wholly appropriate to discontinue a toileting plan if needs have changed. In these circumstances the SILC staff would liaise with Community Nurse to agree how to address this change in needs*'.
- The Education service sent the audiology officer's report of November 2005 to the Special School to action. '*The School made an assessment that they could meet H's needs without any further actions. It is inaccurate to say that [the Special School] could not teach H in that environment although recognising it was not an ideal environment. It is also inaccurate to say that the Education service did nothing: recommendations were sent to the school for them to action*'.
- The Education service would have acted on advice from physiotherapists in relation to H using her stander.
- After H's placement in mainstream primary schools broke down, a placement at another mainstream school was offered but Mrs S refused it.

Findings

117. This part of the complaint is about whether Leeds City Council acted with maladministration in relation to its statutory duties as an education authority, to assess, specify and make provision to meet the special education needs of a child who is deaf and severely physically disabled. I do not have the power to investigate the actions of the Special School. My findings in relation to the Council's role under the Children Act and the Chronically Sick and Disabled Persons Act follow at 154 below.

118. Leeds City Council closed its special provision for deaf children and provided for H in a school where she was the only deaf child. It had a duty to select a school

capable of meeting H's needs and thereafter to ensure that the needs were being met by the provision specified in her Statement of SEN. The Council failed to ensure the specified provision as set out below:

- The Statement of SEN specified that H should have had *'full-time support on a 1:1 basis from a teaching assistant proficient in BSL at level 2 or equivalent, to support H's daily personal care and communication needs'*. The Council knew from December 2006 that H was not being assisted to use the toilet and, therefore, that the specified provision for personal care was not being made. The Principal of the SILC says that the Education Service knew about the lack of 1:1 signing and that the School was *'desperate'*. The Education Service's files contain reports for the April 2008 assessment recording that 1:1 support from a teaching assistant with BSL was not available to H throughout the school week.

I do not accept the Council's comments on these points. There is no evidence that H's toileting plan was changed for any reason other than lack of resources at the Special School nor is there any evidence of an agreement with the Community Nurse (who supported Mrs S's complaint to me. The Council had information on both these issues and failed to act.

- Her Statement of SEN specified that H's cochlear implant should be checked daily by *'managed in conjunction with a programme and advice from Nottingham Cochlear Implant Centre.'* and that H was to be *'taught in an environment that minimises background noise'*. From November 2005, when the Education Service's own audiology officer undertook his first assessment, the Education Service knew that the Special School was unable to teach H in an environment that minimised background noise.

I do not accept the Council's comments that it is inaccurate to say that the Education service did nothing because it did pass the audiology officer's report to the Special School to action. There is no evidence to support the Council's statement that the Special School made an assessment that it could meet H's needs. I find that the Council failed to act to ensure that H's needs were being met in relation to her hearing.

- H's Statement of SEN specified *'all staff working with (H) were to be aware of her...daily need with regard to the use of her standing frame'*. The 2007 annual review of H's Statement of SEN records that H's mother was *'concerned about H's physical needs and wants her to stand in her stander.'* There is no evidence that the Education Service took any action.

Mrs S says that the physiotherapists advised that H should try the stander at home because they were frustrated at the Special School's inability to find time to help her to use it.

I prefer Mrs S's evidence to that of the Council and find that the Council failed to ensure that H's need to use her stander was met.

- H's Statement of SEN specified that she should have '*opportunities for possible increase in attendance in a mainstream setting with appropriate support...*'. From spring 2006 H did not attend a mainstream setting. Mrs S tells me that she made repeated representations for H to have a place at the mainstream school where the Council says that she refused a placement. She says that there was no wheelchair access and so H could not attend.

I prefer Mrs S's evidence to that of the Council and find that the Council failed to provide opportunities for H to attend mainstream school.

119. I have taken account of the Council's comments that the Education Service entered into a professional relationship of trust with the Special School, health and other agencies. I accept that the Education Service was not '*explicitly made aware*' that H was not receiving the provision specified to meet her needs.
120. I appreciate that the annual review reports submitted to the Education Service by the Special School did not set out the concerns that H's mother and others expressed and did not include recommendations to remedy the failures to meet H's needs. I regret that I do not have the power to investigate the actions of the School.
121. However, I am satisfied that through various employees and papers enclosed with the annual review reports, the Education Service had information that H's needs were not being met. It neither made further enquiries nor took any action. It cannot use its failure to properly inform itself as an excuse for its failure to fulfil its statutory duty.
122. The Council acted with maladministration by failing to act when it knew the provision specified in H's Statement of SEN was not being made. The Council failed to provide the education service that it was its function to provide.

The Injustice

123. H's mother says she has had to fight for everything for her daughter. It has been exhausting. The relentless battles took their toll on her marriage and her other children have been affected too.
124. The Principal of the SILC says that, whilst the Special School may not have been right for H, his recollection is of a happy child who made progress during her time there. *Although 'she did not have the level of support to which her Statement entitled her, she was never left without cover'.*
125. It is not possible to make any reliable assessment of the effect these various failings had upon H. Nowhere amongst H's files is there any proper assessment of her underlying cognitive ability. Reports vary widely. Some suggest she is currently on a par with pre-reception age infants. Other reports suggest that, in certain areas, she may be very bright. Without that insight, there is no way of knowing H's developmental potential and, by inference, how far below that she may now be.
126. I am informally advised that it is very difficult to carry out an educational psychology assessment of a child who is deaf. An assessment would have to have an intermediary signer, someone with whom H was relaxed, confident and familiar. The tests generally used have been standardised within the hearing community. They would not be right for a deaf child whose tests would have to be standardised within the deaf community.
127. Secondly, it is impossible to overlook the toll taken by H's general poor health, in particular the impact of pain and discomfort upon her ability to learn. The records show H's school attendance was generally good until 2008 when the pain of her hip displacement led to her mother keeping her at home. H's mother says the School's failure to help H use the toilet exacerbated a pre-existing propensity for urinary tract infections, a view with which, she says, H's medical consultant concurs.
128. As a consequence of the Education Service's neglect of H's special educational needs, her mother felt she had no option but to remove her from the Special School in 2008. Following surgery on her hip she was placed out of area and is now back in Leeds awaiting another school placement. The anguish for the family and expense for the Council resulting from that decision was entirely avoidable.

PART 2: The complaint against Leeds Children's Services

129. H's mother's complaints against Children's Services were broken into a number of parts for investigation purposes but in essence, there were two substantive issues:
- i. the Council failed to undertake a comprehensive assessment of H's needs and those of her family; and
 - ii. it failed, over many years and despite repeated pleas, to provide any suitable respite care for them all.
130. The Council appointed an independent Investigating Officer²⁰ (IIO) to investigate the complaints. The IIO found the Council had failed to make comprehensive assessments. The Council accepted this finding and assessments and care plans have since been completed.
131. In relation to respite care, the IIO made three separate findings:
- i. Before 2006, despite considerable efforts to find appropriate respite (or short-break) placements for H, no placements were available although the family was in considerable need.
 - ii. In 2006 a carer, NP was identified. The Council believed she was suitable and it invested capital adapting her property to meet the needs of H and another child but H's mother did not believe the placement was suitable. The IIO acknowledged H's mother's point of view but found the Council's efforts reasonable and did not uphold her complaint from 2006 to late 2007.
 - iii. Between December 2007 and June 2008 the IIO found the Council had been dilatory in seeking appropriate respite.
132. Following the IIO's report Council arranged respite and those arrangements are not part of this complaint.
133. H's mother complains that nothing was done to remedy the Council's past failings and about the period in 2006 – 2007 for which the IIO did not uphold her complaint to the Council.
134. The Council says it struggled to find suitable provision because it was not easy to find a carer capable of meeting H's physical needs and also able to communicate with her on account of her deafness. It says it *'would be agreeable to settling this complaint in respect of the failure to provide respite care for a year up to*

²⁰ Leeds City Council has a contract with an independent consultancy business for the provision of independent complaints investigators. None of its investigators is employed by the Council.

September 2005 and would welcome the Ombudsman's guidance in this respect.'

135. H's mother acknowledges that, although no respite provision was made for H, the family benefited from short break cover for 4 hours on alternate weekends (increased to 8 hours in December 2006) and 4 hours on Mondays.
136. H's mother says the assessment completed in 2008 said H needed 30 nights respite a year. That would have been at a residential school for the deaf, where respite placements could quite easily be accommodated.
137. The Council says it does not normally fund overnight respite if it is also funding day-time support within the family home.

Background

138. The Council says H was assigned a social worker from her first birthday and in 2002 work on an integrated needs assessment was begun. The Council suggests that, because 'assessment' is a continuous process, H has been assessed from 2002. The evidence does not support this. The 2002 'assessment' on file is incomplete - after a few entries, work on the document ceased to progress.
139. The current assessment was begun in April 2008 and concluded a few months later.
140. Between 2005 – 2008 Children's Services considered providing respite by residential care, sitting services and family placements.
141. Three residential care provisions were explored. One was unable to meet H's needs; a second had no signer but, even with signer, the Head said H would be isolated because the majority of her children had profound and multiple learning difficulties and the third had no signer. The sitting service carers were not available to commit to the hours the family needed.
142. The Family Placement records show:
 - 16 March 2005 - an unmet need recorded.
 - September 2005 – H identified as having unmet need for a year.
 - February 2006 – H registered as having unmet need re BSL / ground floor.
 - March 2006 – carer, NP, identified.
 - June 2006 – work on NP's house began.

July 2006 – H's family introduced to NP.

October 2006 – Family Placement worker concerned that NP will not cope with H because there is no hoist in her house.

July 2007 – H's family used NP once to care for H at their own home

December 2007 – family placement unit closed case.

Before 2006

143. The IIO found that the Council had failed to arrange respite 'before 2006' although he does not give a more precise date.
144. The record shows that, by September 2005 H's assessed need for respite had been unmet for over a year. H's social worker attended the annual reviews of her Statement of special educational needs and, in November 2005, the Head Teacher noted: 'Respite care for [H] was discussed with the Social Workers and there is an ongoing search for an appropriate placement.'
145. In January 2006 H's mother wrote to the Children's Disability Team to say the family was now '*in desperate need of some help.*' The family was introduced to NP in July 2006 and in July and September 2007 NP cared for H twice in the family home. There is therefore a clear twenty two month period, between September 2004 and July 2006, during which an assessed need for respite care was not being met.
146. The Council says it will remedy the injustice caused to the family by its failure to provide respite care for a year up to September 2005.

The period July 2006 – December 2007

147. The record shows the family was first introduced to NP in July 2006 and the Council says NP was available to provide respite from that date.
148. H's mother disagrees. She says that NP cared briefly for H twice between July 2006 and September 2007 but her house was never adapted to meet H's needs.
149. The record shows that in September 2006 a council officer made an assessment visit to NP's home and this visit concluded that, before H could stay there, adaptations had to be made to the house, a special bed bought and NP had to attend 'moving and handling' training.

150. Meanwhile H's medical condition was deteriorating and, on 10 October 2006 the Family Placement Worker expressed concerned that NP would not be able to cope with H's deterioration because she had no hoist in her home.
151. It was accepted that, if H was to be cared for in NP's home, H's mother would have to move the toilet chair and mobile hoist between the houses. After the July visit, H's mother said H and NP had not bonded and, because of NP's shift pattern of work, she was not able to offer times that would suit the family. A review in December 2007 decided that the match was unsuccessful and no further visits were pursued.
152. The Council says that NP was able to provide short breaks from July 2006 and that H's condition subsequently deteriorated and it became aware that she would need a hoist. If Mrs S had shown a commitment to using NP it would have added to the investment it had already made in adapting NP's home and provided a specialist bed and a hoist.

The evidence is that H had used a hoist for some time before July 2006 because she had become too heavy to move without one. The Council's own assessment in September 2006 concluded that NP could not care for H without a specialist bed, adaptations to her home and training.

The period December 2007 - June 2008

153. The Council's IIO found H's assessed need for respite was not met during this period. From June 2008 onwards a residential school provided respite. From 21 November 2008 the assessment begun in February 2008 concluded that a single respite carer could no longer manage H without additional support.

Findings

154. H and her family desperately needed respite. The Council did not make an integrated needs assessment or a carer's assessment until 2008. Without those assessments the Council could not know how the family functioned. Its delays put the family unit at risk.
155. Caring for H requires both care and BSL skills. The Council had difficulty finding carers with these dual skills. There is no evidence that it considered the obvious and sensible expedient of paying two people to work together, one to communicate with H and the other to provide for her care. Nor did it explore whether it could fund a carer to be trained in BSL.

156. The Council's failure to assess H's needs and those of her family was maladministration. The Council's failure to provide adequate respite care for H was maladministration, as was its failure to take obvious measures that would have enabled it to do so.

Injustice

157. I assess that the family suffered the injustice of the loss of 44 nights' respite (or 532 hours.)

Remedies and recommendations

158. In recommending remedies for injustice, the Local Government Ombudsmen aim, as far as possible, to put the person effected by maladministration or service failings into the position they would have been in if that had not occurred. It is not possible to do that in this case because:

- H's mother and her family struggled through and held together under enormous strain without access to adequate respite care;
- the opportunity for H to develop her use of the cochlear implant whilst she was a young child has been lost and cannot be replicated;
- the impact on H's ability to learn and develop of not having 1:1 support from a teaching assistant with BSL at level 2 cannot be assessed;
- H suffered sores on her flesh from being left in wet or soiled pads during the school day, exacerbating her tendency to urinary tract infections, and that cannot be 'undone'.

159. I am mindful that many of the reports I have seen as part of this investigation describe H as a very happy child and it is clear that her teachers and other professionals regarded her with affection. However, one of the documents, produced in June 2008 as part of the assessment, records in a section headed 'Expression':

'When [H] is happy she has a lovely smile and laugh which is infectious for others around. [H] has been known to bite her hand in frustration, she has done this to a degree where she has caused herself open wounds and pain. This behaviour has stopped recently it is felt by those who know [H] that this was [H's] way of managing any discomfort or frustration. [H's] recent difficulties with chronic diarrhoea have stopped and her health and well being has improved noticeable since leaving school in May 2008. Dr ... has commented on the improvement in [H's] health...'

160. I consider that the appropriate remedies for the injustice are for the Council:

- arrange for a suitably senior representative of the Council to apologise in person to H and her mother for its failings;

- pay the family the amount it would have paid for respite care provided either by two carers, one proficient in BSL, or at the residential school that H attended for a time;
- arrange for H to be assessed by someone skilled and experienced in assessing the educational potential and needs of children who are deaf with the specific brief to establish H's potential and to recommend the educational provision that would enable her to achieve it;
- make the educational provision recommended by the skilled and experienced person;
- pay H's mother £50 per day for every day that H did not attend school because there would be no-one there able to communicate with her in BSL (this does not mean every day that H missed school as many days were lost because of illness etc);
- pay £1,000 to H in recognition of the pain, discomfort and indignity caused to her by the lack of provision to enable her to use the toilet or to change her incontinence pads sufficiently frequently.

161. H, a severely disabled child, was left in a situation where, for a significant proportion of the school week, the people caring for and educating her were unable to communicate with her because none of the available staff was competent in BSL. As a result of being placed in an unsuitable and noisy environment, H had only very limited use of a cochlear implant – fitted at some cost to the NHS and with some risk to her. She had no assistance to use the toilet - thereby losing previously acquired skills and continence. I do not have the power to investigate the actions of the School and so this report cannot give a complete and comprehensive account of how the situation that caused injustice to H arose or was allowed to continue.

162. Clearly the relationship between the Special School, the SILC and the Education Service did not function properly. As the School is a Maintained School I recommend that the Council should

- discuss this case with the senior staff and the Governors to understand the factors that resulted in the Governors deciding not to pay a competitive salary to Teaching Assistants with the specialist qualification of BSL level 2;
- H being left without the specified provision of 1:1 support from someone able to communicate with her in BSL;
- H being educated in an environment that prevented her from making effective use of her cochlear implant
- there being inadequate resources to assist H to use the toilet and to use her standing frame.

163. When an investigation identifies serious failings, I would normally recommend that a council should undertake a thorough review of the way a service is organised and delivered. However, I note that there is a Scrutiny Enquiry into Service Redesign of Services for Children with disabilities, special educational needs and additional health needs. It seems to me that the proposals emerging from that Enquiry would, if implemented effectively and with adequate resources, have a positive impact on the issues raised by the experience of H and her family. I recommend that the Council produces a statement setting out explicitly how H's experiences would have been different if the proposed new arrangements had been in place.
164. I am aware from information published on the Council's web-site that, in response to a Scrutiny Review in 2006, there was some concern about the governance arrangements for Special Inclusive Learning Centres. The Scrutiny Board was advised that in January 2007 *'Governance arrangements for SILC partnership now part of a larger project developing new governance arrangements for the growing number of collaborative arrangements between schools. Some of these are currently being piloted and if they prove successful should be transferable to SILC settings by September 2007'*. I recommend that the Council should produce a statement setting out the governance arrangements for its proposed Integrated Services for Children with Complex Needs, the Special Inclusive Learning Centres, and its maintained special schools and how those arrangements relate to each other.

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

July 2011