

## Scottish Parliament Region: Central Scotland

### Case 200801246: South Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: Special educational needs – assessment and provision

##### **Overview**

The complainant (Mrs C) raised a number of concerns regarding the accessibility of further education for her son (Mr A), who is blind and has learning difficulties. She complained that South Lanarkshire Council (the Council) failed to take into account Mr A's specific needs when deciding on the educational package that they would fund. Mrs C considered that the Council unreasonably dismissed funding a residential placement at Henshaws College, a specialist college in England for blind students, in favour of a less suitable local option.

##### **Specific complaint and conclusion**

The complaint which has been investigated is that the Council acted unreasonably in their decision not to fund a place for Mr A at Henshaws College (*not upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) apologise to Mr A for the delay to the introduction of his personal care package and the subsequent gap in his personal development;
- (ii) review their procedures to ensure that service users are provided with details of proposed care packages prior to being asked for their acceptance; and
- (iii) pay Mr A an appropriate sum that adequately reflects the hardship and injustice experienced by the family as a consequence of the considerable delay in putting in place a care package for him.

At the time of publication, the Council have accepted recommendations (i) and (ii) and will act upon them accordingly. They have not accepted recommendation (iii).

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mrs C)'s son (Mr A) is completely blind and has mild cerebral palsy and a mild learning disability. He attended the Royal Blind School in Edinburgh (the School) and left there in the summer of 2008. Mr A wished to continue on to further education. He applied, and was accepted, for a place at Henshaws College for the blind in Yorkshire (Henshaws). Mrs C applied to South Lanarkshire Council (the Council) for funding for the placement at Henshaws. The Council refused to fund the placement at Henshaws. Mrs C complained that Henshaws was the most suitable option for Mr A's further education. It is set up with the specific needs of blind students in mind and was recommended by Mr A's Careers Adviser. She felt that the alternatives available locally were inadequate and that Mr A's educational and social development would suffer should he remain in his local area.

2. Mrs C complained to the Council about their decision not to fund a placement at Henshaws. The Council did not change their position but committed to finding a package of education and social care locally that would meet Mr A's needs. Mrs C complained to the Ombudsman in August 2008 that the Council were slow to propose any arrangements and made suggestions that were vague, unsuitable and incomplete. The Council continued to research options for Mr A throughout 2008 and 2009. Whilst progress was made, Mrs C became increasingly dissatisfied that Mr A's education and personal development had to be put on hold whilst the Council made their enquiries. She asked that the Ombudsman investigate her concerns.

3. The complaint from Mrs C which I have investigated is that the Council acted unreasonably in their decision not to fund a place for Mr A at Henshaws.

4. The subsequent provision of Mr A's education and personal care package was directly linked to the decision reached by the Council. I have, therefore, also considered the Council's approach to providing services to Mr A.

### **Investigation**

5. In order to investigate this complaint, I reviewed all of the complaint correspondence between Mrs C and the Council and additional background documentation. I also met with staff of the Council and interviewed Mrs C by telephone. I have not included in this report every detail investigated but I am

satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

**Complaint: The Council acted unreasonably in their decision not to fund a place for Mr A at Henshaws**

6. Mr A attended the School on a residential basis, returning home to his parents at weekends and during school breaks. The School caters specifically for blind and partially sighted students. Mr A left the School in the summer of 2008. Prior to this, between April and November 2007, the Council carried out a Social Work assessment with a view to identifying his future care needs. The assessment noted that Mr A wished to further his education to develop his skills and knowledge and to progress toward independent living. It was noted that Mr A had not yet reached his full potential in terms of independent living and that he would benefit from interaction with other young people as well as further development of his Braille skills. The opening summary of the assessment identified the following recommended developments for Mr A:

- maintaining and enhancing Braille skills;
- enhancement of personal care and domestic skills;
- development in mobility training;
- educational opportunities that will lead to appropriate vocational training; and
- social opportunities/confidence building in an adult setting

7. With specific reference to educational needs, the assessment noted the importance of obtaining further education after school and of Mr A being encouraged to use and improve on his existing skills. He was described as becoming less motivated if left to himself and quick to lose skills.

8. On 21 February 2008, Mrs C wrote to the Council to advise that Mr A had been offered a residential placement at Henshaws. In her letter she made reference to improvements in the further education provision for disabled people in the local area, which I take to indicate that previous discussions had taken place with the Council regarding the possibility of sourcing education for Mr A locally. Whilst acknowledging these improvements, Mrs C explained that none of the colleges that she and Mr A had visited locally were able to offer continuation of Mr A's Braille tuition; something that Mrs C considered fundamental to Mr A's development. Furthermore, local colleges were not able to offer mobility support or training and the courses identified as being

potentially suitable all began at a level that Mr A had already achieved. Mrs C considered that the placement at Henshaws would be the best option for Mr A, as it would provide specialist support, specific to visual impairment, and staff who were experienced in dealing with his specific needs. Mrs C further noted the progress that Mr A had made at the School under the tutelage of staff familiar with the needs of visually impaired students. She asked that the Council consider continuing to support Mr A by funding a placement at Henshaws where he could develop alongside his peers, in an environment that had been adapted to cater for his specific needs.

9. While Mr A was at school, the Council provided support in the form of a Rehabilitation Officer (the Officer), who helped Mr A with mobility training. The Officer completed an Adult and Justice Services report on Mr A's current and future needs on 19 March 2008. In his report, the Officer commented on Mr A's proficiency as a Braille user, noting that this was unusual for a blind person of his age. The Officer also expressed his opinion that, upon leaving the School, Mr A would require a structured programme of learning in terms of his visual impairment, including the necessary resources to develop his Braille and mobility skills. The Officer considered it beneficial for Mr A to learn alongside his peers, as he had excelled in such environments in the past. It was further observed that Mr A thrived within a residential environment and any placement offering vocational training and employment opportunities would be best suited to meeting Mr A's future needs. The Officer said that his understanding of mainstream education was that courses for visually impaired students tended to be aimed at those who lost their sight later in life. He felt that this may mean that students were older than Mr A and that mainstream college may not provide a suitable peer group for him. He also noted that Mr A may be at a different level of ability to his fellow students. The Officer concluded his report by noting that Mr A's physical and learning disabilities should be borne in mind when considering future educational placements. He said that attending one establishment would be preferable, as outsourcing a range of provisions would require him to learn and become familiar with a range of different environments and travel arrangements, which may be impossible for him to master.

10. The Council responded to Mrs C's letter of 21 February 2008 on 1 May 2008. They advised that they would not be funding a placement at Henshaws for Mr A. They noted that the course at Henshaws would consist of developing Mr A's social and independent living skills. Courses were available locally that could provide this. Henshaws also offered Braille tuition, which was not

available locally, but which the Council advised could be sourced and provided separate to his college education. The Council concluded that independent living and social skills were better developed within one's local community where long-lasting friendships and peer groups could be maintained. They, therefore, proposed to fund a person-centred package based around Mr A's needs using a range of local resources.

11. The Council's letter of 1 May 2008 also noted the cost of a placement at Henshaws as being £207,000.00 over three years. They explained that the Council had a budget of just £40,000.00 per person, per year, for college support for students with special needs.

12. Mrs C wrote to the Council on 16 May 2008, advising that she wished to appeal the decision not to fund a placement at Henshaws, as she did not believe that local colleges could offer the range of education that Mr A required. Mr A also wrote to the Council personally asking that they review their decision. The Council responded to Mr A on 10 June 2008. They explained that their decision to refuse funding for the Henshaws place was due to the same life skills portions as the Henshaws course being available locally with the added value, in their opinion, of local colleges being able to help Mr A develop the skills to integrate into his local community. Mrs C was advised of the appeals procedure in a letter from the Council dated 3 July 2008. The Council explained that she may ask for the matter to be considered by the Social Work (Complaints Review) Sub Committee (CRC).

13. Mrs C asked that her complaint be reviewed by the CRC on 10 July 2008. Additionally, she wrote to the Council's Chief Executive (the Chief Executive) on 15 July 2008. She expressed her concern that the Council had acted without due regard to the terms of the Disability Discrimination Act 1995 by deciding to refuse a placement at Henshaws for Mr A.

14. The Council's Head of Adults and Justice Services wrote to Mrs C on 1 August 2008 advising that as the Council had no statutory obligation to provide further education, it would be inappropriate for the matter to be progressed for consideration by the CRC. Mrs C, therefore, brought her complaint to the Ombudsman.

15. Mrs C provided me with a copy of a letter that she sent to the Cabinet Secretary for Education and Lifelong Learning (the MSP) on 17 June 2008. In

this letter, she explained what local education options she and Mr A had considered. She explained that she and Mr A had been discussing various options with the Council for over a year, but that due to Mr A's complex needs, no suitable arrangements could be found. Mrs C said that she and Mr A had visited Motherwell College, which offered an Information Technology course to visually impaired students, however, the college considered their course to be inappropriate for Mr A, as it was intended for older students who had lost their sight later in life. Motherwell College also advised that, whilst they could provide a Braille transcription service, they would be unable to correct Mr A's Braille or explain any mistakes and would, therefore, be unable to progress Mr A's Braille learning. Mrs C further noted that Motherwell College would be difficult in terms of independent mobility and did not offer any suitable mainstream courses that Mr A could progress on to. John Wheatley College in Glasgow was also considered as a possible option for Mr A. Again, a transcription service was available, but no Braille tuition. Mrs C noted that, whilst the college had Braille signage, this was placed in awkward places, such as over sofas where other students sit, making access to them inconvenient. The supported courses were split over two campuses, which Mrs C considered created transportation problems for Mr A.

16. In addition to her concerns about the educational options available to Mr A locally, Mrs C was apprehensive about the Council's ability to help Mr A with his independent mobility. She noted that, whilst Mr A had thrived in this respect at the School, the Council had only provided three short mobility training sessions over a ten year period.

17. Mrs C wrote a further letter to the Chief Executive on 11 August 2008. She noted that Mr A's needs had been assessed by the Council but that services that were identified as being required were not being provided. She noted that Braille tuition had been highlighted in the November 2007 Social Work assessment as important for Mr A's development, but that Mr A's Social Worker had been unable to find any resource in Scotland that could provide this service. Furthermore, Mrs C noted that Mr A was receiving no mobility or independent living skills training, which had also been specified in his Social Work assessment. Mrs C acknowledged the Council's view that they could provide a better package of education and personal development for Mr A within his local community, but contested that they had been endeavouring to do so for more than a year and so far services that he had been assessed by the Council as needing were not being provided.

18. Following Mrs C's comments in her letter of 11 August 2008, on 11 September 2008, a meeting was held for Mrs C, Mr A and representatives from the Council to discuss the services that the Council proposed to offer Mr A. I have been provided with a copy of the minutes of that meeting. These record that the Council suggested designing and building a service around Mr A's assessed needs. Their intention was to build this gradually as Mr A tried out different options.

19. The Council acknowledged Mr A's desire to continue his education with his friends, some of whom had received funding for placements at Henshaws from their local authorities. However, they stressed that, should Mr A attend Henshaws, he would have to make the transition to independent living upon returning home after his course ended. The Council felt that there would be advantages to Mr A studying and learning independent living skills within the environment that he would be living in long-term.

20. The minutes of the meeting on 11 September 2008 note that, by the time of the meeting, it was too late for Mr A to apply for a local college placement. He could, however, be added to a waiting list should he choose to apply at that stage. The minutes further record that the Council were still experiencing problems sourcing Braille tuition but that they would continue pursuing this. Mr A's Social Worker was noted as having been in contact with the Royal National Institute of Blind People (RNIB). She was hoping to arrange a meeting with them to discuss building a personal plan for Mr A to enhance his social, personal and daily living skills.

21. RNIB completed a Rehabilitation assessment for Mr A on 9 October 2008. This document made a number of suggestions to help with Mr A's social development but concluded that, due to other commitments, RNIB would be unable to provide support until early 2009.

22. Mrs C wrote to me on 22 October 2008, advising that she had been provided with a copy of the Officer's Adult and Justice Services report of 19 March 2008. She noted that the Officer's findings did not appear to have been taken into consideration by the Council when they reached their decision not to fund a placement at Henshaws for Mr A. She also said that Mr A's Educational Psychologist had confirmed to her that he had never been consulted by the Council. Mrs C expressed concern that the Council were

concentrating on Mr A's learning disability when finding suitable education and social options, and treating his blindness as incidental.

23. On 10 December 2008, Mrs C and Mr A attended a further meeting at the Council to review progress since the meeting on 11 September 2008. Members present at the meeting discussed the assessments that had been carried out by RNIB and Social Work. It was noted that RNIB would be providing support in the form of a dedicated Outreach Worker. However, all parties present acknowledged that no care plan was yet in place for Mr A and whilst efforts were underway to source services for him, this did not help his immediate situation. Mrs C and Mr A stressed that Henshaws remained their preferred option for Mr A's education. The Council said that they would consider other ways of meeting Mr A's needs, including the possibility of providing Direct Payments. These could be paid toward the personal care elements of the Henshaws placement. Mr A's family would then be responsible for raising the remaining fees via grants and personal funding. The Council agreed to research this option and to confirm what the costs would be. At the time of writing this report, Mr A had accepted a residential placement at Henshaws. The Council had committed to the provision of three-years' Direct Payments and Mr A's family had raised the remaining funds to cover his first year at the college.

24. I met with the Council on 15 June 2009 to discuss Mrs C's complaint. I asked about the background to the decision not to fund a residential placement at Henshaws for Mr A. The Council told me that, after researching the services that Henshaws had to offer, and other local services, they concluded that their preference would be to provide a full care package, including personal care and education, locally. The basis for this decision was that Henshaws' terms are relatively short, and the Council did not want Mr A to miss out on personal care for long periods when he was not at Henshaws. Furthermore, the Council took the view that it would be beneficial for Mr A to develop his independent living skills in the environment that he would ultimately be living in, rather than in a sheltered environment where everything is adapted to the specific needs of visually impaired individuals. The Council advised that the most recent proposal put to Mr A was for attendance on a course at South Lanarkshire College. This course was 'exactly the same' as the one offered by Henshaws, but without Braille tuition. This would be provided by a private tutor separately. It was noted that this offer had been presented to Mr A, but that he had been

formally offered a placement at Henshaws and intended to pursue that option in the first instance.

25. In January 2005, the Scottish Government published a booklet called Partnership Matters. Partnership Matters acts as guidance for various agencies involved in supporting young people with additional needs to attend further education and to encourage partnership working between agencies. The guidance sets out the obligations and expectations of local authorities when dealing with situations such as Mr A's. The document highlights the general duty on local authorities to ensure their areas have adequate educational provisions, as required by the Education (Scotland) Act 1980, section 1 (1) of which states:

'... it shall be the duty of every education authority to secure that there is made for their area adequate and efficient provision of school education and further education.'

26. Section 3.1.2 of Partnership Matters lists the core principles relevant to the provision of further education for young people with additional support needs. It lists:

- (a) The learner must be fully involved in discussions about an appropriate education placement and the decision making process.
- (b) The needs and aspirations of the individual must be at the centre of any decision taken regarding an appropriate education placement.
- (c) Statutory agencies – Further education colleges, local authorities and NHS boards – must work together to ensure the most effective and appropriate learning opportunities are offered to students.
- (d) Further education colleges are primarily responsible for the provision of education making adjustments where these are necessary to meet the learning needs of the individual.
- (e) Local authorities and health boards are responsible for the provision of personal and health care where an assessment has identified a need for such support.
- (f) Providers of post-16 education should demonstrate a commitment to inclusiveness recognising the diversity of student placement.
- (g) Where colleges identify a need for support by other agencies, for example, social work and health, they will liaise with the appropriate agency to discuss how best support can be provided and will liaise with the student and the appropriate agency to discuss how best support can be provided.

- (h) The learner's needs will only be discussed between agencies with the learner's explicit consent.

27. I asked the Council how they viewed their position with reference to the requirements of the Education (Scotland) Act 1980 and the Partnership Matters guidance. They believed that they performed strongly in relation to both, as Mr A was not excluded from further education within their area and every effort was being made to meet his assessed personal and educational needs within the local area. The Council further explained that they are responsible for the personal care elements of a student's support package, while colleges provide educational course elements. For example, for Mr A's Braille tuition, local colleges would provide any equipment that was required, but the Council would be responsible for the provision of care staff or tutors.

28. I asked the Council about the timescales between Mrs C requesting funding for the Henshaws placement and the Council refusing this and proposing an alternative package. The Council conceded that there had been delays in providing details of packages that they could provide locally. They said that this was largely due to their being unable to source services and include them as an option without Mrs C and Mr A first accepting them. For instance, a Braille tutor would have to be sourced through RNIB, however, RNIB were reluctant to consider recruiting a tutor until it was confirmed that they would definitely be required. These comments were mirrored in the minutes of the 10 December 2008 meeting, where it was noted that Mr A would be required to apply for a place at a local college before deciding what vocational elements he wished to pursue. The Council confirmed during my meeting with them that, at that time, no formal offer had been made to Mr A as to the educational and personal services that they would provide, as certain specific parts of the package could not be confirmed until Mr A accepted to take the 'local' option.

29. I sought to clarify what services would be available to Mr A had he not chosen to proceed to further education after leaving school. I noted that Braille had been identified as a personal development need in Mr A's Social Work assessment and asked the Council whether this was the case, or whether Braille was considered education. They said that it really falls into both categories. Had Mr A not chosen to carry on his education, he would still have required Braille tuition as part of his personal care plan.

### *Conclusion*

30. The Council concluded their assessment of Mr A's personal and educational needs in November 2007, some six months before he left the School. That assessment identified that he had not yet reached his full potential in terms of independent living and highlighted a need for further development and support in Braille, personal care, mobility training and education. The needs identified in this assessment are consistent with those identified by Mrs C throughout her dealings with the Council. I do not consider there to be any argument over the type of personal development that Mr A required and accept the November 2007 assessment as clear evidence of the Council's understanding of Mr A's needs.

31. Further assessment was made by the Officer in March 2008 and he also noted the need for Mr A to continue his Braille and independent living skills development. The Officer made specific comments regarding the benefit to Mr A of learning within a residential environment among peers of a similar age and ability. Mrs C's letter to me of 22 October 2008 suggested that she considered the Officer's comments to be supportive of a placement at Henshaws. Whilst I accept that Henshaws would be able to meet the requirements described in the Officer's report, I note that his comments did not represent a formal recommendation. I consider the Officer's report to be a balanced assessment of Mr A's future needs, highlighting challenges to be addressed by any future service provider.

32. I did not investigate, in detail, the extent of the Council's research into the suitability of Henshaws and other educational options for Mr A, as it is not for me to decide which was the correct option. I am satisfied, however, that the Council were aware of Mr A's specific needs and the services provided by Henshaws when reaching their decision to provide a package of personal care and education locally instead. I found that the Council were able to demonstrate that this decision was made with relevant information available to them and that their reasons for the decision were well documented. I, therefore, do not consider the Council's decision not to fund a place at Henshaws to have been unreasonable. That said, I was concerned about the events following their decision.

33. The Council announced their decision to fund a local package in May 2008, having been aware of Mr A's specific needs since November 2007 and the challenges to local package provision raised by the Officer in

March 2008. It is clear, from the correspondence that I have seen, that Henshaws was the preferred option for Mrs C and Mr A and that they would have automatically compared any local package against the Henshaws offering. I found that Mrs C's letter to the MSP, dated 17 June 2008, demonstrated an understanding of the Council's position with regard to funding the Henshaws placement and a willingness to consider local packages. I am satisfied, therefore, that Mrs C and Mr A did consider local packages at the same time as continuing to pursue funding for Henshaws.

34. The Council conceded during my meeting with them that it had taken longer than they would have liked to propose a local package for Mr A. They attributed this to the fact that services could not be confirmed as part of a package until Mr A confirmed that he would be making use of them. Whilst I accept that there were difficulties for the Council in confirming third-party services 'up-front', I also acknowledge that Mrs C and Mr A would have been keen to secure the best possible package. From their point of view, Henshaws was able to meet Mr A's assessed needs in one complete package, provided in one location by one provider. The Council, on the other hand, were offering a package made up of a number of different local services, which had not yet been identified and which would be developed around Mr A on an ongoing basis. Given the lack of a defined offering from the Council, I did not find it unreasonable for Mrs C and Mr A to seek further clarification before agreeing to take a local package. I consider that it would have been beneficial for them to have been provided with details of at least an outline package, in writing, to allow them to contemplate Mr A's options.

35. Although I appreciate that there were reasons for the lack of a defined proposal for local services, I was particularly concerned by the time taken to introduce any services for Mr A. The Council's assessment of his needs recognised that he had personal care needs, separate to his educational development. Mrs C noted in her letter to the Council of 11 August 2008, that Mr A's needs had been assessed by the Council, but that they were not being addressed. She noted that personal needs, such as Braille tuition, independent living skills development and mobility training were not being provided, despite having been identified in Mr A's Social Work assessment. Additionally, the Council noted in their meeting with Mrs C and Mr A on 11 September 2008, that Mr A had now missed the opportunity to gain automatic entry to local colleges and could only apply for placement on a waiting list. This meeting resulted in

what I understand to have been the first contact being made with RNIB for personal support for Mr A.

36. I consider that, having taken the decision not to fund a placement at Henshaws in May 2008, the Council should have been in a position to advise Mrs C and Mr A what services would be available to them locally. This would allow Mr A to make a reasoned decision as to whether to stay at home or research the possibility of funding Henshaws via other means. The Council should also have been in a position to provide the support that they had identified as being necessary for Mr A in their Social Work assessment of November 2007. I consider the Council's failure to identify local services to meet Mr A's needs to have resulted in his missing a full year's personal care and development, as well as any associated financial assistance that he may have been entitled to.

37. I found that, having taken the decision not to fund a placement at Henshaws for Mr A, the Council failed to make reasonable arrangements to meet his assessed needs locally. I consider that, as a direct result of this, Mr A suffered an injustice in terms of personal care services not being provided, delays to the commencement of his further education and loss of financial support that may have been available to him. This injustice should be addressed by the Council. In terms of the specific complaint brought to the Ombudsman, however, I consider the Council's decision not to fund the Henshaws placement to be reasonable. Accordingly, I do not uphold this complaint.

#### *Recommendations*

38. The Ombudsman recommends that the Council:

- (i) apologise to Mr A for the delay to the introduction of his personal care package and the subsequent gap in his personal development; and
- (ii) review their procedures to ensure that service users are provided with details of proposed care packages prior to being asked for their acceptance.

39. I found that the Council's failure to identify local services to meet Mr A's needs resulted in his missing a full year's personal care and development or equivalent financial support. In recognition of this, the Ombudsman recommends that the Council pay Mr A an appropriate sum that adequately

reflects the hardship and injustice experienced by the family as a consequence of the considerable delay in putting in place a care package for him.

40. At the time of publication, the Council have accepted recommendations (i) and (ii) and will act upon them accordingly. They have not accepted my third recommendation.

**Explanation of abbreviations used**

Mrs C	The complainant
Mr A	Mrs C's son
The School	The Royal Blind School, Edinburgh
Henshaws	Henshaws College for the Blind
The Council	South Lanarkshire Council
The Officer	A Rehabilitation Officer for the Council
CRC	Social Work (Complaints Review) Sub Committee
The Chief Executive	The Council's Chief Executive
The MSP	The Cabinet Secretary for Education and Lifelong Learning
RNIB	Royal National Institute of Blind People