

Formal Investigation
Under Central Bedfordshire Council's
Customer Feedback Procedure

Complainant: Mrs X

Complaint Reference No: **CR 13807**

Investigating Officer: Jane Friswell

Date of Report: 21 January 2022

Key to names used:

Mr & Mrs X The Complainants

B Their son

School Z

This report relates to the investigation of complaints made against Central Bedfordshire Council. It may not be used for any other purpose without the written permission of the Council.

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• **INTRODUCTION**

- .1 The complainant is identified as Mrs X and her son, to whom the complaint relates, as B.
- .2 This complaint relates to Central Bedfordshire Council's (CBC) and its handling of a request for a swift response to B's educational provision requirements in view of the difficulties B experienced in attending full time school provision owing to extreme anxiety.
- .3 According to the original complaint description provided by the complainant, dated 13/08/21,

“ B has been unable to attend school since March 2021 (when children legally returned to school) He has a diagnosis of adhd autism (with demand avoidance traits) His anxiety around school and unmet needs at school lead to him being unable to leave the house. He has received no formal education since then.”

- .4 B is the eldest son of Mrs X who lives with his parents and siblings at the family home. Mrs X felt that CBC was not meeting B's needs in line with his increasing level of anxiety related to his ASC, ADHD and demand avoidant behaviour profile which prevents him from attending full time mainstream school.
- .5 At the time of school attendance issues arising, B had a suitable placement at Z school.
- .6 At the time of school attendance issues arising, there was no medical evidence to support Mrs X's view of the difficulties B experience in attending school
- .7 Z School provided encouraging support to B and Mrs X to access school.
- .8 The complaint centres on the view that Central Bedfordshire Council (CBC) did not provide B with alternative education since March 2021 when they became aware that he was not attending his primary school and further, after the Council were notified in May 2021, by a Neuropsychiatric Consultant, that B had an autistic spectrum condition (ASC), demand

avoidant behaviours and related extreme anxiety, which prevented him from accessing school on medical grounds.

- .9 CBC and capacity to respond proportionately at the time of B's continued and extended absence from school was hampered by the absence of medical evidence and explanation.
- .10 CBC requested of Mrs X to provide substantial medical evidence to explain why B was unable to attend school due to medical issues.
- .11 Mrs X reported that B missed out on his education for over 5 months at the time of lodging her complaint. Mrs X has had to stay at home to care for B and the family have been caused avoidable distress and anxiety.
- .12 The Access and Inclusion Team involvement in this case was to determine whether the family required prosecution for non-attendance. The Local Authority decided not to issue a penalty notice to parents as there was recognition by the LA that this would not have been helpful to the process at the time. The LA acknowledge that this case was not straightforward at the time.
- .13 Medical evidence of the extent of B's severe anxiety was not provided by parents to Z School, CBC Access and Inclusion Service at the point of B's sustained absence from school. CBC were not in possession of all the information required to enable effective decision making regarding medical needs provision. Consequently, CBC identified that B's educational requirements did not meet the criteria for medical needs at the time.
- .14 A timeline of specialist health services accessed is provided within the main body of this report.
- .15 The period in which complaint operates, sits within the challenging COVID-19 context. The pandemic regulations which all providers and individuals were required to abide by, affected service delivery at local level and access to services.

• **STATEMENT OF COMPLAINT**

The complaint:

- .1 Mrs X notified CBC via her submission of the CBC customer feedback form dated 13th August 2021 that she would like her original complaint subject to formal investigation in accordance with CBC published Customer Feedback Procedure; Compliments, Comments and Complaints (Version 3, April 2021).
- .2 Local Authorities are responsible for arranging suitable full-time education for children who because of illness or other reasons would not receive suitable education without such provision. This means that where a child cannot attend school because of health problems, and would not otherwise receive a suitable full-time education, the LA is responsible for arranging provision and must have regard to DfE statutory guidance (*Ensuring a good education for children who cannot attend school because of health needs Statutory guidance for local authorities, January 2013 DfE*).
- .3 B has been unable to attend school since March 2021 (when all school age children returned to school after COVID restrictions were lifted). He has a diagnosis of ADHD, autism (with demand avoidance traits). His anxiety around school and consequent unmet needs by not being in receipt of an appropriate education led to him being unable to leave the house. He has received no formal education in a school setting since March 2021.
- .4 B and his family experience significant difficulties with reported lack of support, being unable to attend school and no formal in-setting education being provided. This has caused considerable strain on family relationships and increased stress for all members of the family. The absence of any form of educational and respite from the resulting increasingly stressful home environment has had significant impact on Mrs X's own mental health and wellbeing, the parent/child relationship, and the wider family.
- .5 Mrs X feels let down by the local authority and the systems providing education support for B during this period. She feels she and B have been failed by the system in providing education for him during this time. B has been out of education for 8 months (at the time of the formal investigation complaint request) because CBC have failed to provide an education for

him whilst he has been unable to attend school. The complaint is that it has taken far too long for any education to be put in place for him.

- .6 CBC provided Medical Needs Service support to the family from May 2021, however, Mrs X reports that direct teaching support was not in place until September 2021. This is largely owing to securing new school placement arrangements at Z School for B which he attended from September 2021 for three weeks before he encountered difficulties in attending full-time. Medical Needs Service support enabled the arrangements for B's medical needs to be met and managed in both planning his return to full-time education and monitoring this during the period he attended Z school.
- .7 Whilst CBC Medical Needs Service are now involved, CBC still haven't put anything substantial in place for B's education. Mrs X contests that even if this wasn't a medical issue, B is still entitled to full time education and the council still have nothing substantial or full-time equivalent provision since March 2021.
- .8 CBC had investigated Mrs X's original complaint through the local resolution process and her complaint was not upheld. Mrs X remained dissatisfied with this outcome and requested a formal investigation as to why no education has been offered or put in place for B in 8 months.
- .9 Mrs X requests formal acknowledgment of the stress this has caused to the family and the fact that B has missed months of education due to no fault of his own or that of parents.
- .10 Mrs X requests compensation for missed education and distress caused.
- .11 Mrs X wants a legitimate explanation as to why Central Bedfordshire Council's (CBC) has failed to provide her child with an appropriate full-time education he could access whilst unable to attend school given his complex mental health needs.

Desired Outcomes:

- .12 Mrs X desires a local recognition and shared understanding that B has not been well enough to attend school owing to his high levels of anxiety which prevent him from accessing education typically for a child of his age and stage.
- .13 Mrs X wants to be listened to and for her views to be given equal value and respect according to the decisions affecting her child's education.
- .14 Mrs X wants an acknowledgement of the distress caused and some form of compensation offered by way of this acknowledgement.

- .15 Mrs X wants to look forward to the future where her son's educational entitlement to full-time education is provided for appropriately to meet his needs.
- .16 Mrs X hopes that any further negotiations with CBC are undertaken with a renewed sense of feeling equally valued and that a collaborative effort to find solutions to meeting B's needs are co-produced and borne out of a holistic understanding of his needs.

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| <ul style="list-style-type: none">• COMPLAINT HISTORY |
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- .1 From March 2021 to November 2021, Mrs X had concerns about the way CBC's Access and Inclusion Service handled her son's provision of his education entitlement whilst unable to attend at his local mainstream school placement owing to his increasing levels of anxiety which is a significant dimension of his unique special educational needs profile. She submitted a complaint on 13th August 2021 and received a local resolution response, dated 14th September 2021 from the Access and Inclusion Service Manager. The complaint was not upheld.
- .2 CBC decide not to apply any penalty notice to this case for non-attendance at school. There was recognition by the LA that this would not have been helpful to the process at the time. The LA acknowledge that this case was not straightforward at the time.
- .3 On 8th April 2021 Mrs X applied for an Education, Health, Care Needs Assessment for B. The Education, Health & Care assessment process began formally in May 2021.
- .4 During this time B changed schools and began attending his new school from 23rd June 2021. The change of schools was initiated because of CBC professionals meeting and their work with Mrs X to try to resolve the issue.
- .5 After three weeks, B's anxiety increased significantly despite a relatively smooth transition to his new school placement. B attended for a few days overall on a full-time basis. Communication from school to the LA outlines that B is getting on well at school and that they can meet need.
- .6 Mrs X reports that by mid-week, B is evidently very tired and becoming increasingly distressed, displaying high levels of anxiety at home.

- .7 B's attendance diminishes over the initial three to four weeks at his new school.
- .8 B shouted at the Deputy Head Teacher at his school in the final days of attending his new school placement, this is the first reported incident of B behaving in this way at school. School is reported by Mrs X as surprised by B's response.
- .9 Mrs X considers that this is a significant moment in B's school experience as she believes that school are now able to better appreciate and understand the significant impact B's anxiety and his ability to manage this in school is having on his ability to cope with sustaining his attendance.
- .10 Early September 2021, B's Education, Health Care Plan (EHCP) is issued by CBC to Mrs X.
- .11 From 3rd September 2021, Mrs X expresses her concerns at a Co-production meeting with B's school, that she will not be able to get him to attend school and that the family are struggling. She expresses her concerns about the lack of appropriate educational support provided in line with B's increasing level of anxiety.
- .12 On 16th September 2021, Mrs X requested her complaint be reviewed further. Mrs X felt the local resolution response was inadequate and B's Consultant Neuropsychiatrist has provided written evidence in a letter explaining that his psychiatric/mental health needs were preventing him from attending school and therefore that he should be provided with access to education provision other than at school. Mrs X's reports that this information was shared with CBC at this time.
- .13 CBC Access and Inclusion Service replied to Mrs X's latest request acknowledging that they are aware of B's continuing absence from school and the current situation. They further acknowledged that the school has not accepted the Consultant Neuropsychiatrist's letter as sufficient evidence to record B's absence from school as authorised and consequently the Local Authority have no legal duty to provide an education other than at school.
- .14 On 17th September, CBC refused Education Other Than At School (EOTAS) as B is allocated full time provision at school and Mrs X had requested a part-time timetable to enable him to access school on a more personalised arrangement earlier in the summer term. The Local Authority advised Mrs X that more medical information was required from B's Consultant Neuropsychiatrist before they would reconsider their position.

- .15 In September 2021 (specific date unclear), a Medical Needs Service referral was completed and submitted on behalf of B.
- .16 From 21st September Medical Tuition provided to B for two hours a week. CBC explained that one hour of medical tuition provided is equal to three hours of in - class school-based teaching support owing to the intensive nature of this type of individual teaching support.
- .17 B's Neuropsychiatrist provided in writing his clinical advice relating to B's mental health in view of school attendance requirements. This advice stated that B is unfit to attend a full-time school placement due to his anxiety. The advice also included that B could attend part-time schooling providing his anxiety permitted.
- .18 According to Mrs X's and communication evidence, accessed by the investigation, Early Help support provided to the family is withdrawn. Mrs X described her family situation as being at "breaking point" to Early Help practitioners. Mrs X received confirmation that they have been approved for a child and family assessment by Social Care.
- .19 Mrs X makes a renewed request of CBC for full-time EOTAS provision for B as his anxiety is preventing him from accessing school.
- .20 SNAP Panel meeting via Zoom with Mrs X and Local Authority. Outcome of this meeting was an escalation of the family's case and that the SEND & Inclusion Team at CBC would co-ordinate services and support.
- .21 On 18th October 2021, Mrs X contacted CBC Customer Relations Team to record her dissatisfaction with the original complaint response from CBC. Mrs X requested a further level of investigation, i.e. formal external investigation.
- .22 On 22nd October 2021, CBC contacted Mrs X, no response to her renewed request for EOTAS provision for B is provided. CBC explained in the communication to Mrs X that as she had requested further investigation of her original complaint that their representative believed it was no longer appropriate to provide any comment to her request.
- .23 On 29th October 2021, Mrs X applied for legal aid to access the services of a solicitor.
- .24 On 3rd November 2021, CBC telephone Mrs X to cancel an interim review meeting for B owing to lack of medical evidence received. The meeting was due to be held on 4th November, the call was made at 5.00pm on 3rd November. The cancellation was agreed, and meeting rearranged with parent specifically because the decision in respect of EOTAS would be

influenced by the view of CAMHS professionals – the meeting with CAMHS was taking place the following day and had been arranged at short notice to try to address the issues.

- .25 On 4th November 2021, CAMHS outcomes of recent assessment of B shared with Mrs X. B's assessment scores are reported as high for separation anxiety; obsessive/compulsive behaviours; generalised anxiety; panic; social phobia; depression.
- .26 On 8th November 2021, CBC Customer Relations team confirmed Mrs X's request of an independent investigation of her complaint.

Views provided by Bedfordshire (North) Child & Adolescent Mental Health Service (CAMHS)

Bedfordshire (North) Child & Adolescent Mental Health Service (CAMHS) provided a helpful mini chronology of significant events in B's health care needs over the last year. The salient information is noted below.

- B referred to CAMHS by GP in January 2021.
- 26th February 2021 assessment session part 1 completed by CAMHS Emotional and Behavioural Team
- 5th February 2021 – was assessed by CBC Early Help Team
- 11th March 2021 – assessment session part 2 completed by CAMHS EB Team
- 13th April 2021 – case transferred to CAMHS NDT for ongoing support. Presenting needs are anxiety, school difficulties and continence issues
- 26th April 2021 – initial telephone assessment with Professor Frank Besag, Neuropsychiatrist, CAMHS Neurodevelopmental Team
- 20th May 2021 – 2nd appointment with Professor Besag
- May 2021 – request for Professor Besag to provide information to Medical Needs (local authority) team to support B's absence from school
- 6th May 2021 – request from SEND for information for an EHCPNA
- 7th June – B has not been attending school for 13 weeks and was due to attend as of 8/3/21
- 8th June 2021 – placed on waiting list for community nurse treatment
- 26th June 2021 – EHCP advice information sent to SEND by Assistant Psychologist for CAMHS NDT
- 13th July 2021 – Senior CAMHS Practitioner (Social Worker) allocated the case. This role was to review the CAMHS input for B. Mum confirms that B's levels of anxiety have reduced since he has not been attending school.
- 27th July 2021 – EHCNA completed. Draft EHC plan sent to CAMHS
- July to 8th October 2021 – H is not presenting with acute mental health needs currently. Senior CAMHS Practitioner (Social Worker) role was to support

Mum with suggested amendments to EHCP and liaise with Early Help and SEND regarding educational issues.

- September 2021 - B has started the transition to Z.
- 29th September 2021 – Early Help confirm they are closing the case. Senior CAMHS Practitioner (Social Worker) challenges this and Early Help worker in agreement to escalate to social care. Mum is supportive of social care involvement and had given Senior CAMHS Practitioner (Social Worker) consent to refer to social care if Early Help could not escalate.
- 6th October 2021 – Early Help have stepped up case to social care and agreement for a Child and Family Assessment to be undertaken
- 8th October 2021– significant decline in mental health and resurgence of symptoms of anxiety, particularly checking behaviours and rituals. Mum and B have previously made agreement for him not to return to Z.
- 20th October 2021 – Senior CAMHS Practitioner (Social Worker) completes anxiety questionnaire with B and sends questionnaires to other family members. Parents complete a questionnaire to give a scoring as to whether it reaches significant clinical thresholds.
- 28th October 2021 – Senior CAMHS Practitioner (Social Worker) consults with psychologist and scores the questionnaires. B scores above the clinical threshold for several areas of anxiety including Separation anxiety, Obsessions/compulsions, Generalised anxiety, Panic, Social phobia, and Depression. Mum shares these results with social care with CAMHS consent.
- 6th November 2021 – B presents to A&E following episode of self-harm of banging his head and physical aggression towards Mum, admitted to Riverbank Ward, children’s paediatric ward for his safety and wellbeing. Mum stays with him to support and comfort him.
- 1st December 2021 – CAMHS NDT psychology assessment completed.
- 6th December 2021 – Senior CAMHS Practitioner (Social Worker) emails request for school laptop to SEND team and Moggerhanger SENCO.
- 9th December 2021 – Moggerhanger confirm laptop is ready for collection.

Health views expressed during the investigation on the nature and type of considerations that any educational provision will need to make for B and his learning needs.

The health contributor to this investigation was very clear in the views which CAMHS provided, whilst acknowledging that they are not an educational professional but drawing on the knowledge they have of B, his family and his neurodevelopmental needs, the following is noted:

- B responds well to having ‘attuned adults’ around him who can pick up on when he is struggling, these individuals need to have a good understanding of how his Autism, ADHD and anxieties affect his thoughts and feelings and responses to ‘triggering’ situations.
- Attuned adults to have a good understanding of how to ‘contain’ his anxieties through reassurance, understanding and appropriate responses to him when he shows the initial signs of distress. This helps prevent the anxiety

becoming so overwhelming for him that then he exhibits behaviours that challenge or compulsive behaviours.

- B responds well to learning opportunities that are flexible in approach rather than ‘traditional’ learning approaches of him sitting in a classroom setting for long periods of time. This is mainly due to his ADHD diagnosis, which is at present not medicated for (medication is not always suited to all children and so parents keep an open mind about whether to medicate or not, but this is balanced against the risks of adverse side effects for children namely – they can cause an increase in agitation and can cause appetite suppression, leading to weight loss. B is a boy who is slim currently and so great care would need to be taken to avoid weight loss). Parents continue to consider the possible merits of ADHD medication and liaise with Child Development Community Paediatrician who are responsible for his ADHD treatment not CAMHS NDT.
- B struggles to keep his focus and concentration for longer periods of time and therefore responds well to short bursts of learning.
- Movement breaks are essential for B to be able to have bursts of learning and then opportunity to move around to be able to offset his excess energy levels
- B is keen and proficient in using digital technology to access learning opportunities. He spends time researching and exploring topics of interest and this learning style suits him well. This should be encouraged where appropriate
- Demands – B has a demand avoidant profile in the context of his ASD, he responds much better to a negotiated style rather than instructional style of learning. If demands are deemed as unmanageable for him, this raises his anxiety levels, and he is more likely to exhibit his coping strategy of obsessional compulsive behaviours. Negotiation and giving B choices in how he learns will give him the best opportunity to engage in learning.

• INVESTIGATION PROCESS

- .1 Jane Friswell, Independent SEND Consultant was allocated to this complaint as investigating officer on 16th November 2021.
- .2 The investigating officer contacted Mrs X to agree the statement of complaint, via email, on 16th November 2021.
- .3 The investigating officer accessed CBC records in relation to this case held by the Customer Relations Team. The investigating officer was also provided access to case related documentation shared by the

complainant. Also accessed included relevant legislation, procedures, and guidelines. The table below provides the details (in date order) of the interviews conducted during this investigation. The investigating officer wishes to thank all those involved for their cooperation with this matter.

- .4 Health contributions relevant to the investigation were provided by Bedfordshire (North) Child & Adolescent Mental Health Service (CAMHS)
- .5 No Social Care interview has been held despite requests.

| Date | Interviewee | Interview Type |
|----------|---|----------------|
| 24.11.21 | Mrs X, Complainant | Virtual |
| 29.11.21 | CBC Customer Relations Team | E |
| 29.11.21 | Head of Service, CBC Access and Inclusion Service | T |
| 06.12.21 | Mrs X, Complainant | T |
| 06.12.21 | Head of Service, CBC Access and Inclusion Service | T |
| 07.12.21 | SEND Manager – North Locality SEND Team | V |
| 20.01.22 | Senior CAMHS Practitioner (Social Worker) Bedfordshire (North) Child & Adolescent Mental Health Service (CAMHS) Neurodevelopment Team (NDT) | V |

KEY: V = virtual; T = telephone; E = E-mail

• RELEVANT POLICY & PROCEDURES

.1 This is a complaint about CBC’s handling of Mrs X’s son’s situation and the lack of suitable educational provision provided by CBC at a time when he was unable to attend school owing to extreme anxiety. The following areas of legislation, policy and procedures explains the duties of local authorities which are set out below referencing the key points from the legislation, policy, and procedures as further numbered paragraphs.

.2 The Equality Act 2010

- .3 The Equality Act came into force on 1 October 2010. The Act provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. Organisations carrying out public functions are subject to the duties not to discriminate on any of the nine protected characteristics listed in the Equality Act. Disability is one of those protected characteristics.
- .4 On 5 April 2011, the public sector equality duty (the equality duty) came into force. The equality duty was created under the Equality Act 2010. The duty requires all local authorities (and bodies acting on their behalf) to have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- .5 **Parents' duty to ensure school attendance**
- .6 Section 7 of the Education Act 1996 says parents must ensure their children receive suitable full-time education at school or otherwise. Councils can act against parents who do not ensure their children's attendance at school.
- .7 **The Children and Families Act 2014 (CFA)**
- .8 The CFA sets out the way councils should assess the special educational needs and disability of children and young people up to the age of 25. Once an assessment determines that special educational needs provision is required for a child, the council must issue an Education, Health and Care Plan (EHC Plan). The council has a duty to ensure it is in place and is maintained. Councils should issue an EHC Plan within 20 weeks of the request for a statutory needs assessment unless certain exemptions apply. Councils should collect evidence from education, health, and care professionals.
- .9 If a parent or young person already has their own advice and reports, these can be submitted as part of their own advice, which councils must ask for. This will ensure the advice and reports form part of the assessment process. The council must consider this evidence when it decides whether to issue an EHC Plan.
- .10 Parents and young people can request a local authority to provide a personal budget for special educational provision in an EHC plan and

request direct payments. The request must be made when the draft EHC plan is being prepared, reviewed, or re-assessed. (The Special Educational Needs (Personal Budget) Regulations 2014 Section 4(1))

- .11 The Children and Families Act 2014 places a duty on maintained schools and academies to make arrangements to support pupils with medical conditions. Individual healthcare plans will normally specify the type and level of support required to meet the medical needs of such pupils. Where children and young people also have SEN, their provision should be planned and delivered in a co-ordinated way with the healthcare plan. Schools are required to have regard to statutory guidance 'Supporting pupils at school with medical conditions'
- .12 **Special Educational Needs & Disability Code of Practice; 0 to 25 years, 2015, DfE & DoH**
- .13 The SEND Code of Practice is statutory guidance for organisations which work with and support children and young people with special educational needs or disabilities.
- .14 Local Authorities must have regard to the Code of Practice. This means that whenever they are taking decisions, they must consider what the Code says. They cannot ignore it. They must fulfil their statutory duties towards children and young people with SEN or disabilities in the light of the guidance set out in it. They must be able to demonstrate in their arrangements for children and young people with SEN or disabilities that they are fulfilling their statutory duty to have regard to the Code
- .15 **Children out of school because of medical needs**
- .16 Section 19 of the Education Act 1996 says "councils must make arrangements for the provision of suitable education at a school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless arrangements are made for them".
- .17 Government statutory guidance of January 2013 'Ensuring a good education for children who cannot attend school because of health needs' states that there may be cases where the child can still attend school with some support, or the school has arranged to deliver suitable education. The guidance states that: "We would not expect the local authority to become involved in such arrangements unless it had reason to think that the education being provided to the child was not suitable or, while otherwise suitable, was not full-time or for the number of hours the child could benefit from without adversely affecting their health. This might be

the case where, for example, the child can attend school but only intermittently.”

- .18 If medical evidence is not quickly available, the statutory guidance states councils “should consider liaising with other medical professionals, such as the child’s GP, and consider looking at other evidence to ensure minimal delay in arranging appropriate provision for the child”. Further, the guidance says that “councils should be ready to take responsibility for any child whose illness prevents them attending school for 15 days or more”.
- .19 Suitable education means efficient education suitable to a child’s age, ability, and aptitude and to any special educational needs he may have. (Education Act 1996, section 19(6))
- .20 The education provided by the council must be full time unless the council determines that full-time education would not be in the child’s best interests for reasons of the child’s physical or mental health. (Education Act 1996, section 3A and 3AA)
- .21 Case law regarding section 19 alternative educational provision does exist. For example, In *G v Westminster City Council* [2004] (followed more recently in *DS v Wolverhampton City Council* [2017]), the Court of Appeal stated: “It seems to us that ‘otherwise’, where used for the second time in [section 19, Education Act 1996], is intended to cover any situation in which it is not reasonably possible for a child to take advantage of any existing suitable schooling”.
- .22 **Local Government and Social Care Ombudsman (LG & SCO) *Our Focus report, 2016***
- .23 Issued in 2016, this guidance describes how the LG & SCO expect councils to fulfil their responsibilities to provide education for children who, for whatever reason, do not attend school full-time. They identified six recommendations based on examples of good practice in councils.
- .24 • Consider the individual circumstances of each case and be aware that, potentially, a council may need to act whatever the reason for absence (except for minor issues that schools deal with on a day-to-day basis) – even when a child is on a school roll.
- .25 • Consult all the professionals involved in a child's education and welfare, taking account of the evidence in coming to decisions.
- .26 • Choose, based on all the evidence, whether to enforce attendance or provide the child with suitable alternative education.

- .27 • Keep all cases of part-time education under review with a view to increasing it if a child's capacity to learn increases.
- .28 • Adopt a strategic and planned approach to reintegrating children back into mainstream education where they can do so.
- .29 • Put whatever action is chosen into practice without delay to ensure the child is back in education as soon as possible.
- .30 **The Council's procedures**
- .31 The Council says that schools, including academies, should report absences for a continuous period of 10 days or more.
- .32 The Council's procedure is that, before a school refers a case to it, schools are expected to address the non-attendance with the parents first.
- .33 As part of the Council's Multi Academy Trust, an academy can direct the Council's school attendance officer to undertake certain actions.
- .34 The Council's Medical Needs Service is responsible for providing alternative education provision for children who cannot attend school for medical reasons. It has a policy and criteria for referrals and admission to alternative provision.
- .35 The Council says it follows the statutory guidance that, where it is identified that alternative provision is required, it will work closely with medical professionals and the child's family to consider the medical evidence. The Council says that, once parents have provided evidence from a consultant, it will not unnecessarily demand continuing evidence without good reason.
- .36 The Council's Medical Needs Service aims to offer a tailored programme of education to assist pupils' reintegration into school after a medical illness. Its criteria for eligibility are as follows: "That all referrals should include the school and medical referral form (NHS only no private diagnosis or treatment) signed by the relevant medical practitioner.
- .37 Pupils MUST engage with appropriate healthcare package and attend their healthcare appointments. Without engagement, tuition will cease. The first 3 weeks (15 days) of absence remains school's responsibility".
- .38 The Medical Needs Service says the NHS does not recognise ASC as an illness preventing school attendance. But anxiety is regarded as an illness and can be linked to ASC.

- .39 Once a pupil is accepted by the Medical Needs Service, the professionals involved will work together with the pupil and parents. There will be personal education plan meetings every six weeks. The Council says that pupils must engage with an appropriate healthcare package and attend their healthcare appointments. Without engagement tuition will cease.
- .40 The Medical Needs Service provides teaching, mainly in the three core subjects of Maths, Science, and English, to support reintegration back into school. Pupils remain on the roll of their school, and the medical needs teachers work in partnership with the school to ensure continuity and progression for the pupil, taking account of medical advice. Schools and the Medical Needs Service support reintegration of pupils where the medical advice supports their readiness to return to school.
- .41 The Council says that all tuition is based on what health advise and what the child/parents feel is realistic. An hour tuition with the Medical Needs Service is the equivalent to three hours in a mainstream classroom, as the teaching is more intense. Once an initial allocation of tuition hours is agreed by the child, parents, and with health, this is kept under regular review. The child's progress and voice are critical in the whole process.
- .42 **Central Bedfordshire Council Pathological Demand Avoidance (PDA) Position Statement, May 2021, Central Bedfordshire SEND Local Offer**
- .43 The Central Bedfordshire PDA position statement has been co-produced between Education and Health professionals and SNAP Parent Carer Forum to ensure a shared understanding of Pathological Demand Avoidance (PDA) and how best to support children with demand avoidant behaviours.
- .44 The Council's PDA Position Paper describes "Children and young people with this profile can sometimes appear excessively controlling and dominating, while others may mask their anxiety - demand avoidance is a spectrum of behaviours. These behaviours can be a form of 'panic attack', often referred to as 'fight, flight or freeze' responses and are caused by feelings of anxiety. When children and young people feel secure and in control, they can also be confident and engaging. It is important to acknowledge that those who have demand avoidance behaviours have a hidden disability".
- .45 Central Bedfordshire recognises that there are different clinical viewpoints across health services and that whilst PDA is not included within the current diagnostic tools for Autism – DSM 5 and ICD 10 - the NICE

guidelines on recognition, referral and treatment for autism spectrum disorder in under 19's does identify demand avoidant behaviour as a sign and symptom when considering autism spectrum condition [NICE Guidelines CG128](#)

- .46 The position paper articulates how Central Bedfordshire will support children and young people with PDA; Children and young people with a PDA profile will require **effective, personalised support with a more flexible approach, that focuses on and understands their individual needs**. In addition, we know that individuals with a PDA profile do not always respond to the traditional strategies recommended for autism.
- .47 Bedfordshire and Luton CAMHS recognise that these behaviours can be identified within the diagnosis of ASD. Clinicians within CAMHS can work with parents, carers, and other professionals to try and understand these difficulties and tailor a package of care and personalised support for the individual needs of children.
- .48 **PDA Society Report, *Being Misunderstood; Experiences of the Pathological Demand Avoidance Profile of ASD*, 2018**
- .49 The PDA Society conducted an online survey for two weeks in March 2018 through their website and social media. 1,445 parents, professionals, adults with PDA and their partners or family members contributed. The results of this survey demonstrate that, in practice, a constellation of traits is being identified by some who diagnose ASD, and that this is most often done through use of terminology which reflects the idea of a 'Pathological Demand Avoidance profile of ASD'.
- .50 Autistic adults and parents reported that a lack of understanding (and sometimes acceptance of the profile) is the biggest barrier to getting support. Adults and children are regularly being misunderstood, with services consequently failing in their duty to be needsbased and outcomes focused.
- .51 This report states that for outcomes to improve, professionals need to know that they can speak openly about this group using unambiguous terminology and, most importantly, promote appropriate strategies.
- .52 For this to happen, local leaders of adult and children's services which support autistic people must frame the way in which this complex autism can be managed. This is likely to be best achieved through publication of a 'position statement' for professionals and service users, along with resources for staff development.

• **FINDINGS**

COMPLAINT: Mrs X's views:

- .1 Mrs X's believes that during the last 9 months, since March 2021, the Local authority have failed to listen to her concerns about her son, B and the increasing extreme anxiety experienced by him because of his special educational needs in relation to his attendance at school.
- .2 Mrs X believes that the Local Authority failed to consider her son's attendance at school considering his complex needs, particularly how his autism with a demand avoidant behaviour profile has resulted in an underlying anxiety which has developed to extreme levels.
- .3 Mrs X's believes that she has not been adequately listened to regarding the reasons for absence of B from school.
- .4 Mrs X's describes a culture of "parent blaming" in her dealings with CBC more generally which
- .5 Importantly, Mrs X believes that B's entitlement and access to full-time education has been significantly disrupted by the Local Authority not recognising the impact his anxiety has on his ability to attend school and by not providing alternative education other than school while they awaited further clinical confirmation of his extreme anxiety condition.
- .6 Mrs X believes the lack of action taken by the Local Authority at this time prolonged and exacerbated the extremely stressful and anxiety making circumstances for B and his whole family, which impacted considerably on family members physical and mental health.
- .7 Mrs X reports that both she and B lost confidence in the Local Authority's capacity to act in the best interests of B at that time.

COMPLAINT: information gathered from CBC records and interviews:

- .8 Head of Service, CBC Access and Inclusion Service attended Team Around the Child (TAC) meetings on 29th March 2021, 6th May 2021 and on 17th June 2021 and he became aware of the interventions that the school and professionals (Early Help) were undertaking to support the family in addressing B's absences.
- .9 Because of these interventions, even with the lack of medical evidence for B's absences, the Head of Service, CBC Access and Inclusion Service did not feel the Local Authority should initiate legal action against B's parents at that time due to his unauthorised absences, as it was hoped that this support would have a positive impact.
- .10 His attendance record was recorded as unauthorised by the school and the Local Authority were formally notified by the school on 19th May 2021. No Attendance Officer engagement is reported by CBC although there is

- significant involvement by the Head of Service, CBC Access and Inclusion Service.
- .11 The Local Authority were unable to satisfy the Section 19 threshold requirement to approve B's attendance at school as authorised owing to medical reasons.
 - .12 The Local Authority are unable to provide alternative education arrangements

CONCLUSIONS:

What should have happened?

- A holistic understanding of the complexities of this case should have been agreed on a shared basis with all stakeholders from the outset of B's diminishing attendance at school. There is clear evidence which builds over time dating back to 2017 that B's mother is increasingly concerned about the sustainability of full-time education access by him as his level of needs/ anxieties manifest in his inability to engage in attending school regularly.
- Agreed and understood co-ordination of this shared understanding should have been led well by the school. The Local Authority is reliant on accurate information and co-ordination of provision arrangements provided by the school. It is unclear whether this was supplied by the school well.
- Despite Section 19 threshold criteria not being met in this case the Local Authority should have considered the explanation of B's non-attendance where there was a medical reason and special educational needs – this should have triggered the Council's duty to arrange alternative provision immediately. As this did not happen B was unable to attend school and has missed a considerable amount of his education entitlement.
- Section 19 of the Education Act 1996 says "councils must make arrangements for the provision of suitable education at a school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless arrangements are made for them".
- Government statutory guidance of January 2013 '*Ensuring a good education for children who cannot attend school because of health needs*' states that there may be cases where the child can still attend school with some support, or the school has arranged to deliver suitable education. The guidance states that: "We would not expect the local authority to become involved in such arrangements unless it had reason to think that the education being provided to the child was not suitable or, while otherwise suitable, was not full-time or for the number of hours the child could benefit from **without adversely affecting their health**. This might be the case where, for example, the child can attend school but only intermittently."
- The Local Authority and the school could have acted earlier according to the timeline of events investigated. Attendance Officer involvement and support of

both the child and the family would have enabled the Local Authority to have established a pertinent level of insight of the family's concerns at the time.

- Clinical evidence of B's needs was provided by his Neuropsychiatric Consultant, Professor Besag (letter May 2021) and a further letter provided at the request of the Local Authority Access and Inclusion Service. This was also provided by the complainant, however, CBC decided that there was insufficient medical evidence to satisfy Section 19 threshold. I do not agree that this was the case at the time. There are insufficient grounds on which the Local Authority decided not to proceed with providing alternative educational arrangements for B.
- Substantial TAC arrangements combined with Early Help since February 2021, indicates a substantial level of involvement by the Local Authority along with later direct involvement with CAMHS, this was a family approaching crisis owing to the complex nature of B's needs and the impact this has on family life at home.
- A growing evidence base of intervention, support and increasing awareness of impending crisis for this family through the level of Local Authority service involvement is important context for this case which should have enabled the Local Authority to consider the needs of the child holistically through the TAC approach.
- If medical evidence is not quickly available, the statutory guidance states councils "should consider liaising with other medical professionals, such as the child's GP, and consider looking at other evidence to ensure minimal delay in arranging appropriate provision for the child".
- Furthermore, the guidance says that "councils should be ready to take responsibility for any child whose illness prevents them attending school for 15 days or more".
- Suitable education means efficient education suitable to a child's age, ability, and aptitude and to any special educational needs he may have. (Education Act 1996, section 19(6)) .
- The education provided by the council must be full time unless the council determines that full-time education would not be in the child's best interests for reasons of the child's physical or mental health. (Education Act 1996, section 3A and 3AA)

What did happen?

- B's attendance at school during national lockdown was consistent and regular.
- B's attendance at school reduced considerably once lockdown restrictions were lifted and school reopened for all pupils to attend.
- Mrs X informed both school and the Local Authority of her concerns regarding B's school attendance and her concerns about his mental health from March 2021

- The Local Authority recognised the complex nature of this case as they chose not to take legal action in issuing a penalty notice to parents.
- Head of Service, CBC Access and Inclusion Service reported via interview (07.12.21) that Attendance Officer engagement was at held “arms-length” in relation to this case owing to its complex nature and that they believed this was appropriate to avoid unnecessary potential conflict around the raising of any penalty notices.
- The Local Authority arranged for the provision of education which was deemed to be suitable for B to attend, in their view and which they believed he is reasonably able to attend, according to the information provided by the school.
- As such CBC were not under a duty to provide alternative suitable education, simply because, for one reason or another, B is not taking advantage of the existing facility.
- Mrs X submits a request for statutory assessment of B’s special education needs with CBC in April 2021
- Mrs X’s Education, Health & Care Needs assessment for B is accepted by CBC and formal integrated assessment of his special educational needs begins.
- Owing to the CBC’s decision not to provide alternative education to B, Mrs X lodged a formal complaint against CBC Access and Inclusion Service
- Mrs X’s initial complaint was investigated by the Head of CBC Access and Inclusion Service and her complaint was not upheld.
- CBC issue an Education, Health & Care Plan as an outcome of the formal assessment process (September 2021).

Was this fair and reasonable in the circumstances? NO

On what basis was practice correct or incorrect?

- The Local authority’s view at the time of B’s diminishing school attendance was entirely influenced by the school’s report of B’s level of need identified by the school which was not perceived to be high at that time.
- The Local Authority were aware of the extreme level of concern Mrs X’s had been reporting since February 2021 in anticipation of full reopening of school once lockdown restrictions had been lifted. There is limited evidence of how well the views of parents were accommodated.
- The extent of this concern is an important factor in how Mrs X’s forecasting of the risk of B’s attendance at school reducing quickly once school reopened to all pupils. This is owing to knowing her child well and understanding how likely this was in B’s response to wider reopening arrangements of school post national lockdown.
- The Local Authority approach at the time of reviewing B’s school attendance record was, in my view, too narrow rather than taking a more holistic view of

the significant drivers of his special educational needs and medical needs which have impacted on B's ability to attend school consistently and happily.

Is there any conflicting information and no supporting evidence? YES

- The Local Authority, whilst recognising that to issue a penalty notice to parents could cause further conflict with the family, calls into question CBC's decision-making processes for complex cases which CBC acknowledge this case is.
- In choosing not to apply legal powers in this case, CBC have rightly, in my view, not irritated existing strained relationships with this family but in doing so acknowledge a more personalised response is required in this case.
- Personalisation of the approach taken by CBC in the management of this case is relatively minimal based on the evidence provided and reviewed.
- CBC accepted a parental request for statutory assessment of B's special educational needs and issued an EHCP as a result, however, his school identified that he had no significant level of need at the time of his reducing school period.
- There is limited evidence as to why CBC were slow to act in providing Attendance Officer intervention in this case which may suggest an inequitable allocation of support, intervention, and resource. CBC may need to reflect on and compare the steps the Access & Inclusion Service take ordinarily in cases where children and young people are absent from school who have additional needs?
- During this investigation, Mrs X has described a culture of "parent-blaming" which she believes she has encountered with CBC's approach, communications, and perceived resistance to better understand her and her family's circumstances.
- Whilst there is no strong evidence to substantiate Mrs X's perceptions and feelings of her treatment, it may be helpful to reflect on this point as when blame is conveyed to parents, it creates anger and resentment and guarantees a non-cooperative response from them. This response is then all too readily used as evidence to support the view that parents are indeed to blame for their child's lack of attendance or medical condition. In practice, a blaming approach is futile.
- More recently, CBC have produced a Co-production Charter, "to make sure that agencies will alongside families with SEND children.... will go that extra mile to ensure that child gets the support it needs and support its family on how to support that child". This is both encouraging and to be welcomed. However, when considering the commitment to co-production in this case, how well would both the family and LA consider the outcomes it has influenced?

Is there sufficient evidence for you to make a decision? YES

FINDING ON COMPLAINT: Upheld

- If a child is not receiving full-time education, it has possible long-term consequences for the child's future. B has been out of full-time education for 9 months and this could have been avoided.
- Because of prolonged absence from education, this has impacted significantly on his mental and physical health as evidenced by clinical reports accessed during the period of absence from school.
- Because of prolonged absence from education, this has impacted significantly on the mental and physical health of Mrs X particularly but also the wider family.
- Mrs X is the primary carer of B and during the last 9 months the family have received limited respite other than in-family arrangements of support
- The efficacy of the initial investigation of Mrs X's complaint against CBC Access & Inclusion Service is questionable as it was undertaken by the Head of Service who fulfilled a casework role in this case also at the time. It is advisable that complaints of this nature are not undertaken by personnel who are directly involved in the case under investigation, this is not good practice for all parties.
- The demand avoidant dimension of B's needs has been overlooked during the period where he has been out of full time school, when evidence suggests that CBC have not well understood the impact this dimension of his special educational needs will have, for example, on returning to school when it reopened after lockdown restrictions were lifted; "Offered a place to B during lockdown and I understand he attended regularly during this period" (reference; CBC initial complaint investigation letter; Head of Access & Inclusion Service).
- The nature of B's needs profile is such that when children stop attending school it can be incredibly challenging to come back from as returning to attending school becomes an increasing demand – this can almost be perceived as self-sabotaging.
- Whilst schools and Local Authorities are required to meet national performance standards related to minimum requirements for school attendance for all children and young people, in this case the questions required asking which should drive support arrangements should include How do we sustain engagement in the learning process for B? How do we develop and increase his toleration of being taught? This appreciative enquiry approach appears to be absent in this case.

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| <ul style="list-style-type: none">• DESIRED OUTCOMES/RECOMMENDATIONS |
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- Mrs X requests that CBC acknowledge that they have not listened adequately to her views and the views of B in managing the difficulties he has encountered in attending school. This a reasonable request as there is limited evidence which suggests that the views of parents and the child have been

held at the centre of decision-making processes. CBC should recognise the importance of this acknowledgement for parents.

- Mrs X seeks some form of financial compensation in view of the absence of a suitable education for B provided by CBC for the last 9 months and the implicated stress and anxiety this has caused her family. I would suggest that the costs of the provision of the Medical Needs Service tuition arrangements from April - September 2021 on the allocation arrangement he is now in receipt of, is considered as suitable recompense in this regard.
- The complaint from Mrs X has been upheld. There is evidence of avoidable delay in decision making and consequent provision of appropriate support and education to B. There is no adequate explanation or evidence to explain the 9-month timeline of B being out of school for this duration given the complex nature of his needs.
- In my view, Mrs X's desired outcome should be provided by CBC with the knowledge that Mrs X wishes to work with CBC to secure a workable long-term solution for accessing full-time education for B beyond the re-start provision and medical needs tuition recently allocated to him.
- I have found the need for improvement in the processes that have been administered by CBC and I understand that process and decision-making improvements have been reviewed and refreshed ready for implementation in the new year, which I welcome.
- I consider the desired outcome to be appropriate. I would recommend that consideration be given to Mrs X's desired outcome and the following; Apologise in writing; Review the practice and procedures of the attendance team where complex cases exist; Guidance or training for staff on relevant issues pertaining to complex casework; enable parent carers and young people to inform review of local practice to be led by lived experience of those that services are designed to support and improve outcomes for.

Prepared by: Jane Friswell, Investigating Offer

21 January 2022