



Northern Ireland

**Public Services**

Ombudsman

# **Investigation of a complaint against the Western Health & Social Care Trust**

**Report Reference: 202000387**

The Northern Ireland Public Services Ombudsman

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## **The Role of the Ombudsman**

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

## **Reporting in the Public Interest**

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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**Case Reference: 202000387**

**Listed Authority: Western Health & Social Care Trust**

## **SUMMARY**

This complaint is about care and treatment the Western Health and Social Care Trust's (the Trust) Paediatric Occupational Therapy department provided to the complainant's child while in school between 2016 and March 2018. The complainant raised concerns that the occupational therapist (OT) did not properly oversee the use of two specialist chairs she endorsed for the child for use at mealtimes. The complainant said that as a result, staff in the child's school used the chairs to restrain him. The complainant was also concerned that the Trust failed to consider her complaint with adequate rigor and understanding. She also said the Trust's handling of her complaint was unfair and inappropriate.

The investigation established failures in the child's care and treatment regarding the occupational therapy he received in school. In particular, the investigation established the OT failed to undertake appropriate assessments prior to her endorsement of a Jenx chair<sup>1</sup> and wheeled base for a Heathfield<sup>2</sup> chair. The investigation also identified that the OT did not obtain informed consent from the complainant for the child's use of a Jenx chair and a wheeled base with a Heathfield chair. The investigation further established the OT failed to complete documented handovers, in the form of a photographic seating plan, for the child's use of the chairs to ensure their proper use by school staff.

In addition, the investigation established maladministration in relation to the Trust's handling of the complaint. In particular, it identified the Trust failed to appoint an Investigation Officer who was independent of the events leading to the complaint. The investigation also established that the Trust failed to address several issues of the complaint within its written response, and its apology to the child and the complainant was inadequate.

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<sup>1</sup> A wheeled chair suitable for children who require minimal postural support when seated.

<sup>2</sup> A stationary chair suitable for children who require minimal postural support when seated.

I recommended the Trust apologise to the child and the complainant for the failures identified. I also recommended actions for the Trust to undertake to prevent the failures recurring.

## THE COMPLAINT

1. The complainant raised concerns on behalf on her son (the child) about the actions of the Western Health and Social Care Trust (the Trust). The complainant said an Occupational Therapist (OT) did not appropriately oversee the use of specialist chairs which she endorsed for the child's use in school. She said as a result, school staff used the chairs as a means of restraint for her child from January 2016 to March 2018.

### Background

2. The child lives with Global Development Delay<sup>3</sup> (GDD) and Autism Spectrum Disorder<sup>4</sup> (ASD). He is non-verbal and fully ambulant<sup>5</sup>. He was four years old in January 2016 and attended a special school. At that time, the child used a Heathfield chair<sup>6</sup> for feeding.
3. The OT was a Trust employee who provided an Occupational Therapy service within the school for a total of three hours per week. She also had responsibility for all children within school within this time frame (142 pupils). In January 2016, the OT reported the child started to drop to the floor when he walked around the school. In September 2016, the OT ordered a wheeled base to allow school staff to wheel the child in his Heathfield chair. In February 2017, the complainant said she found the child in school strapped into the Heathfield chair. She said the lap belt was so tight she could not fit her fingers underneath it. The OT recommended the child use a Jenx chair<sup>7</sup>, which was fitted with footplates, foot sandals, and an adjustable lap belt.
4. In June 2017, the complainant observed a footplate was missing from the Jenx chair. She reported this to the Trust's Occupational Therapy department. The complainant said she later saw photographs of the child in the chair with his feet fastened using the foot sandals while in school. She also said she discovered that staff belted the child in his chair and wheeled him to other areas in the school rather than allowing him to walk. The complainant raised

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<sup>3</sup> When a child takes longer to reach certain development milestones than other children their age.

<sup>4</sup> A developmental disability that can cause significant social, communication, and behavioural challenges.

<sup>5</sup> Able or strong enough to walk.

<sup>6</sup> A stationary chair suitable for children who require minimal postural support when seated.

<sup>7</sup> A wheeled chair suitable for children who require minimal postural support when seated.

her concerns to the OT, and she removed the Jenx chair from use in February 2018. The complainant raised her concerns regarding school staff's restraint of the child and met with its Board of Governors (BOG) in March 2018. The OT also attended this meeting.

5. The complainant raised concerns to the Trust regarding the OT's involvement in the restraint of the child in April 2018. The Trust responded to the complaint in June 2018.

### **Issues of complaint**

6. I accepted the following issues of complaint for investigation:

**Issue 1: Whether the Western Health and Social Care Trust's Occupational Therapy department managed the use of the Heathfield chair appropriately and in accordance with relevant standards.**

**Issue 2: Whether the Western Health and Social Care Trust's Occupational Therapy department managed the use of the Jenx chair appropriately and in accordance with relevant standards.**

**Issue 3: Whether the Western Health and Social Care Trust handled the complaint in accordance with its policy and relevant standards.**

### **INVESTIGATION METHODOLOGY**

7. In order to investigate this complaint, the Investigating Officer obtained from the Trust all relevant documentation together with its comments on the issues the complainant raised. This documentation included information relating to how the Trust handled the complaint.

### **Independent Professional Advice Sought**

8. After further consideration of the issues, I obtained independent professional advice from the following independent professional advisor (IPA):
  - A qualified Paediatric Occupational Therapist with 18 years' experience in the field, working with children and young people with complex conditions.

9. The information and advice which informed the findings and conclusions are included within the body of this report. The IPA provided ‘advice’; however how I weighed this advice, within the context of this particular complaint, is a matter for my discretion.

### **Relevant Standards and Guidance**

10. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also refer to relevant regulatory, professional and statutory guidance.

The general standards are the Ombudsman’s Principles<sup>8</sup>:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

11. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions and professional judgement of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- Royal College of Occupational Therapists (RCOT): Code of Ethics and Professional Conduct, 2015 (OT Code of Practice);
- Royal College of Occupational Therapists (RCOT): Professional standards for Occupational Therapy Practice, conduct and ethics – OT Code of Practice 2017 (OT Code of Practice);
- National Institute for Health and Care Excellence (NICE) Challenging behaviour and learning disabilities: interventions for people with learning disabilities whose behaviour challenges, NICE Guideline NG11, as updated May 2015 (NICE Guideline NG11);
- Royal College of Nursing: Three Steps to Positive Practice – A rights

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<sup>8</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.



based approach when considering and reviewing the use of restrictive interventions, June 2017 (Three Steps to Positive Practice);

- The Western Health and Social Care Trust – Policy for Management of Complaints, May 2011 (Trust’s Complaints Policy); and
- The Department of Health’s (DoH) Guidance in relation to the Health and Social Care Complaints Procedure, April 2009 (the DoH’s Complaints Procedure).

12. I also referred to the following publication:

- Northern Ireland Ombudsman Human Rights Manual, 2015 (the NIPSO Human Rights Manual).

I enclose relevant sections of the guidance considered at Appendix four to this report.

13. I did not include all of the information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.

14. A draft copy of this report was shared with the complainant and the Trust for comment on factual accuracy and the reasonableness of the findings and recommendations.

## **THE INVESTIGATION**

**Issue 1: Whether the Western Health and Social Care Trust’s Occupational Therapy department managed the use of the Heathfield chair appropriately and in accordance with relevant standards. In particular, it will consider:**

- **The decision to order and fit a wheeled base;**
- **Other children’s use of the chair; and**
- **Information provided during the telephone call on 28 February 2017.**

a. *The wheeled base*

**Detail of Complaint**

15. The complainant said the OT ordered a wheeled base for the Heathfield chair without undertaking an appropriate risk assessment, and without seeking her consent as the child's parent. This action meant that school staff could use the chair to restrain the child and wheel him in it while in school.

**Evidence Considered**

**Legislation/Policies/Guidance**

16. I considered the following guidance and publication:
- OT Code of Practice;
  - NICE Guideline NG11; and
  - The NIPSO Human Rights Manual.

**The Trust's response to investigation enquiries**

17. The Trust explained the school provided the child with a Heathfield chair for use in his classroom. The OT '*provided and fitted*' the wheeled base '*as an interim solution*' to school staff's concerns that the child was '*frequently dropping to the floor to be used for the purpose of getting [the child] off the floor and to the dining room within the school*'. In relation to alternatives trialled, the OT provided school staff with a sling. She also tried to encourage the child to push the chair while walking between areas in the school.
18. The Trust explained staff should complete handover documentation each time it provides equipment. This ensures staff appropriately obtain consent and communicates and demonstrates its use. While the OT communicated this to school staff verbally, '*there was no written record of this advice or consent from [the child's] parents*'. It acknowledged the OT's failure to seek parental consent for the base. It also acknowledged the OT did not document its use in the child's file. It apologised to the complainant for these failures.

19. The Trust explained that when the child started to drop to the floor, it became a manual handling issue. Therefore, the OT should have completed, documented, and obtained consent for a multidisciplinary<sup>9</sup> risk assessment. It addressed these failures with the OT during her supervision meetings.

### **Relevant Trust records**

20. I enclose a summary of the Trust's records relevant to this issue at Appendix five to this report.

### **Relevant Independent Professional Advice**

21. As part of investigation enquiries, I obtained independent professional advice from an OT independent professional advisor (the IPA).

### **The complainant's response to the draft report**

22. The complainant said the records evidence that school staff complained to the OT that lifting the child when he dropped to the floor caused them back pain. This demonstrates that the Trust's approach to order a wheeled base for the chair was '*staff-led*' rather than '*child-centred*'. It used the term 'manual handling risk assessment' to '*justify misconduct*'. The complainant said the Trust '*inflicted abusive use of restraints with failure to engage with us when [the child] was distressed in his environment*'.
23. The complainant said the child dropping to the floor was not a manual handling issue. Therefore, the Trust did not require a risk assessment. Instead, the child needed '*time and compassionate care*' as the child would stand up and walk when given time to process the demands made on him.
24. The complainant explained the Trust's term, 'interim solution', related to a period of years. She considered its actions '*disproportionate*' and they became a '*prolonged solution to prolonged restraint management*'. The OT did not seek any '*clinical or emotional reasons*' for the child's distress behaviour. For example, noise levels in the canteen area were typical emotional triggers. The

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<sup>9</sup> A group of professionals from different but relevant fields who have input into the child's care.

child dropping to the ground (which rarely happened elsewhere) was a sign of *'emotional crisis and a non-verbal child trying to communicate his distress'*.

25. The complainant said that adopting a stop and wait approach to allow the child time to process would have prevented the Trust's use of restrictive interventions. There records do not provide any evidence that the child pushed the chair, as the Trust suggested. Instead, it *'conditioned'* the child to sit in the chair at all times and *'struggle with transitioning'*, even after it removed the chairs. The Trust also stated it used a sling to *'try'* to lift the child. The records suggest this may have happened once, if at all.
26. The complainant provided a contemporaneous record from another parent who saw school staff *'wheel'* the child within school while he was in the chair.
27. The complainant also referred to IPA advice received, which identified a record that documents that staff offered the child a wheelchair. She explained it was unlikely the child ever used a wheelchair and considered it likely this referred to another postural chair.
28. The complainant said she now understood the *'trauma'* the child presented with. His Child and Adolescent Mental Health Service's (CAMHS<sup>10</sup>) Intellectual Disability Consultant recognised his *'acute pain'* as a post-traumatic stress condition. The complainant explained her child will need *'to be referred to a trauma centre for the resulting anxiety and distress'* caused.
29. The complainant said she used the wheeled base inappropriately and disproportionately as an *'interim solution to make life easier for the staff'*. She considered this was an *'infringement of [the child's] right to liberty and breach of his human rights'*.
30. The complainant said she agreed and welcomed the Trust's acknowledgement that staff should complete handover procedures with each piece of equipment. This is because it *'ensures consent and observation on equipment between the professional and parent'*.

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<sup>10</sup> An NHS service that assesses and treats young people with emotional, behavioural or mental health difficulties.

31. The complainant said she also ‘welcomed’ the Trust’s acknowledgement that it failed to notify or document consent for the wheeled base. However, she considered its apology ‘*inadequate*’.

## **Analysis and Findings**

### *The decision to order and fit the wheeled base*

32. The Heathfield chair is for children from two years to adulthood who require some, though minimal, level of postural support.
33. The complainant was concerned the OT failed to carry out an appropriate assessment to warrant the need for fitting a wheeled base. I refer to section 2.1.1 of the OT Code of Practice which requires that ‘*access to occupational therapy should be based on the occupational needs of the individual*’. The Code also requires staff to record ‘*the clinical reasoning behind the[ir] care planning and provision*’.
34. The IPA advised that a wheeled base is used for children who have postural needs and difficulty in balance, fatigue or other health issues such as epileptic seizures, who, although they are ambulant, ‘*need constant supervision and careful monitoring of physical activity*’. Based on the guidance set out in the Code, I would expect the child’s records to include the OT’s clinical reasons for the wheeled base such as that the IPA outlined. However, the IPA advised she found ‘*no evidence*’ the OT undertook any kind of assessment of the child’s needs, or documented a clinical rationale, prior to ordering the wheeled base ‘*to justify its use*’. I accept the IPA’s advice.
35. The Trust explained the OT ordered the wheeled base because the child ‘*was dropping to the floor and posed a manual handling risk for [the child] and school staff*’. I note the complainant’s comment that this reason for fitting the wheeled base demonstrates the decision was ‘*staff-led*’ rather than ‘*child-centred*’. In the absence of any documented clinical reasons for the wheeled base, I have no reason to dispute the complainant’s view.
36. The IPA advised that an OT can prescribe a wheeled dolly base for use with a Heathfield chair on the basis of behaviour and without the child having any

documented postural needs. However, to do so, they must clearly demonstrate their rationale within a risk assessment and behaviour plan, and document it is a last and necessary resort. This is in accordance with NICE Guideline NG11. It states that a designated team should *'work together to design care pathways... which provide the least restrictive alternatives for people with behaviour that challenges'*. In the absence of a rationale, I consider the decision to fit the wheeled base was not in accordance with this guidance.

37. The Trust stated the OT used alternative strategies in January 2016 to help manage the child dropping to the floor. These included the child pushing a wheelchair and providing the class teacher with a sling. In her response to the draft report, the complainant raised doubt that the OT sufficiently trialled these strategies. The IPA raised similar concerns. She advised she did not find any evidence to indicate the OT trialled these strategies for sufficiently long periods of time. Moreover, the IPA advised the OT should have demonstrated that she used additional strategies, such as motivators, to manage the child's behaviour. The records should also have detailed the length of time she trialled the motivators and if she adapted each strategy. The records do not evidence a trial of such strategies.
38. In its response to this Office, the Trust said, *'it is the school's responsibility to carry out risk assessments with regard to the child's safety with the school'*. I accept the Trust's view. However, the school only does so with MDT involvement. Furthermore, I am satisfied it was the OT, and not the school, that ordered and fitted the wheeled base. Therefore, I am satisfied it was the OT's responsibility to document the clinical rationale underpinning this decision and thereby the details of the risk assessment. Having examined the available OT records, I found no documented evidence that the OT contributed to a risk assessment or behavioural plan prior to ordering and fitting the wheeled base. Without such evidence, I cannot be satisfied the OT appropriately considered the child's *'occupational needs'*, in accordance with the OT Code of Practice, when she made her decision. I consider this a failure in the child's care and treatment and uphold this element of the complaint.

39. I consider this failure led to a loss of opportunity for the child to have consideration given to alternative strategies to address his behaviour. I also consider it led to a loss of opportunity for the child to have alternative strategies trialled for a longer period of time and with adaptations made to better test their efficacy to meet his needs. In turn, I consider this failure caused the complainant upset and uncertainty regarding the appropriateness of the care and treatment the child received. As a result, I uphold this element of the complaint.
40. I note the complainant's comments about the impact the wheeled based had on the child's human rights. Express findings of a breach of any relevant laws are a matter for the courts to consider. However, I considered the human rights principles of fairness, respect, equality, dignity, and autonomy (FREDA) in my consideration of this element of the complaint. Given the failings I identified, I consider that in fitting the wheeled base to the chair, the Trust did not give sufficient consideration to the child's human rights and did not adhere to the FREDA principles of freedom, dignity, and autonomy.

#### *Consent for the wheeled base*

41. The complainant said the OT Service fitted the wheeled base to the child's Heathfield chair without her knowledge or consent. I refer to Section 3.2.4 of the OT Code of Practice which requires staff to obtain informed consent before they provide a person with any intervention or treatment. Section 3.3 of the Code states '*Informed consent is a continuing requirement*'. On this basis, I accept the IPA's advice that the provision of a wheeled base for use with the child's Heathfield chair constituted an intervention to the equipment already in place. As such, the OT was required to obtain informed parental consent for this.
42. On review of the available records, I found no evidence to suggest the OT sought or obtained parental consent for fitting a wheeled base to the Heathfield chair. I note the Trust accepted the OT failed to obtain consent. The IPA advised the '*OT Professional Standards dictate that informed consent is required and is a continuous process*'. Thus, I am satisfied that by failing to

obtain informed consent, the OT did not act in accordance with the OT Code of Practice. I consider this a failure in the child's care and treatment.

43. I consider this failure led to a loss of opportunity for the complainant to be properly informed about the wheeled base and refuse this intervention. I consider this failure also caused the complainant to experience loss of trust in the occupational therapy care the child received. I uphold this element of the complaint.

*b. Use of the chair*

**Detail of Complaint**

44. The complainant said the OT allowed other pupils to use the chair. She explained she was unaware the school used the child's chair for different pupils.

**Evidence Considered**

**Legislation/Policies/Guidance**

45. I considered the following guidance:
- OT Code of Practice; and
  - NICE Guideline NG11.

Relevant extracts of the guidance referred to are enclosed at Appendix four to this report.

**The Trust's response to investigation enquiries**

46. The Trust explained the chair belonged to the Education Authority (EA). Once the EA allocates a chair to a pupil, there is an '*understanding that it is to be used for that specific child*'. The OT was present in school for three hours per week. Therefore, the OT was unable to monitor school staff's use of this chair for other pupils outside of these hours. While other pupils may have used the chair, this was '*outside the control of the Occupational Therapy service*'.



47. The Trust explained the OT first became aware that other pupils may have used the chair following her telephone call with the complainant in February 2017.

### **Relevant Trust records**

48. I enclose a summary of the Trust's records relevant to this issue at Appendix five to this report.

### **Relevant Independent Professional Advice**

49. As part of investigation enquiries, I obtained independent professional advice from an OT independent professional advisor (the IPA). I enclose the full IPA advice report at Appendix three to this report.

### **The complainant's response to the draft report**

50. The complainant said she believed the child did not have his own chair despite records showing she signed for one in March 2016.
51. The complainant said she was unaware the School used chairs with other pupils until it told her the OT adjusted the lap belt on the chair. The OT later told her she would not correct a lap belt without a child present. The School informed the complainant that they did not know how to adjust a lap belt. It apologised to her and said staff '*adjusted the chair a little*' as the child was leaning forward, and they were afraid he would fall out.
52. The complainant said she would '*never have assumed*' staff would use the child '*as an experiment*', to trial how they would use the chair. She explained she agreed to the expert advice from staff supporting the child. The complainant said a diary entry documented that staff trialled the chair on a pupil. However, she now realises it was the child who was the subject of the trial.
53. The complainant said the Trust should have documented a seating plan so staff were aware of the '*usage and limitations due to detrimental effects overuse would have on a disabled child*'.

## **The Trust's response to the draft report**

54. The Trust said the OT did not 'allow' other children to use the chair as she was only in school for three hours each week.

## **Analysis and Findings**

55. I acknowledge and understand the complainant's concerns regarding how school staff used the Heathfield chair for the child. However, it is not the role of this investigation to examine the actions of school staff. Rather, it is to examine the OT department's responsibilities regarding the chair and the child's use of it.
56. The OT Annual Review Report dated 18 February 2016, signed by both the OT and the complainant, documents the child was provided with a Heathfield chair. However, neither the report nor the OT records specify the purpose of the chair, if only the child could use it, nor when the child should use it. I also did not find any documented record of the OT's recommendations for the child's use of the chair. I therefore accept the IPA's advice that the OT failed to demonstrate she fulfilled section 2.1 of the OT Code of Practice. This requires that '*assessments, interventions and documentation should be centred on occupational performance, engagement and participation in life roles*'. It also provides that '*the professional rationale for... intervention... should be the enhancement of health and wellbeing through the promotion of occupational performance and engagement*'.
57. In its response to this Office, the Trust confirmed the chair was allocated to the child for use within the classroom. However, it said that as the equipment '*is the property of the Education Authority*', the Trust does '*not have any responsibility if the school staff chooses to use [it] with another child*'. I note the Trust also explained that while other pupils may have used the chair, this was '*outside the control of the Occupational Therapy service*'. The Trust said the OT was present in school for three hours per week. Therefore, she could not monitor school staff's use of this chair outside of these hours.
58. I accept this was the case. Notwithstanding, I refer to section 5.4 of the OT Code of Practice, which requires that staff '*recognise the need for multi*

*professional collaboration to ensure that well co-ordinated services are delivered in the most effective way*. 5.4.3 of the Code also provides that staff *'should consult with other service providers when additional knowledge, expertise and/or support are required'*. In this regard, I accept the IPA's advice that it was *'the responsibility of the OT to guide the user and whoever supports them on how to use the chair'*. As such, the IPA advised the OT should have *'upskilled'* school staff with full information regarding the child's recommended use of it. In addition, the IPA advised that *'it is the responsibility of the OT to review the use of the chair regularly'*. I accept this advice. I am satisfied the OT had responsibility to ensure and oversee that the child's use of the chair in school was appropriate.

59. Furthermore, I accept the IPA's advice that it is best practice for the OT to issue an *'individualised photographic seating plan'* when a specialist chair is allocated to a child. The IPA advised a seating plan should include a photograph of the child sitting in the chair and describe how and when, and for what activities, the child should use the chair. In addition, the IPA explained it should detail what to do if the chair breaks, becomes damaged or needs adjustment. It is also a means by which OTs inform school staff that a particular chair belongs to a specific child. I accept this advice.
60. While I acknowledge the OT Code of Practice does not specifically refer to the completion of a seating plan, I note it is established good practice. As such, I am critical the OT failed to complete and share a seating plan for the child's use of the Heathfield chair. In any event, I am satisfied it was the OT's responsibility, in accordance with the OT Code of Practice, to communicate with school staff to ensure the welfare of the child. I accept the IPA's advice that the OT should have advised school staff on the child's use of the Heathfield chair. However, I have not identified any documented evidence within the records to indicate this occurred.
61. I am also critical of the OT's failure to document and share with school staff a comprehensive and accurate plan for the child's use of the wheeled base. I previously established that the OT fixed the wheeled base to the chair.

Therefore, I consider it reasonable to conclude, on the balance of probabilities, that the OT would have expected school staff to use the chair to transport the child. I am particularly concerned the OT, who was aware the child is fully ambulant, did not take action to document her recommendations for the use of this intervention to ensure it was used only to enhance the child's occupational performance. I am also concerned the OT failed to demonstrate that she sought to ensure, in so far as by sharing a seating plan, that school staff only use the wheeled base within clinically assessed OT recommendations.

62. I note the Trust informed this Office that the OT did '*communicate handover information pertaining to the child's Heathfield chair*' to school staff '*verbally*'. The Trust said however, '*there was no written record of this advice*'. I am satisfied the OT was required to document the information provided to school staff, in accordance with the OT Code of Practice. In the absence of any documented record, I cannot be certain whether, and what, the OT informed school staff regarding the child's use of the chair.
63. As previously stated, I am satisfied the OT Code of Practice emphasises the importance of good record keeping and provides it is a key tenet of OT care provision. I consider a failure to maintain accurate and contemporaneous records impedes the thorough, independent assessment of care provided to patients. I also consider that maintaining accurate and appropriate records affords protection to health and social care staff involved in providing patient care by providing a clear record of their actions and the care provided. By not doing so, I consider the OT failed to demonstrate she fulfilled 2.6 the OT Code of Practice.
64. I acknowledge that even if the OT had documented and shared a completed photographic seating plan with school staff, this may not have eliminated the risk of them failing to adhere to that plan. This is because the OT was only in the school for three hours per week. Therefore, school staff still could have used the Heathfield chair outside of the OT's intended use for it when she was not present. Thus, I cannot attribute the school's use of the Heathfield chair to the OT.

65. However, I consider that by equipping school staff with appropriate and relevant documented details regarding the child's recommended use of the chair, this could have minimised the likelihood of staff using it incorrectly or for too long. It could also have minimised the risk of staff sharing the chair with other pupils when the OT was not present.
66. Based on the evidence available to me, I am satisfied the OT failed to demonstrate she acted in accordance with sections 2.6 and 5.4 of the OT Code of Practice. I consider this amounts to a failure in care and treatment of the child.
67. It is my view that these failures resulted in a loss of opportunity for the child to have an appropriate documented plan in place for his proper use of the Heathfield chair. I consider this in turn caused a loss of opportunity for the child to have proper and sole use of the chair in accordance with clinically assessed OT recommendations. I consider this failure also caused the complainant distress, frustration and uncertainty regarding the consequences to the child of the OT care he received. Consequently, I uphold this element of the complaint.

### **Detail of Complaint**

#### *c. The telephone call on 28 February 2017*

68. The complainant said the OT gave her inaccurate information about the Heathfield chair during their telephone call on 28 February 2017. The complainant said she would not have agreed to move the child to the Jenx chair had the OT provided her with the correct information.

### **Evidence Considered**

#### **Legislation/Policies/Guidance**

69. I considered the following guidance:
- OT Code of Practice; and
  - NICE Guideline NG11.

## **The Trust's response to investigation enquiries**

*The telephone call on 28 February 2017*

70. The Trust said the call related to the tightness of the lap belt on the Heathfield chair. It explained that during the telephone call, the complainant and the OT discussed an alternative chair (Jenx chair). The Trust said the complainant informed the OT she preferred the child use the Jenx chair '*as it was more comfortable*'.
71. I asked the Trust if the OT considered adjusting the Heathfield chair's lap belt rather than change to a different chair. It explained the OT did not adjust the lap belt. It said this was because the complainant agreed during the telephone call that the child should use the Jenx chair.

## **Relevant Trust records**

72. I enclose a summary of the Trust's records relevant to this issue at Appendix five to this report.

## **Relevant Independent Professional Advice**

73. As part of investigation enquiries, I obtained independent professional advice from an OT independent professional advisor (the IPA).

## **The complainant's response to the draft report**

74. The complainant referred to the IPA advice this office received and clarified that while the Trust discharged the child from physiotherapy at age three, the physiotherapist agreed to see him at the time he transitioned to the School before formally discharging him from the service.
75. The complainant referred to the Trust's response to investigation enquiries where it said the complainant told the OT she preferred the child use the Jenx chair '*as it was more comfortable*'. The complainant denied she said this.
76. The complainant said it is '*basic common sense*' that she would not have agreed to change chairs because the lap belt was too tight. She considered this '*misleading*'. It was not a '*simple case*' of a lap belt being too tight; it was because the child was restrained.

77. The complainant said she agreed to '*minimal use*' of the Jenx chair because staff (including the OT) told her there was no other available chair. Staff suggested the child preferred the Jenx chair as it was more comfortable. However, the complainant could not understand how a non-verbal child could communicate this, especially as staff were unable to understand him '*communicating distress around other unmet needs*'.
78. The complainant said it was on the basis of this '*false information*' that she agreed verbally to use the chair for mealtimes only. This was so the child did not have to share a chair with another pupil. It was also to prevent him from being restrained.
79. The complainant said she '*challenges*' the OT's entry in the notes which implied she agreed to the child using the chair on this basis. She explained she was not present for a handover or to check if the child did find the chair more comfortable.
80. The complainant said the OT signed the diary entry to notify her that she completed a full check of the chair. The OT should have removed the foot sandals at this point. However, she failed to do so.
81. The complainant said that for a '*fully mobile child with sensory needs*', the foot sandals demonstrated an '*over prescription of punitive restraint*'. She added it caused the child to experience '*a cruel limitation to movement and forced sensory overload*'. The complainant provided photographs that she said reflect the child's '*trauma and distress*'.

### **Analysis and Findings**

82. I note the complainant spoke to the OT via telephone on 28 February 2017 to express her concern at having discovered the child strapped into the Heathfield chair so tightly that she was unable to fit her fingers underneath the strap. On review of the OT records, I note the annotated record of the telephone call documents that the complainant was '*unhappy re the belt on the Heathfield and said it was far too tight*'. The record states that the class '*Teacher advised [the complainant] that chair is shared at times with another pupil and she was not*

*aware of how to adjust the [lap belt]'. The record states the class 'teacher discussed with mum and dad that the [child] uses the Jenx chair & that he prefers it.' The record states further that '[the complainant] & [OT] agreed that [child] should continue to use Jenx chair even though it is overprovision it is more comfortable & [the child] settles in it. OT adjusted strap on this Jenx chair & advised class staff re same'.*

83. I note the Trust said the OT was not aware that the Heathfield chair was shared with another pupil until the complainant informed her during the telephone call on 28 February 2017. I found no evidence to indicate otherwise. However, as stated previously, I am satisfied the Heathfield chair was allocated to the child and the OT signed for his use as a specialist resource in the Annual Review 2016. Thus, I am satisfied the OT was aware that on learning the chair was shared, it was in fact allocated to the child.
84. However, having examined the annotated record of the telephone call on 28 February 2017, I found no evidence to suggest the OT clarified or confirmed with school staff, or the complainant, that the Heathfield was allocated to the child. I also found no evidence to suggest the OT instructed staff they should not share the chair with other pupils or adjust the lap belt. This is despite the class teacher informing the OT that the chair was shared, and the OT documenting this in the OT records.
85. In its response to this Office, the Trust said that following the telephone call, *'the OT did not adjust the lap belt on the Heathfield... as [the complainant] agreed on the telephone call that [the child] should continue to use the Jenx'*. However, I consider the complainant's agreement to the use of the Jenx chair was based on her belief that the child shared the Heathfield chair with another pupil. Also, that the lap belt was too tight or could not be adjusted. This agreement did not absolve the OT's responsibility to demonstrate transparency and provide full, accurate and clear information to the complainant. The complainant said she would not have agreed to the Jenx chair had the OT reassured her that school staff would not share the Heathfield chair with another pupil. However, I also note the Trust's position that the OT could not



provide this reassurance given she was present in the school only three hours per week.

86. I refer to section 3.2.4 of the OT Code of Practice, which requires that OT staff *'must always provide adequate information to a service user in order for them to provide informed consent. Every effort should be made to ensure that the service user understands the nature, purpose and likely effect of the intervention before it is undertaken'*. I consider that during the telephone call on 28 February 2017, the OT failed to provide complete information to the complainant. I consider this prevented the complainant from having all information required to enable her to form an opinion on the Jenx chair and provide informed consent. In failing to do so, I consider the OT failed to demonstrate that she fulfilled section 3.2.4 of the OT Code of Practice.
87. The Third Principle of Good Administration *'being open and accountable'*, requires bodies to *'provide honest evidence-based explanations'* and to give reasons for decisions. I consider the OT's failure amounts to maladministration. As a consequence of this failure, I consider the complainant experienced a loss of opportunity to make an informed decision regarding which chair the child should use. I therefore uphold this element of the complaint.

**Issue 2: Whether the Western Health and Social Care Trust's Occupational Therapy department managed the use of the Jenx chair appropriately and in accordance with relevant standards.**

**Detail of Complaint**

88. The complainant raised the following concerns:
- The OT sought agreement from the complainant for the child's use of the Jenx chair without knowing where it originated from, and without first undertaking an assessment. The complainant said the Paediatric OT (the OT's line manager) informed her the Trust no longer used the Jenx chair as it was difficult to service;

- The OT did not take any action when she became aware that school staff used the Jenx chair to restrain the child (using the lap belt and foot sandals), and wheel him to different areas in the school; and
- The OT failed to remove the foot sandals. This allowed school staff to use the sandals to restrain the child.

## **Evidence Considered**

### **Legislation/Policies/Guidance**

89. I considered the following guidance:

- OT Code of Practice; and
- Three Steps to Positive Practice.

Relevant extracts of the guidance referred to are enclosed at Appendix four to this report.

### **The Trust's response to investigation enquiries**

#### *The OT's recommendation to use the Jenx chair*

90. The Trust explained the EA funds and provides all equipment required for children following an OT's recommendation. The school has a range of seating options, which are '*shared or reissued to children in accordance with assessed need*'. The Jenx chair belonged to the EA and it does not have any records for it. The chair was already in the child's classroom as the OT trialled it for another pupil.

91. I asked the Trust if the Paediatric OT informed the complainant that it no longer used the Jenx chair. It explained the complainant spoke with the Paediatric OT on 15 February 2018. The note of the call documented that they discussed seating provision within school. However, it did not refer to this comment, and the Paediatric OT did not recall making it.

#### *The use of the Jenx chair*

92. The Trust explained the OT spoke with the complainant on the telephone on 20 June 2017. During this call, the complainant expressed '*concerns regarding the overuse of the Jenx chair within the classroom*'. The note of the call did not

document any comments regarding use of the foot sandals. Therefore, it is *'unable to comment'* on this particular issue.

93. The Trust explained the OT advised school staff on the use of the chair for specific tasks. The OT provided a *'verbal handover'* to school staff. The teacher and the OT documented the outcome of the handover in the home school diary. The OT spoke to the Principal the same day regarding seating. The OT documented that she advised staff how to adjust the strap on the chair but did not demonstrate how to use the foot sandals. The OT did not intend staff to use the Jenx chair as a restraint. Due to her *'limited presence within the school'*, the OT was not aware how school staff used the Jenx chair.
94. The Trust said lap belts are a *'standard safety feature of all specialist seating'*. Staff must use them when the chair is moved with the occupant or when the high/low function is used. Foot sandals attached to a foot plate are *'required for postural and positional needs'* and the child did not require them. Lap belts, foot straps or tables *'can be considered as restrictive practice if used for purposes other than the therapeutic use they were intended'*. Any other uses require a *'multidisciplinary agreement and recommendation, not a manual handling risk assessment'*.
95. The Trust said the OT completed a *'use of seating provision document'* on 8 September 2017. She completed a sensory assessment with follow up advice and provided intervention to parents and the school. The Trust shared the document with the child's parents, and both they and school staff signed it. A second review occurred on 20 October 2017. The OT received feedback that sensory strategies (deep pressure) enabled the child to sit on a chair with or without a belt. Everyone who attended the meeting felt it was still important to use the Jenx for meal time. The record of this review documented the child used a different chair in the classroom (Rifton chair<sup>11</sup>) and only used the Jenx for snack time.
96. The Trust explained staff again reviewed the Jenx chair on 9 February 2018. The note of the review did not refer to the complainant's statement that staff

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<sup>11</sup> A positioning chair for clients with special needs.

strapped the child in with his feet. The Trust agreed the complainant requested removal of the Jenx chair completely at that time, and staff did not use it following the review. Staff removed the chair because of the complainant's '*valid concerns*' regarding restraint of the child in school. The OT was in the school for three hours per week at this time and '*cannot be accountable for any additional usage of the chair outside of the original purpose*'.

97. I asked the Trust what actions the OT took following implementation of the Three Steps to Positive Practice guidance. It explained the OT organised the meeting held on the 8 September 2017 to discuss the use of seating provision in school. By having the child's parents as part of the decision making, the '*OT aimed to ensure the intervention was in his best interest*'. The OT also planned a review for 20 October 2017. She undertook a sensory assessment and provided intervention to school and home. This was to build skills and prepare the child for the '*ongoing process of his development and adjustment*'. It was also to focus the child during the school day, whilst flexible to change, and eventually to no longer require a lap belt for seated tasks. The plan supported the child's '*Article 5 and Article 8 Human Rights, and the application of the FREDA principles and values*'.

#### *Removal of the Jenx chair's foot sandals*

98. The Trust explained that the company provided foot sandals with the footplates for positional use. It said the child '*did not require this accessory*' and '*they should have been removed*'. The Trust explained it acknowledged this and apologised to the complainant in its response to her complaint.
99. The Trust explained that in June 2017, the complainant informed the OT during a telephone call that the footplate had fallen off the Jenx chair. It said the telephone note documents that the complainant said school staff informed her the OT removed the footplate. It explained this was '*not the case*'.

#### **Relevant Trust records**

100. I enclose a summary of the Trust's records relevant to this investigation at Appendix five to this report.

## **Relevant Independent Professional Advice**

101. I enclose the full IPA advice report at Appendix three to this report.

## **The complainant's response to the draft report**

102. The complainant provided a copy of a diary entry the OT and class teacher signed, dated 28 February 2017. The diary entry documents that the OT spoke to staff about loosening and tightening the lap belt. It also documents that the OT completed an overall check of the '*red chair*' (Jenx) the child used. The complainant said this evidenced the OT '*took advantage of my inability to understand restraint was ongoing as a method to control [the child] throughout his school day*'.
103. The complainant explained she did not sign or agree to staff using a lap belt for the child when they signed the Use of Seating Provision document on 8 September 2017. She felt the Trust's response to enquiries suggested she did. However, the form clearly documents that the child should not wear a belt.
104. The OT records outlining the seating review on 20 October 2017 document the child should use the chair for mealtimes '*with or without a belt*'. The complainant did not agree to this change. She said she did not receive or sign a use of seating provision form on 20 October 2017. The complainant also said she did not have an opportunity to disagree with the OT records, and the OT '*failed to document these records contemporaneously*'.
105. The complainant provided a diary entry from 6 February 2017, which showed a photograph of the child in the Jenx chair with his feet restrained using the foot sandals. She explained the child was '*subjected to restraint*' and the OT was responsible, under the Children (NI) Order 1995, to prevent this harm continuing. They continued to agree to the OT recommendations and subsequently signed to continue using the Jenx chair for feeding only. This is without awareness of the '*serious restraints*' the child was subjected to on 6 February 2017.

106. The complainant provided contemporaneous records that evidenced she did not know staff restrained the child's feet using the foot sandals until January 2018.
107. In response to the OT IPA advice received, the complainant clarified they have only two pieces of equipment at home. The child uses both for their intended purpose.
108. The complainant considered it critical she underlines that the medical model used to care for the child '*highly pathologises disability*'. The OT service '*failed repeatedly to acknowledge that a disabled child is, by virtue of the Children (NI) Order 1995, to be a Child in Need*'. This required the Trust to undertake an '*enhanced level of communication and safeguarding measures*' in the care and support of disabled children, '*irrespective of the need to respond to a formal complaint such as this*'. Research evidence, knowledge and best practice have evolved to inform us that practice previously applied '*is no longer acceptable*'. Irrespective of any intent to harm, the Trust's approach has '*harmed*' the child.

### **The Trust's response to the draft report**

109. The Trust said the OT did not provide the Jenx chair. Instead, the child sought it out himself in the classroom because he was familiar with it as he has a similar chair at home. It stated the OT did not '*prescribe*' the chair, but '*endorsed*' it for the child's use in the classroom. It did not intend for school staff to push the child while seated in the Jenx chair.
110. In relation to the foot straps on the Jenx chair, the Trust stated these are Velcro straps for positioning. It acknowledged its staff should have removed these straps. The child used a similar chair at home. Therefore, the OT assumed using the chair would not cause concern. However, the Trust acknowledged this did not remove the need for a valid handover and associated documentation.
111. The Trust explained it is currently developing a regional seating passport<sup>12</sup> in conjunction with the Public Health Agency.

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<sup>12</sup> A type of guide to safely use equipment.

112. In relation to the use of seating provision form, the Trust stated it completed a form when the child returned to school after the summer holidays (September 2017) as the child was not in school during July or August. It did not complete a risk assessment in relation to manual handling.

### **Analysis and Findings**

#### *The OT's recommendation to use the Jenx chair*

113. The complainant raised concern that the OT sought her agreement for the child to use the Jenx chair without undertaking an appropriate assessment. In response to the draft report, the Trust explained the OT did not provide the chair. Rather, the child sought out the chair himself as he had the same chair at home. I wish to remind the Trust that it was the OT, as the healthcare professional, who had overarching responsibility for chair provision following an appropriate assessment. I am disappointed the Trust sought to absolve itself of the responsibility for this decision and place it on a child, especially one who lives with GDD. I am satisfied, for the purposes of this investigation, that the OT was responsible for providing the chair for the child's use in school.

114. As previously stated, in accordance with the OT Code of Practice, all OT clinical actions need to take place after assessment and evaluation of the findings, demonstrating clear clinical reasoning, and recorded with clear clinical notes. Moreover, sections 4 and 3.1 of the OT Code of Practice requires that OTs use '*interview, observation and / or specific assessment*' to '*identify the service user's occupational needs*' and their actions should be based '*on national guidelines, research and evidence to inform practice...*'

115. I refer to the record of the complainant's telephone discussion with the OT on 28 February 2017. It documents '*[the OT] spoke to [the complainant] & agreed [the child] continue to use Jenx chair as though it is over provision it is more comfortable & [the child] settles in it*'. I consider it clear from this record that the OT recommended the child switch from using the Heathfield to a Jenx chair on the basis that the child '*settles in*' the Jenx and '*prefers it*'.

116. I note the IPA's advice that a child's preference for a particular specialist chair does not constitute clinical evidence to prescribe a chair. Having reviewed the available records, I accept the IPA's advice that there was *'no clinical reasoning for switching from a Heathfield chair to a Jenx'*. Furthermore, the IPA advised that on recommending the Jenx chair to the child, the OT should have completed a clinical assessment to determine the child's postural needs. I accept the IPA's advice that there was no assessment of the child's needs prior to recommending the Jenx for the child, or an assessment of *'his engagement in school tasks with and without the chair'*. As such, I consider the OT failed to demonstrate that she fulfilled the OT Code of Practice.
117. In relation to the suitability of the chair, I note the IPA's advice that she was *'unable to understand or identify how [the] child moves from a Heathfield to a Jenx chair which are two completely different chairs'*. The OT recommended the child use the Jenx chair to replace the Heathfield chair, which he used for mealtimes. However, the IPA advised that a Jenx chair is *'a highly specialist chair'* for children with high postural needs. She advised, *'it is based on wheels exactly because children [who] use it have difficulty walking at all or for long distances'*. I note also the Jenx chair was equipped with additional features and accessories to those of the Heathfield. These included foot sandals.
118. I note the IPA's concern that the OT recommended the Jenx chair despite having acknowledged it was over prescription. The IPA advised that over prescription can prevent a child from developing/improving their ability to engage with people and their environment. Moreover, I accept her advice that it *'is a failure of good practice [and] equally risky for the health and wellbeing of the child as under prescription'*. With this in mind, I consider it was particularly important for the OT to explain this and to provide the child's parents with full and complete information about the Jenx chair's features and how the child would use it.
119. The complainant said, *'the handover for the Jenx chair was done over the phone'* and she had not been invited to attend in person (to look at the chair). The complainant also said she was not aware of the presence of foot sandals



on the chair until she later saw photos of the child in the Jenx with his feet strapped.

120. Section 3.24 of the OT Code of Practice requires staff to obtain informed consent whereby they must provide '*adequate information to a service user in order for them to provide informed consent. Every effort should be made to ensure that the service user understands the nature, purpose and likely effect of the intervention before it is undertaken*'. While I note the telephone discussion of 28 February 2017, I accept the IPA's advice that during this call, the OT did not give sufficient or complete information to the complainant regarding the clinical rationale for the Jenx chair, the chair's features, or how the child should use it. I accept the IPA's advice that this does not constitute informed consent. I found no documented evidence within the records to indicate the OT explained and sought agreement with the child's parents about how the child should use the Jenx chair. I consider, therefore, that the OT failed to demonstrate she fulfilled section 3.24 of the OT Code of Practice. I consider this amounts to a failure in the child's care and treatment.
121. I consider the OT's failure to undertake appropriate assessments before recommending the Jenx chair caused the child a loss of opportunity to have the suitability of the chair scrutinised and its use discounted. I consider the OT's failure to take proper account of good practice, by over prescribing the Jenx, caused the child a loss of opportunity to optimally improve his ability to engage with his environment. I also consider the OT's failure to obtain informed consent caused the complainant distress, uncertainty, and a loss of opportunity to receive complete information to allow her to make an informed decision about the chair. Consequently, I uphold this element of the complaint.
122. The complainant said the Paediatric OT informed her via telephone on 15 February 2018, that the OT Service do not use Jenx chairs '*as they find difficulty getting [them] serviced*'. The Trust explained to this Office that the Paediatric OT does not recall making this comment. Also, I note the documented record of this telephone call does not refer to where the Jenx chair came from or that they have difficulty servicing these chairs. While I have no

reason to doubt the complainant's claim, I am unable to conclude on this matter in the absence of any further evidence.

123. The complainant raised concern regarding where the Jenx chair originated and to whom it belonged before it was *'transferred'* to the child. I note the Trust's response to this Office which said the Jenx chair belonged to the EA and the Trust does not have any records for it. I note the Trust said the chair was already in the child's classroom as the OT trialled it for another pupil. In the absence of further evidence, this investigation did not establish previous ownership of the chair. I note the Trust also explained that the school has a range of seating options, which are *'shared or reissued to children in accordance with assessed need'*. I would ask the Trust to consider the IPA's advice regarding the risks of sharing allocated specialist chairs among pupils within her report at appendix three.

#### *The use of the Jenx chair*

124. The complainant said the OT allowed staff to use the Jenx chair to *'tie'* the child's feet with straps and wheel him around the school despite being fully ambulant.
125. The child began using the Jenx chair following the OT's telephone discussion with the complainant on 28 February 2017. The IPA advised that on receipt of the chair, in accordance with good practice, the OT should have issued an individualised photographic seating plan to instruct school staff how to use the chair in accordance with the child's needs. However, having reviewed the available records, I note the OT did not do so.
126. The records indicate the OT did, however, complete a 'Use of Seating Provision' form on 8 September 2017. The OT shared the form with the child's parents (who signed it), and the school principal and teacher. I am critical of the timeliness of this 'Use of Seating Provision' form, which the Trust completed seven months after it provided the Jenx chair to the child. I note the Trust said it considered completing this form earlier. However, it did not as the child was not at school due to the summer holidays. I wish to highlight that even if the Trust completed the form in July or August 2017, this was still five months after the

child started using the chair. Moreover, the IPA advised, it was *'not a photographic seating plan'* and *'includes the bare minimum of information needed.'* The IPA advised *'it does not explain why a highly specialist chair is given to an ambulant child and how [it] is... the least restrictive practice'*. I accept this advice.

127. On completion of the 'Use of Seating Provision' form, I consider it would have been appropriate to have given due regard to the Three Steps to Positive Practice guidance, published in June 2017. Page 7 of the guidance states that a restrictive practice *'must be a necessity, used only as a last resort, the least restrictive measure possible, proportionate to the risk and/or type of behaviour, regularly reviewed and used for the shortest length of time possible.'* I am critical that the 'Use of Seating Provision' form completed on 8 September 2017 did not include this level of detail.

128. I am satisfied it was the OT's responsibility, in accordance with 10.2 of the OT Code of Practice, to communicate with school staff to ensure the safety and welfare of the child. Thus, I am satisfied the OT ought to have provided appropriate guidance to staff instructing them how they should use the Jenx chair for the child. I consider this should have been in the form of a timely issued, documented photographic seating plan. This should have contained details on which features/accessories of the chair the child should use. Also, how and when, and for what tasks, he should use the chair so that it formed the least restrictive practice. In my view, I consider it was of particular importance that the OT provided complete and accurate information to school staff regarding whether and when they should use the wheels, straps and lap belt. This is particularly so given the child was fully ambulant, and the complainant previously expressed concerns with the use of the Heathfield chair to transport and restrain the child within school.

129. The Trust explained the OT carried out a *'verbal handover'* with school staff regarding the use of the chair. It also said OT staff did not intend school staff to use the Jenx chair as a restraint. In response to the draft report, the complainant provided a diary entry, dated 28 February 2017. This documents that the OT discussed with staff use of the lap belt and completed an overall

check of the chair. However, I do not consider this sufficiently evidences that the OT provided a verbal handover on the use of the chair, as it did not detail what guidance she provided to the school staff (apart from use of the lap belt). The Trust explained that due to the OT's '*limited presence within the school*', the OT was not aware of how school staff used the Jenx chair. I consider this is even more reason for a documented handover, as it would have contained vital information for school staff who interacted with the child daily and when the OT was not present.

130. The complainant said the OT did not take any action when she became aware that staff used the Jenx chair to restrain the child and to transport him to different areas within the school. She explained the OT therefore '*failed to ensure [the child's] safety and well-being*'. The diary entry, dated 28 February 2017, evidences that the OT checked the chair that day. Therefore, she would have been aware of the restraints on the chair (the lap belt and foot sandals). However, I do not consider it evidences the OT was aware staff would use those restraints.
131. The available records indicate the complainant contacted the OT Service by telephone on 20 June 2017 and expressed concern that school staff used the Jenx chair to restrain the child. The annotated note within the OT records evidences that OT 2<sup>13</sup> to whom the complainant spoke, '*advised [the complainant] may need to put a risk Ax [assessment] in place to outline when chair is to be used.*'
132. On review of the available records, I note OT 2 discussed undertaking a risk assessment with the vice principal and documented within the records that she informed the OT. I accept the IPA's advice that on OT 2's notification of the complainant's concerns regarding restraint, her actions to discuss these concerns with the school principal were appropriate.
133. In its response to the complainant, dated 13 June 2018, the Trust said that as the complainant raised concerns at the end of the school term, it did not undertake the '*risk assessment*' until 8 September 2017. However, I found no

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<sup>13</sup> OT 2 refers to a B5 OT (Grade 5), while OT refers to B6 OT (Grade 6).

evidence of a risk assessment in the records available. In its response to the draft report, the Trust stated that the risk assessment referred to was in fact the Use of Seating Provision form. I am critical the Trust did not make this clear in its response to the complainant.

134. The Use of Seating Provision form, dated 8 September 2017, documents that use of a belt is not required for the child. The complainant signed this form as agreement. However, a review of the child's seating took place on 20 October 2017. The annotated note within the records of the same date states '*[the child] is using the Rifton chair for up to 10 minutes if engaged... Jenx junior chair is used only for snack time **with or without the belt** [my emphasis]. All feel this is still important to use for meals as so important for [the child] to have his meals*'. The complainant raised concern that this record documents a change in belt use for the child. In its response to enquiries, the Trust stated this followed feedback the OT received that the sensory strategies (deep pressure) enabled the child to sit on a chair '*with or without a belt*'. I note the Trust documented this in its records and not on a second Use of Seating Provision form. This would have demonstrated that the Trust obtained informed consent from the child's parents this change in restrictive practice. In the absence of such evidence, I cannot be satisfied the Trust made the complainant aware of the change and obtained her consent.
135. Subsequently, the records indicate that the Trust removed the Jenx chair from the child's use on 9 February 2018 following a meeting in which the complainant requested to review the child's seating. Based on the available information, I found no evidence to indicate the complainant sought full removal of the Jenx chair between 20 October 2017 and 9 February 2018. Notwithstanding, as stated above, I am satisfied that on 20 June 2017 the complainant clearly raised her concerns that staff used the Jenx chair to restrain the child. Thus, I am critical that during this period, and following the complainant's concerns raised on 20 June 2017, the OT did not complete and issue a comprehensive individualised photographic seating plan for the child's use of the chair.

136. I consider that had the OT provided staff an appropriate seating plan for the child's use of the Jenx chair, it could have helped minimise the risk of restraint for the child. In failing to do so, I am satisfied the OT did not act in accordance with section 10.2 of the OT Code of Practice. I consider this amounts to a failure in care and treatment.
137. I am satisfied the failures identified caused the child to experience unnecessary restraint leading to his distress. I consider this failure also caused the complainant distress, frustration and uncertainty regarding the occupational therapy care the child received. I uphold this element of the complaint.
138. The complainant also raised concerns that the OT told her she had witnessed the child being wheeled in the Jenx chair within the school. However, the complainant said the OT failed to disclose this information at the Board of Governors' meeting on 6 March 2018. The complainant said the OT later acknowledged to her that she did not share this information at the meeting, as to do so *'would have caused an explosion and a mess'*. I note the complainant explained she felt the OT, in failing to be honest and transparent about this issue, failed in her duty of care to the child. I note the Trust's response to the complainant of 13 June 2018, in which it said, *'this issue should have been reported within this forum'*. I note the Trust also called this *'a significant error of judgement on the [OT's part].'*
139. I note the Trust's view on this issue. I also note the Trust's response to the complainant acknowledged the circumstances of her concern had occurred. Therefore, in the absence of available evidence, I have no reason to doubt the veracity of the complainant's concern. I consider the OT's failure to disclose the information which she shared with the complainant amounts to maladministration. The Third Principle of Good Administration, requires bodies to be 'open and accountable'. I consider the OT failed to act in accordance with this principle by failing to disclose the information which she had previously shared with the complainant. I understand and acknowledge that this would have caused the complainant and her family distress and frustration. I uphold this element of the complaint.

140. In its response to the complainant of 13 June 2018, I note the Trust acknowledged the distress this matter caused the complainant and stated the matter *'will be addressed within the OT Service to ensure that staff feel empowered to be open and transparent in reporting their observations'*. I welcome the Trust's acknowledgement that this occurred. I welcome also its acknowledgement of the distress it caused the complainant and her family. However, in providing these acknowledgments to the complainant, I consider the Trust ought to have provided a specific and prompt apology within its written response.

#### *Removal of the Jenx chair's foot sandals*

141. The complainant said the OT failed to remove the foot sandals from the Jenx chair. She explained this allowed school staff to use the sandals to restrain the child.

142. I am satisfied that in recommending the child use the Jenx chair, it was the OT's responsibility to ensure it was adjusted to suit the child. I note the Trust confirmed to this Office that the child did not require the foot sandals. Thus, I accept the IPA's advice that the OT, on recommending the child use the Jenx chair, should have removed them.

143. I am satisfied further, that the complainant raised clear concerns regarding overuse of the Jenx chair and its use as a restraint in her telephone call to OT2 on 20 June 2017. Thus, I consider the OT should have removed the foot sandals without delay. This would have removed the risk of school staff using them. I am satisfied the OT did not do so. I consider that by failing to remove the foot sandals, the OT did not demonstrate that she fulfilled sections 6.2 and 6.4 of the OT Code of Practice. I consider this amounts to a failure in care and treatment.

144. I refer to the Trust's response to enquiries regarding this issue. The Trust stated that the notes of the complainant's telephone call with the OT on 20 June 2017 did not refer to foot sandals. The complainant provided evidence that she did not become aware of the foot sandals until January 2018. Therefore, based on the note of the call, and this evidence, I am satisfied the

complainant did not ask the OT to remove the sandals at this time because she did not know about them.

145. The complainant provided photographs showing the child in the Jenx chair with the sandals restraining his feet. I consider this failure led to the child experiencing unnecessary restraint, leading him to experience distress. I also consider this in turn caused the complainant distress, upset and frustration regarding the level of occupational therapy care the child received. As a result, I uphold this element of the complaint.

146. I refer again to the FREDA principles and consider that in failing to take action to minimise restraint of the child, the Trust did not adhere to the principles of freedom, dignity and autonomy.

### **Issue 3: Whether the Western Health and Social Care Trust handled the complaint in accordance with its policy and relevant standards.**

#### **Detail of Complaint**

147. The complainant said the Trust allowed the Paediatric OT to investigate her complaint despite her previous involvement with the complainant. She also said the Trust failed to undertake a robust investigation into her complaint.

148. The complainant raised concerns with the Trust's written response to her complaint issued on 13 June 2018. She said the response '*insinuates*' she was aware foot sandals were on the Jenx chair at the time she informed OT staff of the missing footplate. However, she was not. She also raised concern with the clarity and accuracy of the Trust's written response. In addition, she said the response failed to address the following issues:

- Who attached the wheeled base to the Heathfield chair;
- Failure to obtain consent for attaching the wheel base;
- Why the OT did not remove the foot sandals from the Jenx chair;
- Did not apologise to the child;
- Did not explain what it said it failed to manage effectively; and
- Reasons why the child had to move from a Jenx chair to a Rifton chair.



## **Evidence Considered**

### **Legislation/Policies/Guidance**

149. I considered the following policies and guidance:

- The Trust's Complaints Policy; and
- The DoH's Complaint Procedure.

I enclose relevant sections of the policies and guidance referred to in Appendix four to this report.

### **The Trust's response to investigation enquiries**

#### *The decision for the Paediatric OT to investigate the complaint*

150. The Trust explained the Paediatric OT was the '*Clinical Lead for this service*' and the OT's Clinical Supervisor. It said the staff member's line manager usually responds to the complaint. However, an Assistant Director reviews the response. The Trust explained that in this instance, its Head of Occupational Therapy Services was '*ultimately the lead investigator for all the complaints received*'. The Trust explained it carries out investigations '*objectively and independently to identify where we have failed to meet the assessed needs of our clients, where we could have performed better, acknowledging and apologising for failings, and identifying learning to be implemented into our services for improvement*'.

#### *The written response to the complaint*

151. The Trust said it sufficiently responded to the concerns raised. It explained it took '*very seriously*' the issues raised within the complaint. It also said staff raised the issues with the OT in supervision sessions, and the complaint led to a review and change of practice to improve the service.

152. The Trust said at the time of writing its response to the complaint, it believed the complainant was aware foot sandals were on the Jenx chair. It explained the OT assumed the complainant observed the child in the chair while he was in the classroom. The Trust said it referred to the OT's failure to remove the foot sandals from the Jenx chair in its response and apologised to the complainant for it.

153. I referred the Trust to the complaint that its response did not correctly outline the reasons why the child moved from the Jenx chair to the Rifton chair. It explained it issued its response from a '*clinical point of view*'. The Trust said it considered the child moved to a less restrictive chair as he '*made progress*'. However, it acknowledged the complainant's concerns '*started this process*'.

154. The Trust explained that in her written response, the Paediatric OT acknowledged the information sharing, communication, and consent failures, and apologised to the complainant. It also said it informed the complainant that EA own all of the equipment and will hold it in school for pupil use.

### **Relevant records**

155. I enclose a summary of the records considered at Appendix five to this report.

### **The Trust's response to the draft report**

156. The Trust reiterated that the Line Manager acts as investigating officer for all complaints. Also, the Head of Service had oversight throughout the process.

157. In relation to the delay in issuing its response to the complaint in June 2018, the Trust said it was '*due to sick leave*' and that it conducted its investigation '*over a series of meetings and notes reviewed*'.

### **Analysis and Findings**

158. The complainant raised concern that the Paediatric OT conducted the investigation of her complaint to the Trust. She said that as a result, '*it was not in any way an independent investigation*'. The complainant said this is because she had raised, within her Trust complaint, a specific concern relating to the Paediatric OT and her provision of inaccurate information.

159. In response to this element of the complaint, the Trust explained the Paediatric OT was the '*Clinical Lead for this service*' and the OT's Clinical Supervisor. The Trust said the staff member's line manager usually responds to complaints and an Assistant Director reviews the response. The Trust also said the Head of Occupational Therapy Services was '*ultimately the lead investigator for all the complaints received*'.

160. The Trust's Complaints Policy does not provide guidance on who should hold the role of Investigating Officer for a complaint. It also does not provide guidance to staff regarding what process they ought to follow if a complaint is about a member of staff. Notwithstanding, the Trust said it carries out investigations '*objectively and independently*'. I note its Complaints Policy lists this as the third Policy Principle in Part One of the Trust's Complaints Policy. As such, in operating its Complaints Policy, I consider the Trust should both seek to ensure it upholds this Principle and seek to be seen to uphold it.
161. I acknowledge the Trust's decision to appoint the Paediatric OT as the Investigating Officer for the complaint may have been in accordance with its usual practice. However, I do not consider it appropriate in this instance. I am satisfied the Paediatric OT was central to issues raised in the complaint and was specifically named in the complaint. As such, I am satisfied the Trust ought to have referred the complaint to another appropriate senior member of staff for investigation. In failing to do so, I consider the Trust failed to demonstrate it acted in accordance with the objective and independent principle of its Complaints Policy.
162. The complainant raised concerns with the accuracy of the Trust's written response to her complaint, issued on 13 February 2018. In the letter, the Trust referred to the complainant's telephone call on 20 June 2017 and said she advised OT 2 '*that the existing footplate with sandals [my emphasis] was missing*'. The complainant said it '*insinuated*' she knew about the presence of the foot sandals on the Jenx chair when she requested replacement of the footplate.
163. I considered the contemporaneous record the complainant provided, which evidenced that she was not aware of the presence of the foot sandals on the chair until January 2018. I am therefore satisfied that the complainant was not aware of the foot sandals at the time of the telephone call in June 2017. I am satisfied the statement in the response letter does infer the complainant was aware of the foot sandals at that time. The complainant said this reference to foot sandals was '*deliberate*' and '*provocative*'.

164. In response to this Office, the Trust said it based its statement on the OT's assumption [my emphasis] that the complainant knew about the sandals, as she previously observed the child in the chair. This causes me concern. In responding to complaints, I expect bodies to base the information they provide on evidence rather than conjecture. I note OT 2's telephone call record from 20 June 2017 did not document that the complainant referred to '*foot sandals*' when she requested replacement of the missing footplate, or when she raised concerns regarding restraint. Furthermore, the Trust did not provide me with any other evidence that would support the OT's assumption.

165. I note that in an earlier draft of the response the statement only referred to the footplate and not the sandals<sup>14</sup>. Thus, I consider the Trust's subsequent decision to add reference to the sandals in its final response was a considered one and causes me to question its reasons for the addition. While it may not have been the Trust's intention, I consider the complainant could reasonably interpret the addition as defensive and deflective of responsibility, as it suggested the complainant knew about the sandals, and therefore also the potential for restraint. However, I am satisfied she was not aware of them at that time.

166. The DoH Complaints Procedure states that information provided in responses to complaints ought to be accurate, honest, and balanced. It should also '*address the concerns expressed by the complainant*'. By including this reference to foot sandals and doing so only on the basis of the OT's assumption and without supporting evidence, I consider the Trust failed to demonstrate it acted in accordance with this section of the DoH Complaints Procedure.

167. The complainant raised concern that the Trust's written response to her complaint failed to address all issues of her complaint. In particular, she said it did not acknowledge the OT failed to remove the foot sandals from the Jenx chair after she raised her concerns in June 2017. I am satisfied the complainant

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<sup>14</sup> In relation to the complainant's request to have the missing foot plate replaced.

asked this question in her complaint submission to the Trust on 4 April 2018. However, I do not consider the Trust's written response addressed this issue. Furthermore, I am concerned the Trust may have relied on the inaccurate information regarding the complainant's knowledge of the foot sandals to discount her concern.

168. The complainant also said the Trust failed to address the concern about the decision to order and fit the wheeled base to the Heathfield chair. While the written response acknowledged a wheeled base was fitted to the child's Heathfield chair, I note the Trust's response said *'it [was] not documented in [the child's records].'* I note the Trust apologised *'that this decision was not documented accordingly'*. The written response states further that *'to address this [the Paediatric OT] has confirmed that appropriate consent will be obtained from parents'* in future.
169. However, in covering the issue of the Heathfield chair and wheeled base, I do not consider the Trust took proper account of the complainant's concern. I note the Trust failed to provide an adequate explanation to the complainant outlining why it ordered and fitted the wheeled base. Furthermore, I consider the Trust failed to thoroughly address this element of the complaint, as it did not acknowledge that the child's parents did not provide consent.
170. In addition, the complainant raised concern that the Trust's response failed to answer her question of who fitted the wheeled base to the Heathfield chair. I am satisfied the complainant raised this specific issue in her complaint to the Trust. However, the Trust's response documents *'the wheeled base... was fitted by the OT Service'*. In its response to my enquiries, the Trust clarified that it was the OT who fitted the wheeled base. I consider the Trust failed to provide clear and complete information in response to this element of the complaint. The Trust's Complaints Policy provides that the Trust aims *'to ensure responses to complaints are... comprehensive, accurate and open'*. In failing to address fully the specific concern which the complainant raised in her complaint, I consider the Trust failed to act in accordance with this element of its Complaints Policy.

171. The complainant raised a further concern that the Trust failed to document the correct and true reasons why it replaced the Jenx chair with a Rifton chair. I note in its response to the complainant, the Trust said '*it was agreed*' that the child '*had made sufficient progress to no longer require the Jenx seat and it was removed from the class*'. The response further documents '*the assessment indicated that [the child] required a simple class seat and on occasions a Rifton seat*'.
172. However, the Trust confirmed to this Office that it was the complainant's concerns that '*started this process*'. I note this referred to concerns regarding restraint the complainant raised to the OT in February 2018. I am satisfied the reasons documented within the Trust's response do not fully reflect the circumstances which initiated this decision. As such, I do not consider the Trust provided clear and complete information regarding this issue.
173. The Trust's Complaints Policy provides that the Trust aims '*to ensure responses to complaints are... comprehensive, accurate and open*'. In failing to address fully the complainant's concerns, as outlined above, I consider the Trust failed to act in accordance with this element of its Complaints Policy. I also note the Trust's Complaints Policy provides that it is underpinned by Principles of openness and responsiveness. In this regard, I consider the Trust also failed to act in accordance with this section of its Complaints Policy.
174. The Trust's letter to the complainant of 13 June 2018 states the delay in its response '*was to ensure your concerns were fully investigated*'. However, in its response to the draft report, the Trust said the delay was due to '*sick leave*'. I am disappointed and concerned that the Trust did not provide full reasons to the complainant for the significant delay in its investigation.
175. In relation to the investigation referred to, I found no evidence of an investigation beyond the Trust's written response to the complainant issued in June 2018. My examination of the records identified an absence of documentary evidence and of its rationale for the decisions made. I have also identified a number of issues the Trust failed to fully address in its response.

Therefore, I cannot be satisfied it appropriately investigated these elements. This concerns me and calls into question the rigour of the Trust's investigation of the complaint. Pursuant to the Trust's Complaints Policy, complaints should be '*fully*' and '*thoroughly investigated*'. Based on the evidence available, I am unable to determine whether the Trust undertook a thorough investigation in accordance with its Complaints Policy.

176. The complainant was also dissatisfied with the clarity and level of detail in the Trust's written response to her complaint. In particular, the complainant referred to the Trust's statement that the '*[The Paediatric OT] wishes to acknowledge that there were several areas where communication, information sharing and consent issues should have been managed more effectively*'. However, it did not explain what areas it referred to, how it failed to manage them effectively, and how it reached this finding.
177. The complainant also referred to the Trust's statement, '*[Paediatric OT] explained that there was a delay in completing a risk assessment until September 2017*' and that it '*and other written documentation was not shared with school staff to inform them of the appropriate use of the seating*'. I consider the Trust failed to clarify what specific documentation it did not share with school staff. Moreover, it did not explain why the delay and the failure to share information occurred. Pursuant to the Trust's Complaints Policy, responses '*should be clear, accurate, and easy to understand*'.
178. I am critical of this lack of clarity provided in the Trust's response. I consider this indicated a failure to demonstrate openness and accountability. Moreover, it does not demonstrate that the Trust sought to provide the complainant with a '*comprehensive and open*' response in accordance with its Complaints Policy.
179. The complainant raised concern that the Trust's response to her complaint failed to apologise to the child. The Trust's written response documents, in its closing paragraphs, '*acknowledges the distress this matter caused [the child], you and your family and for this [it] sincerely apologies (sic)*'.

180. The Trust's Complaints Policy provides that a response '*should include an apology where things have gone wrong with the aim of assuring the person making the complaint, that we have taken their concerns seriously*'. I consider it clear from the Trust's response that its investigation of the complaint identified failings. I note in its apology, the Trust referred '*to this matter*' which caused distress. In doing so, I consider the Trust failed to be clear and specific regarding the matters to which it related its apology. In the same way, I consider the Trust's written response, in addressing the issues outlined within it, failed to provide sufficiently clear explanations regarding the issues for which it was apologetic. I note also that in addressing the issues within its response, the Trust did not document sufficiently, its '*expression of regret or responsibility or acceptance of any harm done*'<sup>15</sup>. As such, I do not consider the apology provided the child and his family with assurance that the Trust took the complaint seriously. Therefore, I do not consider the Trust's apology to the child or indeed to the family, was in accordance with the Trust's Complaints Policy.

181. I consider the failings identified above amount to maladministration. The First Principle of Good Complaint Handling, 'getting it right', requires bodies to act in accordance with '*relevant guidance and with regard for the rights of those concerned*'. The Third Principle of Good Complaint Handling 'being open and accountable', requires bodies to provide full, clear and evidence-based explanations for their decisions, and to keep clear and accurate records. The Fourth Principle Good Complaint Handling 'acting fairly and proportionately', requires bodies to ensure '*complaints are reviewed by someone not involved in the events leading to the complaint*' and to ensure '*complaints are investigated thoroughly and fairly to establish the facts of the case*'. Furthermore, The Sixth Principle of Good Complaint Handling, requires bodies to '*acknowledge mistakes and apologise where appropriate*'. I consider the Trust failed to act in accordance with these Principles in its handling of the complaint.

182. As a consequence, I am satisfied the maladministration identified caused the complainant frustration that the Trust did not appropriately listen to, acknowledge or address her concerns regarding the child's OT care. I am also

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<sup>15</sup> The Power of Apology handbook, DA Professional – Dr Dorothy Armstrong. Available at [www.dorothyarmstrong.net](http://www.dorothyarmstrong.net)



satisfied the maladministration caused the complainant uncertainty regarding the circumstances and reasoning for what occurred in relation to the child's OT care. Furthermore, I am satisfied that it caused the complainant the time and trouble of bringing this issue of complaint to my office.

## **CONCLUSION**

183. The complainant submitted a complaint on behalf of her child, in relation to the Trust's Occupational Therapy department's care of the child while in school between 2016 and March 2018. The complainant said the OT failed to properly oversee the use of two specialist chairs she gave to the child and as a result, they were used for his restraint. The complainant also said the Trust failed to address issues of her complaint and it did not handle her complaint appropriately. I uphold elements of the complaint for the reasons outlined in the report.

184. I also wish to comment generally on the OT records for the child. I note that parts of the handwritten records were illegible, making it difficult for both this office and the IPA to review. The complainant also raised concerns that the records did not contain notes of telephone calls she had with OT service employees. She also highlighted the brevity of the telephone notes the Trust did record. I agree with the complainant's view. I would ask the Trust to ensure its staff record notes of all telephone calls it has with parents where they discuss a child's care and where it makes decisions about the treatment provided, in accordance with the relevant standards.

185. I recognise the impact the failures had on both the child and the complainant. I especially recognise the distressing situation the child was in while being restrained in seating in school. I also recognise the distress caused to the complainant on learning that her child was restrained in seating without her knowledge or consent.

## **Recommendations**

186. I recommend within **one** month of the date of this report:

- i. The Trust provides the complainant with a written apology in

accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice experienced caused to the child and his family as a result of the maladministration identified;

- ii. The Trust shares this report with staff involved in the child's occupational therapy care and asks them to reflect on the failures identified; and
- iii. The Trust's Chief Executive reminds staff charged with the responsibility of investigating complaints of: the need to be independent and without involvement in the events leading to the complaint; and to provide clear, full and accurate responses to all issues of the complaint.

187. I welcome the learning and service improvements the Trust has already implemented as a result of this complaint. These include holding regular multidisciplinary meetings to discuss any issues with restrictive practice or seating use; and the development of a specialist seating handover form and restrictive practice approval form. I note also the Trust has removed belts from all Heathfield chairs within education settings.

188. I further recommend the Trust provides training to relevant staff within three months of the date of my final report. It should provide evidence to confirm completion of training and that it used the findings in this report as a training tool for staff. The training should incorporate:

- i. The importance of creating and sharing with school staff an individualised photographic seating plan when prescribing a child a specialist chair;
- ii. The importance of undertaking clinical assessment of occupational needs before prescribing a specialist chair to a child; and
- iii. The importance of creating and retaining accurate and legible records related to the care of patients.

189. I recommend that the Trust implements an action plan to incorporate these recommendations and should provide me with an update within **three** months of the date of my final report. That action plan should be supported by evidence to confirm that appropriate action has been taken including, where appropriate, records of any relevant meetings, training records and/or self-

declaration forms which indicate that staff have read and understood any related policies.

190. It is evident from my reading of the records how involved the complainant was in her child's care and how she strived to speak for him when he was unable to do so himself. I hope this report goes some way to address the complainant's concerns about the care the child received between 2016 and March 2018.

**MARGARET KELLY**  
**Ombudsman**

**April 2024**

## **Appendix 1**

### **PRINCIPLES OF GOOD ADMINISTRATION**

**Good administration by public service providers means:**

#### **1. Getting it right**

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

#### **2. Being customer focused**

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

#### **3. Being open and accountable**

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

#### **4. Acting fairly and proportionately**

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

#### **5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

#### **6. Seeking continuous improvement**

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

## **Appendix 2**

### **PRINCIPLES OF GOOD COMPLAINT HANDLING**

**Good complaint handling by public bodies means:**

#### **1. Getting it right**

- Acting in accordance with the law and appropriate guidance with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learned from complaints.
- Including complaint management as an integral part of service design.
- Ensuring staff are equipped and empowered to act decisively to resolve complaints.
- Focusing the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure in the right way and at the right time.

#### **2. Being customer focused**

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including where appropriate co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

#### **3. Being open and accountable**

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.

- Publishing service standards for handling complaints.
- Providing honest evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

#### **4. Acting fairly and proportionately**

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions and actions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants

#### **5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

#### **6. Seeking continuous improvement**

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and the changes made to services, guidance or policy.