

The Ombudsman's final decision

Summary: Mrs F complained the Council failed to find a suitable special school and put in place suitable alternative provision for her daughter when her school could no longer meet her needs. The Council agreed it was at fault and proposed a remedy. We found its remedy was not enough to acknowledge the loss of educational provision its faults caused Mrs F's daughter. The Council agreed with our recommendations.

The complaint

1. The complainant, whom I shall refer to as Mrs F, complained about how the Council managed her daughter's education. She said it:
 - delayed consulting specialist placements once it identified she needed to be at a special school;
 - communicated poorly with her;
 - delayed accepting a placement offer at a suitable independent school; and
 - failed to arrange suitable alternative provision until a suitable special school was found.
2. As a result, Mrs F said her daughter experienced a loss of education and distress due to the impact on her mental health. Mrs F said she also experienced distress due to the stress and trouble this caused.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

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5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
 6. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

How I considered this complaint

7. As part of my investigation, I have:
 - considered Mrs F's complaint and the Council's responses;
 - discussed the complaint with Mrs F and considered the information she provided;
 - considered the information the Council provided in response to my enquiries; and
 - considered the relevant law and guidance to the complaint.
8. Mrs F and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Relevant law and guidance

Education, Health and Care Plans

9. Statutory guidance 'Special educational needs and disability Code of Practice: 0 to 25 years' ('the Code') sets out the process for carrying out EHC assessments and producing EHC plans. The guidance is based on the Children and Families Act 2014 and the SEN Regulations 2014.
10. A child with special educational needs may have an Education, Health and Care (EHC) plan. This sets out the child's needs and what arrangements should be made to meet them. The EHC plan is set out in sections. We cannot direct changes to the sections about education, or name a different school. Only the tribunal can do this.
11. EHC plans must be reviewed every 12 months. Within four weeks of a review meeting, a council must notify the child's parent of its decision to maintain, amend or discontinue the EHC plan. If it decides to amend the plan, it should start the process of amendment "without delay".
12. Where a council proposes to amend an EHC plan, it must send the child's parent the proposed amendments. The child's parent has 15 days in which to comment on the draft amendments. If the council decides to continue to make amendments after receiving the comments, it must issue the amended EHC plan as soon as practicable and within eight weeks of the date it sent the proposed amendments to the parents

Alternative provision

13. Councils must "make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any

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- period receive suitable education unless such arrangements are made for them”. (Education Act 1996, section 19(1))
14. Suitable education means efficient education suitable to a child’s age, ability and aptitude and to any special educational needs they may have. (Education Act 1996, section 19(6))
 15. The Council must consider the individual circumstances of each particular child and be able to demonstrate how it made its decision.
 16. The education provided by a council must be full-time unless a council determines that full-time education would not be in the child’s best interests for reasons of the child’s physical or mental health. (Education Act 1996, section 3A and 3AA)
 17. We have issued guidance on how we expect councils to fulfil their responsibilities to provide education for children who, for whatever reason, do not attend school full-time. (Out of school... out of mind? How councils can do more to give children out of school a good education, published in 2016)
 18. We made six recommendations. Councils should:
 - consider the individual circumstances of each case and be aware that a council may need to act whatever the reason for absence (with the exception of minor issues that schools deal with on a day-to-day basis) – even when a child is on a school roll;
 - consult all the professionals involved in a child's education and welfare, taking account of the evidence in coming to decisions;
 - decide, based on all the evidence, whether to require attendance at school or provide the child with suitable alternative education;
 - keep all cases of part-time education under review with a view to increasing it if a child's capacity to learn increases;
 - adopt a strategic and planned approach to reintegrating children into mainstream education where they are able to do so; and
 - put whatever action is chosen into practice without delay to ensure the child is back in education as soon as possible.
 19. Our focus report states local authorities should not assume that schools shoulder the entire responsibility for a child’s education.
 20. Statutory guidance (Children missing education statutory guidance for local authorities) sets out that the “school should agree with their local authority, the intervals at which they will inform local authorities of the details of pupils who fail to attend school regularly, or have missed ten school days or more without permission.” This applies to all schools, including academies.

What happened

21. Mrs F is the parent of a child (Child X), who has several health and development conditions which impacts her ability to receive and engage with education.
22. Child X’s special educational needs (SEN) were set out in her EHC Plan, which also listed a mainstream school (School Y) as her place of education.
23. In Summer 2021 Mrs F asked for an early annual review of Child X’s EHC Plan with the support of School Y. This was because School Y could no longer met Child X’s needs.

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24. The Council attended the annual review, and confirmed it intended to amend the EHC Plan a month later.
 25. The Council issued Child X's final Amended EHC Plan in October 2021. This set out her special educational needs (SEN) and listed School Y in Section I. However, it said this was until a suitable placement could be found, as Child X needed a specialist school.
 26. The Council consulted with three schools, which included a school Mrs F suggested. However, it told her in early 2022 the consultations had not led to a placement offer.
 27. Mrs F asked the Council to also consult with independent schools and requested an early annual review due to the lack of progress and communication from the Council.
 28. The Council consulted two further school and an independent school Mrs F suggested.
 29. Over the following two months the Council confirmed it was only the independent school which could meet Child X's needs. It also allocated another officer to Child X's case, as Mrs F was not satisfied with the lack responses she had to her concerns.
 30. The Council's officer told Mrs F the independent school could offer Child X a place for the 2022/2023 academic year, but this had to be approved by the Council first.
 31. Mrs F asked the allocated officer for updates and chased this up when she did not get any responses.
 32. In April 2022 an early annual review meeting for Child X's EHC Plan was held. The Council also sent consultations to five schools and again to the independent school. The main discussion of the meeting was the allocation of a school placement for Child X.
 33. Over the following month the Council shared its draft EHC Plan for Child X with Mrs F. She made comments and chased the Council for its final amended EHC Plan.
 34. In response to the Council's consultation, the independent school said it could meet Child X's needs, but it no longer had space for the 2022/2023 academic year.
 35. Mrs F asked the Council for an urgent call to discuss the matter but did not receive a call back. So, she complained to the Council.

Mrs F's complaint

36. Mrs F told the Council it had:
 - delayed consulting specialist placements once it identified she needed to be at a special school;
 - communicated poorly with her;
 - delayed accepting a placement offer at a suitable independent school, which could meet Child X's needs; and
 - failed to arrange suitable alternative provision until a suitable school was found.

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37. In response the Council accepted it had failed to consult enough schools which had caused delay. It also said its officer had not kept her properly informed during the consultation process and it should have told her about the officer's period of absence.
38. The Council said it would review its consultation process with schools to address some of the issues Mrs F had experienced, consider how it could resolve issues with approvals of special school placements, and it would make best endeavours to find Child X the specialist school she needed.
39. The Council subsequently consulted with a large number of schools, including independent schools.
40. In Autumn 2022 Mrs F complained to the Council again, as a school had still not been confirmed for Child X. She said the independent school had confirmed it could meet Child X's needs but the Council had failed to accept its offer for the 2022/2023 academic year. She disagreed with the Council's decision to also consult mainstream schools and said Child X's lack of proper education and therapy continued in School Y. She said the Council should accept the independent school's offer of a placement for the academic year 2023/2024 and put suitable alternative provision in place until then.
41. Mrs F also requested for Child X to receive Education Other Than At School (EOTAS). She said she did not get a response as the allocated officer was on leave.
42. In its responses the Council told Mrs F:
- it had carried out further searches for a suitable special school for Child X without success for the 2022/2023 academic year;
 - the independent school had confirmed it could meet Child X's needs, but it was never able to offer a place for 2022/2023 and did not have space until the 2023/2024 academic year. The Council had therefore continued its search for a suitable school. However, the independent school had since withdrawn its offer as it could no longer meet Child X's needs;
 - it apologised it had not managed to resolve finding a suitable school place for Child X since its previous complaint response, but would continue to consult with schools to find a suitable placement;
 - it was School Y's responsibility in the first instance to provide alternative provision to Child X. The Council became involved because it became clear it needed help. It had since supported School Y in its efforts to arrange alternative provision for Child X;
 - her request for EOTAS had to be properly considered by the Council. It apologised it did not progress this or respond during its officer's absence. However, it had since found EOTAS criteria had been met and its team would work with Mrs F to arrange this.
43. Mrs F was not satisfied with the Council's responses and the steps it had taken to find Child X a suitable school placement and alternative provision until this was in place. She asked the Ombudsman to consider her complaint.
44. Child X was removed from School Y's roll in December 2022. The Council arranged some EOTAS provision for three hours per week in early 2023 and worked to increase the provision.

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45. Mrs F has since told us the EOTAS provision the Council has arranged between January has been very limited, and Child X has continued to be without a suitable education since.
46. In response to our enquiries, the Council accepted:
- it had failed to consult schools as widely as it should have which caused delays in finding Child X a suitable school placement;
 - the independent school did offer a school placement for the start of the summer term in 2022 for Child X;
 - it had not always responded to Mrs F's communication or kept her informed about progress; and
 - its delays and failures meant Child X only received a part-time education.
47. The Council proposed a remedy of £4,000 to acknowledge the loss of educational provision Child X had experienced between October 2021 to July 2023, and £500 for the distress and time Mrs F had experienced. It also made suggestions to the service improvements it would make which included:
- recruiting additional staff;
 - review and refine its current EHC plan system and process, including how it consults with schools and makes its decisions on placements;
 - improve the way it tracks and monitors children and young people who are not in school full-time or receive alternative provision; and
 - ensure all its staff has the knowledge and skills to enable them to have greater accountability for the children with EHC plans they are responsible for.

Analysis and findings

48. Mrs F's complaint relates to matters which started in Summer 2021. Her complaint is therefore late. However, I have found it appropriate to exercise my discretion to consider her concerns. This is because she has continued to work with the Council to resolve the issues throughout and raised her complaint to it without delay.

The Council's faults

49. The Council agreed it was at fault for:
- its failure to consult schools as widely as it should which caused delays in finding Child X a suitable school placement;
 - the independent school did offer a school placement for start of the summer term in 2022 for Child X;
 - it had not always responded to Mrs F's communication or kept her informed about progress; and
 - Child X had only received a part time education between October 2021 to July 2023.
50. I also found the Council at fault for incorrectly informing Mrs F the independent school had never been able to accept Child X before the 2023/2024 academic year. This was because it offered Child X a place for the start of the summer term in 2022.

EHC plan process

51. The Council reviewed Child X's EHC plan twice after Mrs F and School Y requested this. I found no fault in the process the Council followed to do so. This is because it considered their views and finalised the amended EHC plans within the statutory timescales.

Injustice

52. The Council agreed Child X experienced a loss of educational provision. However, I am not satisfied the Council's proposed remedy is enough to remedy the injustice Child X experienced. In reaching my view I am conscious:
- Mrs F and School Y told the Council Child X's needs could not be met by the school in 2021 and during the early annual review in July 2021;
 - the Council therefore had a duty to ensure Child X received the full-time education he was entitled to through suitable alternative provision from July 2021;
 - while Child X did attend School Y from July 2021 to December 2022, the educational provision he could access was very limited to the extent School Y described this as childminding; and
 - the EOTAS provision Child X received between January to July 2023 was very limited and only increased recently.
53. The Council also agreed Mrs F experienced distress and spent time raising her concerns to the Council. I found the Council's proposed remedy of £500 to be appropriate to acknowledge the distress Mrs X experienced as a result of its handling of her concerns and the time this has taken.
54. I found the Council's proposed service improvement recommendations to be appropriate. This is because these should ensure its service improves, prevents unnecessary delays in the consultation process with schools, and arranges suitable alternative provision for children who cannot access the education available to them.

Agreed action

55. To remedy the injustice the Council caused to Mrs F and Child X, the Council should, within one month of the final decision:
- a) apologise to Mrs F in writing, and pay her £500 to acknowledge the distress and uncertainty the Council's faults caused her, including the unnecessary time and trouble she had to bring her concerns to its attention and to arrange some educational provision for Child X;
 - b) pay Mrs F £7,200, to use as she sees fit, to acknowledge the loss of education Child X experienced between July 2021 to July 2023.
- In total the Council should pay Mrs F £7,700.
56. Within three months of the final decision the Council should also:
- c) share with the Ombudsman evidence it has completed its proposed service improvement recommendations, which were to:
 - recruit additional staff to its SEND Team to effectively manage caseloads;
 - review and refine its current Education, Health and Care plan system and processes, including how it consults with school and reaches its decisions on placements;

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- improve the way it tracks and monitors children and young people who are not in school full-time or receive alternative provision; and
 - ensure all its staff has the knowledge and skills to enable them to have greater accountability for children with Education, Health and Care plans they are responsible for.
57. The Council should provide us with evidence it has complied with the above actions.

Final decision

58. There was fault which caused an injustice. The Council has accepted my recommendations, it is on this basis I have completed my investigation.

Investigator's decision on behalf of the Ombudsman