

The Ombudsman's final decision

Summary: Miss Y complains the Council failed to follow the correct process when carrying out an annual review of her Education, Health and Care Plan. She complains the Council failed to provide her special educational provision in full while it finalised her Plan. She says this caused her significant distress and uncertainty. We have decided to uphold Miss Y's complaint because there was fault causing injustice. To remedy this, the Council has agreed to apologise to Miss Y and her parents and make Miss Y a payment. The Council has also agreed to make several service improvements.

The complaint

1. The complainant, who I shall refer to here as Miss Y, complains that the Council:
 - a) failed to follow the correct process when carrying out an Annual Review of her Education, Health and Care (EHC) Plan in January 2020. More specifically, she says the Council failed to: meet the deadline of 31 March 2020 to complete the process, invite a social care representative to the Annual Review meeting and carry out a Social Care Assessment;
 - b) delayed in issuing her final amended EHC Plan following the Annual Review meeting in January 2020;
 - c) failed to plan for her transition to a post-16 placement in September 2020; and,
 - d) failed to provide suitable educational provision while the Council was finalising the amended version of her EHC Plan.
2. Miss Y says she missed out on certain special educational provision because Section F of her EHC Plan has not been implemented. She says the Council's failure to prepare her for her educational transition has caused her uncertainty, negatively impacted her anxiety and worsened her mental health.
3. Miss Y says she experienced uncertainty and distress. This was because she did not know if the Council had decided she had left school during the first COVID-19-related lockdown in March 2020 or if she would be returning to school. She said she spent months worrying about what would happen to her after being isolated during lockdown and she has been at home and out of education since 23 March 2020.
4. Miss Y says her parents went to time and trouble pursuing the issues with the Council on her behalf.

What I have investigated

5. I have investigated parts a, b and d of Miss Y's complaint. The final section of this decision explains the reasons why I cannot investigate Miss Y's complaint that the Council failed to plan for her transition to a post-16 placement in September 2020 (part c of the complaint). This is because this complaint is inseparable from her appeal to the SEND Tribunal.

The Ombudsman's role and powers

6. 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*)
7. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
8. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
9. We cannot investigate a complaint if someone has appealed to a tribunal or a government minister or started court action about the matter. (*Local Government Act 1974, section 26(6), as amended*)
10. If we are satisfied with a council'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*)

How I considered this complaint

11. I considered the information and documents provided by Miss Y and the Council.
12. Miss Y and the Council had an opportunity to comment on my draft decision. I considered all comments before making a final decision.
13. 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.

What I found

What should have happened

Education, Health and Care Plans

14. 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 SEND Tribunal can do this.
15. The Council is responsible for making sure that arrangements specified in the EHC plan are put in place. We can look at complaints about this, such as where support set out in the EHC plan has not been provided, or where there have been delays in the process.

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16. Parents have a right of appeal to the SEND Tribunal if they disagree with the special educational provision or the school named in their child's EHC Plan.
 17. The [Coronavirus Act 2020](#) temporarily amended the absolute duty to make the special educational provision in an EHC Plan, to a duty to use 'reasonable endeavours'. This change was applicable from 1 May to 31 July 2020.

Annual reviews and planning the transition to adulthood

18. The SEND Code of Practice: 0 to 25 years (the SEND Code of Practice), published by the Government, sets out what councils must do to support children with special educational needs (SEN). The Code says:
 - EHC plans must be reviewed at least every 12 months. However, if a young person is moving from one post-16 institution to another post-16 institution at any other time, the EHC plan must be reviewed and amended at least five months before that transfer takes place. (*Regulation 18 of the Special Educational Needs and Disability Regulations 2014*);
 - The purpose of the annual review is to consider whether the special educational provision and educational placement is still appropriate. The annual review is not complete until the council has decided to either: maintain, cease or amend the plan;
 - within four weeks of a review meeting, a council must notify the child's parents of its decision to maintain, amend or discontinue the EHC Plan (*Special Educational Needs and Disability Regulations 2014, Regulation 20 (10)*);
 - when a council decides to amend the EHC Plan, the final Plan should be sent as soon as practicable and within eight weeks of the date when the council sent the parents or young person the EHC plan and proposed amendments (*SEND Code of Practice: 0 to 25 year (January 2015, as amended), paragraphs 9.196 and 9.197*); and,
 - councils must ensure that EHC plan reviews from Year 9 (age 13-14) include a focus on preparing for adulthood, including possible further education. These reviews should result in clear outcomes which are ambitious and prepare young people for adulthood.
19. Under the Code, to help a young person prepare for adulthood, councils should make sure the transition to adult care and support is:

"well planned, is integrated with the annual reviews of the EHC plans and reflects existing special educational and health provision that is in place".
20. This requires a transition assessment for adult care or support taking place as part of an annual review. Assessments for adult care or support must consider:
 - current needs for care and support;
 - whether the young person is likely to have needs for care and support after they turn 18; and,
 - if so, what those needs are likely to be and which are likely to be eligible needs.

What happened

Scope of the investigation

21. Case law has decided that I cannot investigate any matter complained of that is inseparable from any appeal made to the SEND Tribunal. I cannot investigate or

comment on any decision made by the SEND Tribunal. However, I have referred to SEND Tribunal decisions, where necessary, to understand the action taken by the Council and sequence of events.

Chronology

22. Miss Y has special educational needs connected with her diagnoses of anxiety, Autistic Spectrum Disorder (ASD) and dyspraxia. Miss Y has an EHC Plan.
23. During the time period investigated, Miss Y attended Special School B, a non-maintained special school.
24. In January 2020, Special School B began to organise Miss Y's annual review.
25. The Council officers in its Integrated Children's Disability Service (ICDS) met to discuss Miss Y's case before the review meeting. The Council officers:
 - noted Miss Y's parents were concerned that Special School B was not providing the full special educational provision specified in Miss Y's EHC Plan;
 - said Special School B had been *"very flexible with their offer but cannot make any further adjustments"*; and,
 - agreed an officer from ICDS would attend the annual review meeting to explain to Miss Y's parents and her school that the Council would, if needed, get advice from relevant professionals or at least up to date reports.
26. At the end of January, Special School B held Miss Y's annual review meeting.
27. Four weeks later, at the end of February, the Council sent Miss Y's parents its decision to amend her EHC Plan. It said the Council had decided to amend the placement named in Section I of the Plan. It attached an amended EHC Plan.
28. In March, the Council sent Miss Y's parents a copy of the final EHC Plan and decision letter. It said it had decided Miss Y's placement at Special School B would remain until July 2020 only. The Council specified this in Section I of the Plan and named "Mainstream Further Education" as Miss Y's placement from September 2020.
29. In June, the Council received confirmation that Miss Y had appealed to the SEND Tribunal. She was appealing the Council decision to name "Mainstream Further Education" as her placement.
30. In July, the SEND Tribunal issued two Orders. The Orders, which followed two telephone case management hearings, said:
 - there was a disagreement between Miss Y and the Council about whether Special School B could meet Miss Y's needs. Miss Y said Special School B could meet her needs, but the issue was whether the School could offer an appropriate course of study. The Council, however, said Special School B could not meet Miss Y's needs nor could any other school consulted. It proposed meeting Miss Y's needs through online courses provided as Education Otherwise than at School (EOTAS) and with social services support; and,
 - the Judge had decided to direct the Council to carry out a social care needs assessments before the final hearing given the Council's proposal relied on social care providing services.
31. At the end of July, Miss Y's father complained to the Council on her behalf about the 2020/21 annual review process. He said:

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- the Council said at the end of the annual review meeting that, as the Council was looking into other suitable placements for Miss Y as well as Special School B for the 2020/21 academic year, a further meeting would be held with Miss Y and her parents. However, he said this meeting did not take place;
 - Miss Y and her parents were not told about their right to request the Council secure a particular school for Miss Y before the Council issued the final EHC Plan. He said Miss Y's view was that Special School B can meet her needs and would wish to continue studying there;
 - the Council had failed to name a suitable placement in Section I of the EHC Plan and Miss Y still did not know the school she would attend from September; and,
 - Miss Y would turn 18 years old soon, but the Council had failed to plan for her transition to adult social care services or carry out an assessment of her care needs before completing the 2020/21 annual review.
32. In August, Miss Y turned 18 years old.
33. In mid-August, the Council's adult social care services assessed Miss Y and issued a Care and Support Plan.
34. At the beginning of September, the Council sent its stage one complaint response. The Council:
- apologised for the delay in replying. It said this was due to staff absences;
 - explained it planned to hold virtual briefings with school special educational needs coordinators (SENCOs) to remind SENCOs of who should be invited to attend annual review meetings;
 - said it had termly meetings with Special School B where it could share learning from Miss Y's experience and make sure future annual reviews are improved; and,
 - said it could not respond to the other parts of the complaint as they were linked to the ongoing SEND Tribunal appeal about the placement named in Section I of the EHC Plan.
35. Miss Y's father requested a stage two complaint response from the Council. He said:
- the Council had failed to respond to this complaint;
 - at no point during the annual review meeting were Miss Y's outcomes around self-help, independence and preparing for adulthood discussed. He said these points should be considered consistently during Miss Y's annual reviews so that, if needed, the relevant outcomes in her EHC Plan may be updated; and
 - Miss Y felt frustrated and anxious as the family had had to go through the SEND Tribunal appeal process again one year after the previous appeal. He said Miss Y wanted to know what support the Council could provide to support her independence, which would help reduce the uncertainty and lack of clarity around this that had affected her.
36. The next day, the SEND Tribunal issued a further Order. It said:
- the Council had accepted EOTAS was not possible without significantly broader consultation;

- Special School B had confirmed it could continue with Miss Y's placement until she completed her level two qualification. However, it would not be able to offer her a placement either for a level three qualification, as it did not offer qualifications at this level, or beyond July 2021 because it could not offer placements to young people beyond Year 14;
 - it had decided to adjourn the hearing and relist it for November 2020. This was because it had been agreed with both Miss Y and the Council that they would look into possible future courses and placement options that could be arranged before Miss Y's placement of Special School B ended; and,
 - it reminded the Council of its statutory obligation to provide the special educational provision in Section F of the Plan. This was because the Judge noted the Council had introduced amendments to Sections B and F of the Working Document of the Plan, but these Sections were not the subject of the appeal.
37. At the end of October, the Council sent its stage two complaint response. The Council apologised for the delay in replying. It said the SEND Tribunal appeal process was ongoing. However, it said that it expected the SEND Tribunal to make decisions about Miss Y's future school placements and social care support and provision. It decided, therefore, that it could not investigate the complaint further as the matters complained of were inseparable from the issues being considered by the SEND Tribunal.
38. At the beginning of April 2021, the Council issued Miss Y an amended final 2020/21 EHC Plan. This named a new placement, College Z, in Section I of the EHC Plan from April 2021. This was following a Consent Order issued by the SEND Tribunal confirming the Council had agreed to this.
39. Miss Y complained to the Ombudsman.

Analysis – was there fault by the Council causing injustice?

Whether the Council failed to follow the correct process when carrying out an Annual Review of Miss Y's Education, Health and Care Plan

40. Miss Y complains the Council failed to follow the correct process when carrying out an Annual Review of her EHC Plan in January 2020 (part a of the complaint). More specifically, Miss Y says the Council failed to invite a social care representative to the Annual Review meeting and carry out a Social Care Assessment.
41. It is my understanding, based on the information provided by the Council, that the Council did not invite a social care representative to Miss Y's annual review meeting. Its reason for this was because Miss Y was no longer open to its children's social care team and did not have an allocated social worker. This is fault. The SEND Code of Practice makes it clear a social care representative **must** be invited to annual review meetings and given at least two weeks' notice of the date of the meeting (*paragraph 9.176*) Ensuring input from a social care representative is necessary as annual reviews should "*review the health and social care provision made for the child or young person and its effectiveness in ensuring good progress towards outcomes*". The Council's failure to make sure a social care representative was invited to the annual review meeting caused Miss Y and her parents distress and uncertainty.
42. The SEND Code of Practice says that, for a young person with an EHC plan, councils **must** make sure that the transition to adult care and support is well

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- planned, is integrated within the annual reviews of the EHC plans and reflects existing special educational and health provision that is in place to help the young person prepare for adulthood. Council's should carry out transition assessments for adult social care or support as part of this planning process.
43. Based on the evidence I have seen, the Council failed to carry out a transition assessment of Miss Y's possible social care or support needs before completing the 2020/21 annual review process. This is fault.
44. The Council told us that its ICDS team referred Miss Y to its adult social care team at the end of July 2020. However, adult social care did not carry out a statutory assessment until August 2020 following a direction from the SEND Tribunal to do so. Miss Y had already turned 18 years old by the time of the assessment.
45. The SEND Code of Practice says that *"Under no circumstances should young people find themselves suddenly without support and care as they make the transition to adult services. Very few moves from children's to adult services will or should take place on the day of someone's 18th birthday."* Children's services must be maintained until a decision on adult provision is reached. Where it is agreed that adult services will be provided, children's services must continue until the adult support begins. This is to make sure young people are not disadvantaged by the move from children's to adult services.
46. I find the Council's failure to carry out a timely assessment of Miss Y's care needs meant she did not have a smooth transition to adult care services. Based on the evidence I have seen, the Council's failure to plan for this transition during the annual review process meant Miss Y found herself without certain social care provision when she turned 18 years old. As explained above, this should not happen and is fault. This caused Miss Y and her parents distress and uncertainty, particularly around which of her care needs were eligible for adult services. It is my understanding that this meant Miss Y missed out on short breaks over the two-month period following her 18th birthday until adult social care had completed the assessment.
47. In Miss Y's father's complaint to the Council, he complained the Council had failed to consider what provision Miss Y needed to help her transition to adulthood and independent living. The Council's response confirmed it had reviewed the annual review documents. It said:
- this showed the discussion on preparing for adulthood was limited. It accepted that "Preparation for Adulthood" was an area the Council was working on strengthening its understanding of across relevant teams and schools; and
 - the Council said, if Miss Y had not been able to provide her comments on her progress based on the aspects of her timetable that focused on supporting independence and any barriers she was possibly experiencing, it would welcome discussing this with Miss Y. It offered to speak with Miss Y after the SEND Tribunal hearing later in September.
48. Based on the Council's response, I find it has accepted that the focus on preparing for adulthood was not sufficient during the annual review. This is fault. This caused Miss Y and her parents distress and uncertainty.
49. When the Council offered to discuss the issues with Miss Y to improve future annual reviews, her father explained that Miss Y had a long-term diagnosis of stress and anxiety, which affected her ability to talk to or make eye contact with anyone she was not familiar with. He said this meant Miss Y would not be able to

discuss the issue with her annual review by phone. Instead, Miss Y may be able to provide comments by email instead.

50. I have not seen any evidence that the Council followed up on this with Miss Y, including to confirm whether it could meet the requested communication adjustments and accommodate Miss Y's anxiety. This is fault. This caused Miss Y and her parents further uncertainty about how the Council would remedy the issues around making sure future annual reviews had a clear focus on preparing for adulthood. Miss Y was caused uncertainty about how and whether her anxiety, which may be considered a disability under the Equality Act 2010, could be accommodated by the Council.
51. It is my understanding that Miss Y's next annual review is due to be completed by April 2022. I have, therefore, recommended a remedy for the above fault causing injustice that ties in with this latest annual review. This recommends the Council reports back on how it has ensured Miss Y's annual review has included a focus on preparing Miss Y for adulthood. In line with paragraph 8.10 of the SEND Code of Practice, this should include information on the Council's review of the following:
- support identified to prepare Miss Y for higher education and/or employment. This should include: identifying appropriate post-16 pathways that will lead to these outcomes and discussing training options;
 - support to prepare for independent living, including exploring what decisions Miss Y wants to take for herself and planning her role in decision making as she becomes older. This should also include discussing where Miss Y wants to live in the future, who she wants to live with and what support she will need. Local housing options, support in finding accommodation, housing benefits and social care support should be explained;
 - support in maintaining good health in adult life; and,
 - support in participating in society, including understanding mobility and transport support, and how to find out about social and community activities, and opportunities for engagement in local decision-making.
52. I have considered the deadline of 31 March 2020 in the next section.
- Whether the Council delayed in issuing Miss Y's final amended EHC Plan**
53. Miss Y complains the Council delayed in issuing her final amended EHC Plan following the annual review meeting in January 2020 (part b of the complaint).
54. As explained above, if a young person is moving from one post-16 institution to another post-16 institution, the EHC plan must be reviewed and amended at least five months before that transfer takes place. In this case, the Council expected Miss Y would transfer to a different post-16 institution in September 2020. This meant the Council had to complete Miss Y's review by 31 March 2020 (this date is not disputed by either the Council or Miss Y).
55. Miss Y's final EHC Plan was issued on 12 March 2020. I find the Council met the deadline of 31 March. I do not find it at fault here.
56. However, where I do find the Council at fault is how it communicated whether a draft EHC Plan had been sent to Miss Y's parents in February 2020.
57. The Council's response to my questions suggests it sent a draft EHC Plan in February. Based on the decision letter and accompanying EHC Plan, however, I

find this shows this was a final Plan and the decision letter on this explained this triggered SEND Tribunal appeal rights.

58. Given the Council proposal to amend Section I of the Plan so that Miss Y would transfer to a different post-16 institution, it should have sent Miss Y's parents an amendment notice explaining the changes it proposed to make. This should have taken place before the Council issued a final amended EHC Plan.
59. In this amendment notice, the Council should have told Miss Y and her parents:
- they had at least 15 days to make representations about the proposed amendments;
 - they had a right to request that a particular school is named (from the list in section 38(3) Children and Families Act 2014);
 - they could express a preference for an independent placement; and,
 - where they could find information about the schools and colleges that were available for Miss Y to attend.

(Special Educational Needs and Disability Regulations 2014, Regulation 22)

60. The amendment notice and above information should have been sent to Miss Y's parents within four weeks of the annual review meeting. I find the Council failed to send this amendment notice to Miss Y's parents. This caused Miss Y and her parents uncertainty. She missed out on receiving the above information and the chance to make representations that were informed by this advice.

Educational provision provided by the Council

61. Miss Y complains the Council failed to provide suitable educational provision while the Council was finalising the amended version of her EHC Plan.
62. As explained above, I cannot investigate the Council's failure to name a suitable placement in Section I of Miss Y's EHC Plan. This is because Miss Y appealed this decision to the SEND Tribunal. *(Local Government Act 1974, section 26(6), as amended)* This means I cannot look at matters that are inseparable from the appeal from the date Miss Y's appeals right were triggered in February 2021 (when Miss Y received her final 2020/21 EHC Plan).
63. Case law has established certain matters the Ombudsman cannot investigate when, as in this case, a young person successfully appeals to the SEND Tribunal against the placement named by the council in Section I of the EHC Plan. This includes the situation when the council fails to name a placement. Case law has decided the Ombudsman cannot investigate any alleged failure by the council to provide an education during the appeal where this is inseparable from the subject of the appeal (not naming a suitable school). I find that this applies to Miss Y's complaint and means I cannot consider whether the Council failed to provide Miss Y with suitable educational provision from September 2020 until March 2021.
64. However, I can consider whether the Council failed to provide Miss Y with the special educational provision (SEP) specified in her 2019/20 EHC Plan during the summer term 2020. This is because the placement and SEP specified in this Plan were not the subject of Miss Y's appeal.
65. The Council told me, between March and July 2020:
- ICDS contacted Special School B to confirm what educational provision was being provided. ICDS was satisfied that Miss Y was accessing certain

education remotely online and online/telephone support from staff at Special School B was available to Miss Y;

- Special School B agreed with the family, that, due to Miss Y's anxiety and the impact of COVID-19, she would access a reduced timetable. The Council said this decision, whilst not formally recorded on a risk assessment form, was made as a response to working out a reasonable way to meet Miss Y's needs during the pandemic;
- Miss Y's preferred staff were not always available to provide the support by "familiar, trusted adults" as specified in her EHC Plan. Special School B identified an outside agency that could offer the support required for Miss Y's. The Council said Special School B expected the new tutor to build up a relationship with Miss Y remotely, while Miss Y worked at home with a trusted adult from her family. However, the Council said this offer was not accepted by the family; and,
- Special School B took steps to arrange online speech and language therapy and occupational therapy sessions. However, the Council said these sessions were not always attended. During this time, it was not possible for missed sessions to be re-offered when staff needed to support other learners who required similar support.

66. As explained above, the Coronavirus Act 2020 temporarily removed the Council's absolute duty to make the special educational provision in an EHC Plan, to a duty to use 'reasonable endeavours'. The Ombudsman considers 1 May 2020 as the relevant date this measure applied from. However, in the period before this (between 23 March and 1 May), the Ombudsman's general view is that we would be unlikely to criticise a council for not arranging the full provisions in an EHC Plan due to the exceptional circumstances at the time and the requirement for people to stay home wherever possible. From 31 July 2020, the Council's absolute duty to arrange special educational provision was reinstated. I, therefore, do not find the Council at fault for not providing a full package of suitable alternative provision during this period. The evidence shows that, during this time, when support by "familiar, trusted adults" was not being provided in full, steps were taken to look at alternative providers.

67. Where I do find the Council at fault, however, is how it assessed what provision could reasonably be made. The Council told us that Miss Y's *"timetable was based on a route to independence ... Many of the independence activities involved being out in the community, work experience, independent travel etc, all of which could not be delivered due to the national lockdown."* Based on the evidence I have seen, the Council failed to carry out a clear assessment of whether it could continue to make this provision and, if not, consider whether there were alternative means of achieving the same aims. I find this caused Miss Y distress and uncertainty about whether she would receive any such provision, however limited.

Agreed action

68. Within four weeks of my final decision, the Council has agreed to:
- a) apologise to Miss Y in writing for the fault causing injustice. This should include information on how it will communicate with Miss Y given her father's request for written communication instead of telephone calls;
 - b) apologise to Miss Y's parents in writing for the distress and uncertainty caused;

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- c) make Miss Y a payment of £300 for the uncertainty and distress caused. When recommending this remedy I have factored in the distress and uncertainty caused by the Council's failure to: fully assess what provision it could make during the summer term 2020, and carry out a transition assessment before completing the annual review in February 2020. This payment is in line with the Ombudsman's published guidance on remedies; and,
- d) make Miss Y a payment of £400 for the two months that she was without short breaks provision (August to October 2020 made up of £200 per month). This is in line with the Ombudsman's guidance on remedies, which states: where fault has resulted in a loss of provision, we will usually recommend a remedy payment of between £200 to £600 per month.
69. Within three months of my final decision, or sooner if appropriate, the Council has also agreed to report back on how it has ensured Miss Y's latest annual review has included a focus on preparing Miss Y for adulthood (see paragraph 51, which explains the specific information that should be included).
70. Within three months of my final decision, the Council has agreed to make the following service improvements:
- a) circulate a reminder to relevant staff on when an amendment notice should be sent to parents/guardians and a young person following an annual review, including the deadline for sending this and information to provide (see paragraphs 58 to 60 above);
- b) review its Preparing for Adulthood transition policy to ensure it includes clear information on: the requirement to carry out a transition assessment of care and support needs and when this should take place, as well as how staff should ensure annual reviews include a focus on preparing young people for adulthood from Year 9 (this is to remedy the fault identified in paragraphs 42 to 51 above). The Council should provide training on its transition policy to relevant staff following this review; and,
- c) circulate a reminder to relevant staff of the requirement to invite a social care representative to annual review meetings and the importance of attending these.
71. The Ombudsman will need to see evidence that these actions have been completed.

Final decision

72. Subject to further comments by Miss Y and the Council, I intend to complete my investigation.
73. Based on the evidence seen so far, I propose to uphold parts a, b and d of Miss Y's complaint because there was fault by the Council causing injustice. The above recommendations are suitable ways for the Council to remedy this.

Parts of the complaint that I did not investigate

Council planning for Miss Y's transition to a post-16 placement

74. Miss Y complains the Council failed to plan for her transition to a post-16 placement in September 2020 (part c of the complaint).
75. As explained above, Miss Y had appeal rights to the SEND Tribunal from February 2020 when the Council issued a final EHC Plan.

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76. The evidence I have seen shows the Council began consulting possible mainstream or special school placements after these appeal rights were triggered towards the end of February 2020. Miss Y subsequently appealed the Council's decision. When Miss Y appealed the placement named in Section I, the evidence shows, as explained in the chronology section above, that the SEND Tribunal included directions to the Council in certain Orders about consulting further on Miss Y's future placement.
77. Case law has reconfirmed that the Ombudsman cannot investigate a decision where it has been appealed to a tribunal. It has also confirmed we cannot consider the consequences of that decision. In this case, this means I cannot make a decision about any delay in the Council finding a specific school from when the final EHC Plan was issued to when the SEND Tribunal reached a decision. This covers the time period Miss Y complains of given her appeals right were triggered in February 2020.

Investigator's decision on behalf of the Ombudsman