

8 March 2024

Complaint reference:
23 009 620

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: the Council failed to ensure Ms B's son received all his occupational therapy sessions and delayed responding to some of her correspondence. An apology, payment to Ms B and a meeting to discuss the issues is satisfactory remedy.

The complaint

1. The complainant, whom I shall refer to as Ms B, complained the Council:
 - failed to ensure her son received his occupational therapy sessions following a previous Ombudsman investigation which completed in February 2023; and
 - failed to communicate with her effectively.
2. Ms B says this has caused her significant stress and led to her going to time and trouble to chase the Council. Ms B says her son has also missed out on occupational therapy sessions.

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. 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)
5. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

How I considered this complaint

6. As part of the investigation, I have:
 - considered the complaint and Ms B's comments;
 - made enquiries of the Council and considered the comments and documents the Council provided.

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7. Ms B and the organisation had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

What should have happened

8. A child with special educational needs may have an education, health and care plan (EHC plan). An EHC plan describes the child's special educational needs and the provision required to meet them.
9. 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.

What happened

10. Ms B's son has special educational needs and began attending a specialist school in January 2023. Ms B's son has EHC plan which provides for weekly occupational therapy provision during term time.
11. The Council appointed Company A to provide occupational therapy sessions in February 2023.
12. In March 2023 Ms B contacted the Council to ask about the process for changing occupational therapy providers. When she did not receive a response Ms B contacted the Council on 4 April 2023 and asked the Council to commission a new occupational therapy provider. Ms B provided the Council with details for Company B.
13. The Council contacted Company B for a quote. That quote was significantly higher than what the Council paid for Company A to deliver the occupational therapy. Company B also had a 4-6 month waiting list. The Council told Ms B senior management would need to agree the change in providers and the case would then need referring to the Council's panel to approve.
14. Ms B chased the Council in May 2023. On 26 May the Council told Ms B management had agreed for the request for a new occupational therapy provider to go to panel and the next panel was on 8 June. I understand this did not happen because the Council changed the way it commissioned providers to give more responsibility to schools.
15. Company A contacted Ms B in June 2023 to offer to make up some of the missing occupational therapy sessions during the school holiday. Ms B raised concerns about whether that was suitable. Ms B said she would prefer most sessions to take place at school.
16. Ms B's partner contacted the Council at the beginning of the new school year in September 2023 to report another missed occupational therapy session. The Council said Ms B's son would go back to panel for a decision on moving to a new provider and said the Council hoped to have feedback on that before the review meeting planned for the end of September.
17. The annual review of the EHC plan took place on 29 September. Following that the Council referred the request for a new occupational therapy provider to panel. The panel agreed that request on 12 October.
18. On 8 November Ms B asked the Council for an update on the progress of the transfer to Company B. Ms B chased the Council on 20 November and pointed

out the Council needed to complete the form for Company B. The Council confirmed on 30 November it had sent the form to Company B. Ms B's son is now on Company B's waiting list and continues to receive occupational therapy sessions from Company A. Since the end of February 2023 there have been 12 confirmed missed occupational therapy sessions.

Analysis

19. Ms B says the Council failed to ensure her son received his occupational therapy sessions as set out in his EHC plan from February 2023. The evidence I have seen satisfies me Ms B's son missed out on 12 occupational therapy sessions between February 2023 and the middle of January 2024. Ms B has also provided details of a recent missed occupational therapy session. It is therefore clear the issues with the provision are continuing. That means Ms B's son has missed out on a third of his occupational therapy sessions in the last 11 months. The Council is responsible for ensuring the provision in the EHC plan is put into place and failure to do so is fault.
20. The Council says Company A has offered to put in place extra occupational therapy sessions to make up for those missed. Ms B accepts Company A offered her sessions at home for her son during the school holidays. However, Ms B says that was not convenient for her son and in any case she wants the sessions to take place in school. Ms B is also concerned about whether Company A is in a position to put in place the extra sessions given it cannot always provide the scheduled sessions.
21. I note the Council says it intends to arrange a meeting with the school and parents to review the existing occupational therapy provision in school. I welcome that and would hope this would enable Company A to put on more sessions. However, I also share Ms B's concern about whether this is possible given Company A is regularly failing to carry out the scheduled sessions due to a lack of staffing. I am therefore not convinced it will be possible to put in place enough sessions to make up for those which have been missed before Ms B's son moves to Company B later this year.
22. I am also concerned about how the Council handled the move to Company B. The evidence I have seen satisfies me Ms B asked the Council to move to a new provider in April 2023. As the Council pointed out, Company B is significantly more expensive than Company A. That meant the Council needed to seek agreement from managers and then its panel for the change in provider to go ahead. I am satisfied the Council had agreement from managers to take the case to its panel in May 2023 though and there is no evidence the Council took the case to panel until October 2023.
23. I appreciate in the intervening period the Council amended the process which involved schools commissioning providers and billing the Council. However, changing the process should not have resulted in any delay for Ms B. That delay is fault. There was then delay completing the formal referral form required which is also fault. Those delays added an additional six months. I am also concerned during that period the Council failed to provide Ms B with any update and it was left to her to chase what was happening. That, alongside delay responding to some of her communications, is also fault.
24. That delay is significant because Company B has a 4-6 month waiting list. It is possible if the Council had not delayed Ms B's son would now be able to move to Company B. Delay completing the move has therefore compounded the issues

with the missed sessions as Ms B is left with some uncertainty about whether the situation could have been resolved if the Council had acted quicker.

25. As I cannot be satisfied Company A will be able to make up the missing sessions I recommended the Council pay Ms B £600 to reflect the missing sessions. I also recommended the Council pay Ms B an additional £300 to reflect the frustration she has experienced and her uncertainty about whether the situation could have been resolved earlier. The Council has agreed to my recommendations, including a recommendation for a meeting with Ms B to discuss the options going forward.

Agreed action

26. Within one month of my decision the Council should:
- apologise to Ms B for the distress and uncertainty she experienced due to the faults identified in this decision. The Council may want to refer to the Ombudsman's updated guidance on remedies, which sets out the standards we expect apologies to meet;
 - pay Ms B £900; and
 - arrange a meeting with Ms B to discuss the options going forward.

Final decision

27. I have completed my investigation and uphold the complaint.

Investigator's decision on behalf of the Ombudsman