

15 January 2025

Complaint reference:
24 000 894

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: Mr X complained the Council failed to properly consider its duty to provide alternative education provision for his child, Z, and failed to put in place school transport. The Council was not at fault in how it considered and later arranged alternative provision. However the Council did provide incorrect information to Mr Z through its complaint response which implied it had not properly considered its education duties to Z. The Council has agreed to apologise for the uncertainty this caused to Mr X and issue reminders to its complaints officers to prevent recurrence of the fault in future.

The complaint

1. Mr X complained the Council:
 - a) Failed to consider whether it owed Z a section 19 duty when concerns arose over their education placement;
 - b) Failed to ensure the alternative education provided to his child, Z, was suitable; and
 - c) Failed to put in place the necessary transport so Z could get to their education provider.
2. Mr X complained that as a result, Z received fewer hours of education than they should have, Mr X and his partner's earnings were affected by transporting Z to their education providers and the family have been caused avoidable stress and frustration.

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3), as amended)
4. 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)
5. We cannot investigate most complaints about what happens in schools. (Local Government Act 1974, Schedule 5, paragraph 5(2), as amended)

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6. 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)
 7. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

What I have and have not investigated

8. My investigation covers the period from 13 November 2023 to 10 May 2024.
9. Mr X complained that Z did not receive sufficient education between November 2023 and July 2024. However, after 10 May 2024, Z had a final EHC Plan which carried an appeal right to the SEND Tribunal.
10. I have not investigated events beyond 10 May, because this final EHC Plan carried a right of appeal to the SEND Tribunal if Mr X disagreed with the provision or placement named in the Plan and it was reasonable for him to use it. The restrictions on our powers in these circumstances are set out in more detail in paragraphs 25-27.
11. Mr X and Mrs X have also raised concerns that the school's decision, following advice by the Council, to place Z on a part-time timetable was disability discrimination. Whether disability discrimination has taken place is a matter for the courts, rather than the Ombudsman and I have not investigated it here.

How I considered this complaint

12. I considered the information provided by Mr X and the Council.
13. I considered the relevant law and guidance as set out below.
14. I considered our [Guidance on Remedies](#).
15. I considered all comments made by Mr X and the Council on a draft decision before making a final decision.

What I found

Law and guidance

Alternative provision

16. Councils must arrange suitable education at school or elsewhere for pupils who are out of school because of exclusion, illness or for other reasons, if they would not receive suitable education without such arrangements. The provision generally should be full-time unless it is not in the child's interests. (Education Act 1996, section 19). We refer to this as section 19 or alternative education provision.
17. As soon as it is clear the child will be away from school for 15 days or more because of their health needs the council should arrange suitable alternative provision.
18. Suitable education means efficient education suitable to a child's age, ability and aptitude and to any special educational needs he may have. (Education Act 1996, section 19(6))
19. 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. In our guidance we have highlighted the importance of keeping all cases of part-time education under review with a view to increasing it if a child's capacity to learn increases. (Out of school, out of sight? published July 2022)

20. Where councils arrange for schools or other bodies to carry out their functions on their behalf, the council remains responsible. Therefore councils should retain oversight and control to ensure their duties are properly fulfilled.

School transport to alternative provision

21. Councils must provide transport to alternative provision made pursuant to section 19 of the Education Act 1996, where the relevant criteria are met. However, if the school commissioned the alternative provision, the Council will generally not be under a duty to provide transport to that placement.

Education, Health and Care (EHC) Plans

22. A young person with special educational needs may have an Education, Health and Care (EHC) Plan. This sets out their needs and what arrangements should be made to meet them.

EHC Needs Assessments

23. The "Special educational needs and disability Code of Practice: 0 to 25 years" statutory guidance, which I refer to as the Code, sets out the process for deciding whether to issue an EHC Plan for a child or young person for the first time.
24. Councils decide whether to issue an EHC Plan by carrying out an EHC needs assessment. The whole process from the point when an assessment is requested until the final EHC Plan is issued must take no more than 20 weeks (unless certain specific circumstances apply).

Tribunal appeals

25. The First-tier Tribunal (Special Educational Needs and Disability) considers appeals against council decisions regarding special educational needs. We refer to it as the SEND Tribunal in this decision statement.
26. There is a right of appeal to the SEND Tribunal against the description of a child or young person's special educational needs (SEN) in a final EHC Plan, the special educational provision specified in the Plan, the school or placement named in the Plan, or that no school or other placement is specified in the Plan.
27. The law says the Ombudsman cannot normally investigate a complaint when someone has a right of appeal, reference or review to a tribunal about the same matter. However, we may decide to investigate if we consider it would be unreasonable to expect the person to use this right. (Local Government Act 1974, section 26(6)(a), as amended)

What happened

28. Z has neurodevelopmental conditions and some challenging behaviour. During most of this complaint period Z did not have an EHC Plan.
29. Z's mainstream school, School A, informed the Council in mid-November 2023 that it had placed Z on a fixed-term exclusion due to Z having a violent outburst in school. The school had a meeting with Z's mother, Mrs X, where it said it did not feel it was the right setting for Z.
30. At this meeting, School A suggested Z instead attend an alternative provision at an external placement, Provider B, on a part-time basis. It said Provider B, which was based in another school, specialised in managing behavioural issues. The school said while waiting for that provision to start, Z could still attend School A

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- but only for two hours a day and would be taught one on one, away from other children and would also be provided with work to complete at home.
31. Mrs X raised concerns about this plan, due to the much-reduced hours of education and because she and her partner would struggle to transport Z to School A and Provider B for such brief periods each day. She said it would then be difficult to complete work with Z at home, as they had jobs and other commitments each day.
 32. Mrs X also said the school was acting unlawfully and she felt it was a matter of disability discrimination that Z had been placed on a part-time timetable. Neither Mr or Mrs X have taken legal action on this matter.
 33. The school fed back Mrs X's concerns to the Council and sought its advice about provision for Z. The Council said part-time provision at School A initially would be the best approach as it would give Z time to settle back into education following the exclusion and agreed with the school's recommendation to refer Z to Provider B as well. School A arranged and commissioned the alternative provision at Provider B.
 34. Mr and Mrs X mostly kept Z off school for several weeks while the school put in place the arrangements for Provider B, as they said it would not be appropriate for Z to attend lessons for only two hours a day at School A away from other pupils.
 35. From early December 2023 Z started to attend Provider B every morning, for two hours. Either Mr X or Mrs X transported Z there and back, which impacted their ability to work. The school also arranged home tutoring for the afternoons. However this did not begin immediately as Mrs X asked for the tutor to be SEN trained. In response, the Council agreed to fund a SEN specialist tutor and that tutor could not begin until late December 2023.
 36. Mr X asked the Council to assess Z for an EHC Plan on 4 December 2023. The Council agreed to assess Z on 21 December and received the Educational Psychologist's advice on 24 January 2024.
 37. Z's new educational arrangements were reviewed at meetings in December 2023 and again in early January 2024, mid-January and early March. Mrs X continued to raise concerns about transporting Z to and from Provider B. The Council decided not to fund transport to Provider B because it was not under a legal duty to do so, as the school commissioned the alternative provision. The school said its staff could not transport Z because of concerns around Z's safety and behaviour while in the car. Instead Mrs X was told she could seek reimbursement of mileage.
 38. Mrs X said the SEN specialist tutor was working well with Z at home but taking Z to Provider B for two hours each day had been difficult. She also said Z was lacking social interaction. At the January review meeting, attendees agreed Z should keep the home tutoring but combined with a longer-term alternative provision and for increased hours. The hours of provision increased from January to February.
 39. From mid-February 2024 Z started attending a different alternative provision, at Provider C. This was for three full days each week. The Council funded a taxi for Z to this provision, as this provision was commissioned partly by the Council.
 40. On the other two days each week, Z accessed home tutoring and still attended Provider B on a part-time basis. The amount of home tutoring varied between one afternoon and two afternoons a week depending on tutor availability. From early

March 2024 some of the tutoring was taking place in a library which Mr X transported Z to and collected them from.

41. The next time a meeting was held to review Z's education arrangements was early March 2024. Mr and Mrs X attended, as did representatives from Provider B, School A and the Council. At this meeting it was noted the transition to Provider C had initially been challenging but Z was making progress. Mr and Mrs X expressed their preference for a specialist school placement for Z going forward.
42. The Council agreed to issue an EHC Plan for Z on 21 February 2024, issued a draft Plan on 22 March 2024 and issued a final EHC Plan on 10 May 2024. The final EHC Plan named a specialist school placement for Z to start at in September 2024 and the alternative provision arrangements remained in place until then.
43. Mr X complained to the Council about the suitability of the alternative provision put in place for Z following their exclusion, as well as the impact that the transport arrangements had on the family.
44. The Council did not uphold Mr X's complaint about the suitability of the alternative provision as it said, "any decision to offer a part time timetable... or access to alternative provision, to a child or young person on the roll of a school without an EHC Plan is a decision made by the school not the (Council)".
45. Regarding the transport, it said that where alternative provision was commissioned by the school and when Z did not have an EHC Plan it had no duty to provide school transport. However as the education placement at Provider C was jointly commissioned by the Council and the school, it funded this from February 2024.
46. Mr X was unhappy with the complaint response and came to the Ombudsman. He said he disagreed with the advice the Council gave to the school around what provision would be suitable for Z after their exclusion. He also said the Council's response failed to properly consider the impact on the family of the transport arrangements, including loss of earnings.

My findings

Complaints 1a and 1b – Section 19 provision

47. The records show that the Council was aware of its duty to ensure Z had access to (section 19) alternative provision, after their exclusion in mid-November 2023.
48. The Council advised the school on what alternative provision it thought would best meet their needs, explained its reasons and carried out regular review meetings to check how the alternative provision was going. The Council and school arranged new provision, or increased hours of provision, following feedback at these review meetings.
49. Due to there being several changes in providers between mid-November and late December 2023, Z experienced gaps in provision where they did not receive as many education hours as they may have been able to manage in this period. Mr and Mrs X have expressed frustration about this. However the Council and school required time to see what provision worked for Z and to commission providers that were in line with Z's needs and the wishes of their parents. The Council considered Z's needs and kept the placements under regular review during this period. The Council was not at fault.
50. From late December 2023 to 10 May 2024 (when my investigation period ends) Z's hours of education increased. While the records show there were still

challenges, particularly due to Z having multiple different forms of provision at different locations, Mr and Mrs X noted Z was making progress. During this time, all parties agreed the long-term plan for Z would be for them to start at a specialist school. Although Z's parents disagreed with the Council about the suitability of the alternative provision, the Council was not at fault for how it considered its section 19 duties in this period and so we cannot question the outcome.

Complaint 1c - Transport to the alternative provision

51. Between November 2023 and February 2024, Mr and Mrs X were solely responsible for transporting Z to different alternative provision placements, sometimes several in one day. At other times, Z was accessing learning at home which they were expected to supervise and support. They have reported that this impacted their finances, their ability to work and caused them distress and frustration. However this impact on Mr and Mrs X was not a result of fault by the Council.
52. The Council was not under a duty to provide transport to Z's alternative provision placements as these were commissioned by the school. Only where the Council commissioned the placement to meet its section 19 duty – as it did with Provider C – did it have a duty to provide transport. Once Z started at Provider C, the Council provided a taxi for Z to and from the provision. There was no fault in how the Council arranged school transport for Z.
53. The school decided it could not provide transport for Z to the alternative provision placements it commissioned. However the Ombudsman cannot investigate what happens in schools.

EHC Needs Assessment

54. During the period I have investigated, the Council carried out an EHC Needs Assessment for Z. The Council took two weeks longer than the timeframe given in law and this was fault. However this fault did not cause a significant injustice to Mr or Mrs X, or Z.

Complaint response

55. Councils must arrange suitable section 19 education at school or elsewhere if pupils would not receive suitable education without such arrangements. However the Council said in its complaint response that it was the school's decision to provide part-time education, or alternative provision to Z. The Council provided incorrect information about the duties it owed to Z and this was fault.
56. The Council's actions as set out in the case records do not support that the Council believed it was the school's responsibility to consider any section 19 duty owed to Z. The Council demonstrated that it was thinking about this duty and took action in line with it. Instead, this fault in the complaint response caused Mr X uncertainty about whether the Council had properly considered its legal duties to his child and the Council should apologise and issue a reminder to relevant officers.

Agreed action

57. Within one month of the date of the final decision, the Council has agreed to:
 - a) Apologise to Mr X for the uncertainty caused by the incorrect information within its complaint response. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy

injustice. The Council should consider this guidance in making the apology;
and

b) Remind all officers who respond to SEND complaints, of the Council's section 19 duties under the Education Act. In particular that it is the Council's responsibility to make decisions about whether alternative provision is required for a child - not the school's - and ensure its complaint responses reflect that.

58. The Council should provide us with evidence it has complied with the above actions.

Final decision

59. I have completed my investigation. I have found fault leading to injustice and recommended an apology and a service improvement.

Investigator's decision on behalf of the Ombudsman