

The Ombudsman's final decision

Summary: Mr X complained the Council failed to complete his daughter's education, health and care needs assessment within the statutory deadline. We find the Council was at fault. This caused Mr X and his daughter uncertainty and distress. To address the injustice caused by fault the Council has agreed to make a symbolic payment. The Council is already carrying out service improvements to address the shortage of staff and backlog of cases.

The complaint

1. The complainant, Mr X, complains the Council has failed to complete his daughter's education, health and care needs assessment within the statutory deadline.
2. Mr X said this has had a significant impact on him and his daughter's education.

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 significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).
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)

How I considered this complaint

6. I considered all the information provided by Mr X and the Council.
7. Mr X and the Council had an opportunity to comment on my draft decision. I considered their comments before making a final decision.

What I found

8. The Act and Regulations set out the way councils should assess the special educational needs and disabilities of children and young people. The Code provides guidance to councils about how to do this.
9. Councils must decide whether to carry out an EHC needs assessment within six weeks of receiving a parent request. Regulation 6 sets out what professional advice a Council must seek. Educational Psychology (EP) advice is a mandatory part of the assessment process.
10. Professionals should provide their advice within six weeks of a request from the Council to do so. Once the Council has received all relevant advice it must decide whether an EHC plan is required. If so, it must issue a final plan within twenty weeks of receiving the request to assess.
11. At the stage when a council refuses to issue an EHC plan, or when it issues a final EHC plan, parents and the young person have a right to appeal to the SEND Tribunal, if they disagree with the council's decision. They have two months to lodge an appeal.

Summary of the key events

12. Mr X requested a needs assessment for his daughter, B, on 10 May 2023. The Council responded on 15 June 2023. It agreed to undertake an EHC assessment. But it said there would be delays due to a shortage of educational psychologists (EP).
13. Mr X complained to the Council in August 2023 about the delays in the process. In response the Council apologised for the delay. It said B was on the EP waiting list which remained approximately nine months. The Council advised Mr X to contact the schools special educational needs co-ordinator (SENCO) who would be able to explain the additional support B could receive.
14. The Council also said the EP service had taken the following steps to reduce the length of the wait:
 - asking EP's currently employed on part-time contracts if they could provide additional capacity, as private EP's [the EP service currently have five offering additional time as associates];
 - advertising to encourage organisations and private psychologists to join the associate EP list. They need to go through the quality assurance processes;
 - commissioning agency EP capacity, as private EP's [the EP service currently have 20 agency EP's and are working continually to secure more to reduce waiting time further];
 - advertising to recruit additional EP capacity, to assist with a longer-term plan of ensuring the Council can meet statutory deadlines; and
 - the EP service is also looking at creative ways to provide EP advice in a more efficient way.
15. Mr X was unhappy with the Council's response. He said the Council had incorrectly advised him to speak with the school SENCO as he said B was electively home educated. He also said he had paid for a service to provide him with support on the process.
16. The Council responded and:

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- apologised for incorrectly advising him to speak with the school SENCO. It said its records confirm B was electively home educated;
 - explained there was a national shortage of EP's;
 - directed Mr X to free services he could contact for support. This included the Council's local offer.

Analysis- was there fault by the Council causing injustice?

17. There is service failure due to the Council's inability to commission an EP. The LGSCO is aware of the problems arising from a national shortage of EPs, which in turn has created delay in the completion of B's assessment. In response to my enquiries the Council said B's assessment is predicted to be started within two months from the 5 December 2023.
18. As there is fault in this case, we have to consider the injustice caused to Mr X and B and provide a remedy. As the needs assessment has not yet been completed we do not know what, if any, needs will be met in a plan and so cannot provide a remedy for lost provision. However, Mr X and B have experienced uncertainty and distress, and this is ongoing.
19. In line with the LGSCO's remedies guidance, we recommend the Council should pay £100 for each month outside the statutory timescales. This payment is ongoing until Mr X receives a right of appeal.
20. I acknowledge the proactive steps the Council is taking to try and resolve the lack of EP's. Some of these are detailed in paragraph 14. The Council said further EP's have recently been appointed who are undergoing training. Further recruitment is planned for April 2024.
21. I understand Mr X contacted a paid service for help regarding the delays. But we could not ask the Council to reimburse these costs. This is because there is free support available.
22. Mr X told us the Council incorrectly told him to contact the school SENCO. He said he found this distressing and insulting. The Council has recognised this error and apologised. I consider this to be an appropriate remedy.

Agreed action

23. To remedy the injustice caused by fault, within one month of my final decision, the Council has agreed to:
 - apologise and pay Mr X £100 for each month from the 16-week deadline (30 August 2023) up to the point it issues an appealable decision, for example a decision to refuse to issue an EHC plan; and
 - if the Council decides to issue an EHC plan, the remedy of £100 per month should continue from the 20-week deadline until a final plan is issued.
24. The Council should provide us with evidence it has complied with the above actions.

Final decision

25. I have completed my investigation with a finding of fault causing injustice for the reasons explained in this statement. The above agreed actions provide a suitable remedy for the injustice caused by fault.

Investigator's final decision on behalf of the Ombudsman