

Robert Halfon MP
Chair, Education Select Committee
House of Commons
London SW1A 0AA

8 June 2018

Dear Mr. Halfon,

LGSCO contribution to the inquiry into Special Educational Needs and disabilities

About the Ombudsman

The Local Government and Social Care Ombudsman (LGSCO) investigates complaints about councils and some other authorities and organisations, including education admission appeal panels and independent adult social care providers. It is a free service. Our role is to investigate complaints in a fair and independent way – we do not take sides.

Our experience, of dealing with situations where things have gone wrong, puts us in a unique position to provide insight into what could be done to improve local public services.

We welcome this opportunity to submit evidence to the Committee's inquiry into the reforms in the Children and Families Act 2014 and the changes to the special educational needs system the Act introduced.

Summary of key points

- We believe the reforms introduced by the Children and Families Act 2014 have the potential, if implemented well, to provide more integrated, person centred support for children and young people with SEN across education, health and social care.
- As the final stage of redress for the vast majority of complaints regarding Education, Health and Care (EHC) plans, we have unique insight into how the new system is being implemented in practice. We welcome the Committee's inquiry and are keen to share our experience of handling complaints in this area to ensure that reforms achieve their intended goal of an improved and more holistic system of provision to address health and care needs as well as education.
- The volume of complaints we receive about the new EHC system has grown rapidly – an increase of over 150% since 2015-16. While an increase in complaints is not unexpected as more children and young people are transferred to the new system, worryingly we uphold eight out of ten of these investigations. This is far in excess of average of 57%

across all areas of our work. If a complaint is upheld, we recommend actions for councils to take to put things right and to learn from the complaint.

- In the complaints we have investigated, delays and failure to meet statutory deadlines, failing to involve parents and young people properly in the decision-making process, not gathering sufficient evidence to inform decisions, and a lack of proper forward planning when young people move between key educational stages have all been recurrent features.
- While government statistics confirm that by 1 April 2018, 98.4% of statements had been either transferred to EHC plans or statements were reviewed and discontinued¹, we are clear that councils need to ensure provision remains in place if transfers to EHC plans have not been completed by the deadline.
- While the complaints reaching the Ombudsman reflect only part of the picture about the roll-out of the new system, behind every case there is a child potentially missing out on provision and concerned parents facing a battle to get the support their children should receive. A single complaint being escalated to us means that earlier attempts to put things right have been missed, and may reveal systemic problems affecting many more people. The individual stories we hear are powerful illustrations of the frustration, stress and sense of injustice many families experience in their attempts to secure the right support for their children.
- The case studies in this submission represent recurring themes where we have found faults in the way the new system has been implemented. They highlight where problems exist now and how real people are being affected. There is a clear evidential basis to conclude that, unless these problems are addressed promptly, the new system will fail to achieve its ambitions to transform the support families and children with SEN receive.
- We would encourage the committee to also consider the effectiveness of redress arrangements as part of its inquiry. To date parents have only been able to appeal the educational aspects of EHC plans. The government has taken welcome steps in launching a two-year national trial which expands the powers of the SEND tribunal and enables parents to seek recommendations about the health and social care aspects of EHC plans, when making an appeal². While recommendations are non-binding, in cases where these are not followed by the council or health provider, families will be able to bring a complaint either to ourselves or the Parliamentary and Health Service Ombudsman.
- However, we remain concerned that due to the limits of our current jurisdiction, we cannot consider complaints about the actions of a school in relation to an EHC plan. The education aspects of EHC plans remain subject to different complaint procedures. These separate systems can make it difficult for parents and families to navigate their way to get redress. We would urge the government to look again at the issue of ensuring families have a single complaint mechanism for all elements of the EHC provision and delivery, in addition to the single appeal route through the national trial.

What our casework shows

We have seen a considerable increase in the volume of complaints about EHC plans coming to us. In 2017/18, we have received a total of 277 complaints about EHC plans – some 150% more than in 2015-16. We also uphold 80% of the detailed investigations we

¹ <https://www.gov.uk/government/publications/statements-of-sen-transferring-to-ehc-plans-1-march-2018>

² <https://www.gov.uk/government/publications/extended-powers-send-tribunal-national-trial>

undertake – this is exceptionally high and well in excess of the 57% average across all areas of our work.

In October 2017, we published a focus report³ highlighting common features in the first 100 investigations about EHC plans we carried out. Based on our casework, some of the most significant areas of concern are:

- delays (up to 90 weeks and regularly over 52 weeks) in issuing EHC plans and transferring statements to plans
- problems with gathering evidence needed for the EHC assessment
- poor preparation for meetings with families, missing key attendees or essential information
- lack of transition planning and confusion about key phase transfers
- problems with decision-making about placements and provision in new EHC plans
- failure to follow correct processes when using panels in decision-making
- failure to name a school placement in a final EHC plan
- failure to provide specialist support

The case studies presented in this submission illustrate the negative consequences and damage to the educational opportunities for children and young people with SEN when the right support is not put in place. They complement the ones we have previously highlighted in our focus report.

Delays in transferring to an EHC plan

To transfer a young person from a statement to an EHC plan, councils must undertake a formal transfer review. As part of this, councils must give parents at least two weeks' notice before the transfer review begins. They must then issue a final EHC plan within 20 weeks from informing parents about the start of the transfer review process.

Delay remains an overriding feature in most of the complaints we investigate, with councils frequently failing to comply with timeframes set out in legislation. Although delays vary in degree, we continue to see councils taking months over the statutory 20 weeks limit and also delays exceeding a year. Councils are responsible for arranging meetings and responses to queries in a timely manner to ensure the process is completed within the statutory timeframes. We have seen instances of councils issuing an inadequate or incomplete EHC plan to meet statutory timescales. While parents have appeal rights and disputes over the contents of plans are matters for the courts, not the Ombudsman, this is poor practice and goes fundamentally against the aim of parents not having to fight to get the right support.

In our investigations, we find that delay is often accompanied by other faults. When the process overruns, it leads to delay in implementing provision for the child, and prevents parents from pursuing timely appeals to the tribunal.

Case reference: [16 013 618](#)

Mrs X had two sons with special educational needs. She first approached the council in June 2015 to assess her son Y. Having agreed he needed an EHC plan, the council took over a year too long to issue his plan which was not finalised until January 2017, amending it in February 2017 at Mrs X's request. We found this was a completely unacceptable delay in progressing the transfer to the plan. This prevented Mrs X from appealing to the SEND tribunal in a timely manner.

³ <https://www.lgo.org.uk/information-centre/news/2017/oct/a-disproportionate-burden-families-struggling-with-new-special-educational-needs-system-when-councils-get-it-wrong>

Long delays also occurred in relation to her second son's plan – the council took more than eight months too long to issue his EHC plan. Throughout this period, Mrs X had to repeatedly chase the council for updates. The council also failed to deal properly with Mrs X's complaints and also to offer any assistance in completing forms, despite being aware she has dyslexia.

Y's EHC plan contained provision for weekly dyslexia sessions with a specialist teacher. The council's delay in completing the EHC process meant he missed out on support he would have received had the plan been issued on time. Mrs X had to arrange private provision for these sessions instead.

How we put things right

The council apologised to Mrs X for the delay in issuing the EHC plans for her two sons and also its poor complaint handling. It agreed to pay her nearly £2000 to make up for the private sessions she had arranged and the time and trouble she had been put to. It further agreed to arrange training for staff on complaints handling and dealing with requests for reasonable adjustments.

Case reference: [16 017 021](#)

G has a range of special educational needs. The council had arranged his education under a SEN statement since he was four years old. G was attending a mainstream primary school and was due to start secondary school. His mum Ms D was told by the council it would transfer him to an EHC plan. A transfer review meeting took place in November 2014. The council issued a final amended statement of SEN in December 2014. A final EHC plan was issued the following month.

G started attending the named school in September. Ms D raised concerns about the school's understanding of G's EHC plan and the way it was implementing provision detailed in the plan. She also had concerns about evidence submitted by the school in preparation for G's annual review and gaps in his EHC plan. An annual review meeting was held in November 2015.

From January 2016, Ms D decided to home school her son as she was concerned his physical and mental health would deteriorate if he continued attending school without the right support. During the first six months of 2016, she also arranged for G to be assessed by various professionals as she was concerned the EHC plan did not contain up-to-date information. G's doctor also wrote to the school describing his symptoms and argued without appropriate support G should not attend school.

The council issued a draft amended EHC plan for G in April 2016 and consulted Ms D on amendments. In May, Ms D attended a meeting about G's phased return to school, which he did from June. In the autumn term of 2016, the council discussed amendments to G's EHC plan with Ms D. It then issued a final amended EHC plan in January 2017. Following an annual review the council allocated G a place at a maintained school specialising in educating children with complex learning difficulties and disabilities, which G started attending from September 2017.

When we investigated, we found fault in many aspects of the council's actions. There was fault in how it carried out the transfer review. The evidence used was drawn to a significant degree from historic assessments and the council failed to consider the continued relevance or otherwise of the assessment and advice from professionals. It did not consult with Ms D about the sufficiency of existing advice. It drafted an EHC plan but

did not share it with Ms D. We also found that issuing an amended statement of SEN during a period when a transfer review was in progress created unnecessary confusion. The council then delayed in completing the annual review process, taking four months more than it should have done, creating a prolonged period of uncertainty for G and his mum. Having decided to amend the EHC plan the council then severely delayed issuing an amended EHC plan. It took around eight months for the council to issue a final amended EHC plan.

The impact on G was significant. The outcome of the annual review was a decision to amend the EHC plan. If the decision was made in a timely manner, the council would have been in a position to issue an amended EHC plan for G much sooner. These delays prevented Ms D from appealing to the tribunal until January 2017. It also left her with the uncertainty that without the fault in the council's actions, her son's education outcomes in his first two years of secondary education would have been better and G would have started attending a school in line with parental preference and his SEN significantly earlier than September 2017.

How we put things right

In this case, the council has agreed to apologise to the mother and pay her £1,000 to acknowledge the distress and frustration caused by severe delay completing the annual review and amending an EHC plan. The council has also agreed to review how it audits compliance with time frames for EHC plan processes; and ensure appropriate action is taken on casework where there is significant overrun of statutory time frames.

Case reference: [17 008 897](#)

In a previous complaint, we found that the council took 13 months too long to issue an EHC plan for Y. At the time of that investigation, his mother was due to appeal against some of the content of that EHC plan to the tribunal. The tribunal since decided Y needed weekly one-to-one maths sessions with a specialist dyslexia teacher.

If the council had issued the EHC plan on time, the appeal would have been heard earlier and Y would have started to receive his provision much sooner. Delays meant he missed out on the sessions he needed for a period of about 7 months.

How we put things right

In this case, the council has agreed to apologise to the mother and pay her £840 to make up for the lost provision and costs she incurred in making some of the provision herself.

Gathering evidence to inform the EHC assessment

Any new request, or a transfer to an EHC Plan, requires an EHC needs assessment. New assessments do not need to be undertaken if the council, parents and the professionals who gave the advice all agree the existing advice is sufficient for an EHC needs assessment.

A common feature of the cases we investigate is councils failing to have discussions to determine whether there is sufficient evidence to inform the EHC assessment with the family early enough, or at all. This often causes delays later and can lead to unnecessary complaints and appeals, when parents challenge the absence of up-to-date evidence, or the fact that the draft EHC plan does not reflect the child's current needs.

Where new or additional advice is needed, we have seen examples of councils not obtaining this within the statutory timeframe of six weeks, and not giving professionals clear instructions, meaning the advice obtained not detailed and specific enough to write a clear

EHC plan. Sometimes councils need to seek clarification from a professional several times, which leads to unnecessary delay. We have also investigated complaints about cases where councils have wrongly sought to delegate the duty to gather evidence to the school or family.

Case reference: [16 014 348](#)

The council began the transfer to convert F's statement to an EHC plan. It issued a draft EHC plan in February 2016. Mrs D was unhappy with the plan for her daughter and argued it was based on outdated information, only contained educational advice and did not contain formal assessments from any other professionals. Mrs D asked for an educational psychologist assessment. She also sent a written request for a personal budget.

While the council commissioned a report from an educational psychologist, this was only completed in December 2016. At an annual review meeting in January 2017, Mrs D complained about the delay in the council issuing the final EHC plan. As the council took until October 2017 to issue the final EHC plan, F lost out on the increased support she should have received for 11 school months and Mrs D was unable to appeal to the tribunal.

When we investigated, we found fault in the council issuing the draft EHC plan without advice from professionals and the lengthy delays in the process. We also found fault in the council's failure to respond to the request for the personal budget.

How we put things right

In this case, the council agreed to commission an independent assessment of the impact on F of the loss of the additional support she should have received and put in place any provision recommended by this assessment. It also agreed to pay £500 to Mrs D for the delay in exercising her appeal rights to the tribunal and the trouble she had been put to. Further, it agreed to remind staff of the importance of adhering to statutory timescales.

Case reference: [17000415](#)

Mrs X's son, Y, has had a SEN statement since he was three years old. The council agreed to transfer him to an EHC plan. Mrs X requested the council seek social care and health advice for the assessment on multiple occasions. The council issued the final EHC plan 46 weeks after it agreed to transfer Y's statement to an EHC plan – 26 weeks longer than the law allows.

When we investigated, we found the council delayed requesting social care information for the assessment for three months and also failed to obtain health advice to inform the plan. This created uncertainty whether the plan properly addressed Y's health needs and also compounded the overall delay in finalising his EHC plan. In response to Mrs X's complaint, the council accepted it had not gathered enough information during the early stages of the EHC planning process.

How we put things right

In this case, the council apologised to Mrs X and paid her £500 for the distress and uncertainty caused and the trouble she had been put to. It also agreed to review its processes to ensure similar delays are not experienced by others in the future and the relevant agencies are consulted early in the process.

Case reference: [17011186](#)

Mrs G's daughter had an EHC plan since September 2016. This stated an assessment by an occupational therapist would be done once the EHC plan was issued. Mrs. G also wanted involvement from an educational psychologist as her daughter's needs had not been assessed for some time.

The occupational therapy assessment was not carried out. Mrs G pursued mediation, where it was agreed the council would consult with an educational psychologist and an occupational therapist to arrange an assessment of her educational and emotional needs. The council again failed to arrange this. An amended final EHC plan was issued, but no professional reports were arranged.

Our investigation found that due to the council's delay, Mrs G had been trying to get the assessments completed and support put in place over a period of sixteen months.

How we put things right

The council agreed to apologise to Mrs G for the lengthy delay in arranging these assessments and also make a payment of £400 for the trouble she had been put to. It also agreed to consider amending its procedures so necessary assessments are carried out without unnecessary delay once they are specified in EHC plans.

Case reference (*decision not published due to risk to anonymity*):

Ms C's son had special education needs. It was agreed the council would transfer him to an EHC plan. The council issued the EHC plan with a two-month delay. In doing so, it had only obtained advice from the head teacher to inform the EHC needs assessment, despite requests from Ms C to obtain psychology reports or arrange a social care assessment.

When we investigated, we found Ms C was put to unnecessary expense obtaining private reports because the council failed to obtain mandatory evidence. We asked the council to apologise to Ms C and her son for these faults, refund the cost of Ms C's report from an education psychologist to acknowledge this advice should have been sought by the council and also pay her half the cost of obtaining the clinical psychologist report. We also asked the council to provide evidence to us whether the failure to get mandatory advice was a one-off omission or whether there was a wider misunderstanding of the law among its staff.

Meetings and transfer reviews

The transfer from statements to EHC plans should be carefully managed to minimise the disruption for the child and parents. It usually takes the place of the annual review and should be in the academic year within which the transfer occurs. In the complaints we investigate, we often see cases of poor communication with families given confusing information or not realising the usual review meeting was the transfer review.

Other common faults we see are councils:

- intending to use the annual review meeting as the transfer meeting but failing to issue the notice so a further meeting has to be held in order to comply with the rules
- asking the school to hold the annual review and using this as the transfer meeting even though no relevant local authority officer attends

- arranging the meeting too late to meet key transfer deadlines or the timescale for issuing a final EHC plan
- telling families at the start of the academic year their next annual review meeting will be used for EHC transfer but then causing confusion by not going ahead with the transfer when the annual review comes round
- realising at the end of the EHC process no meeting has been held and pressuring parents to hold it at short notice (in one case 24 hours) or by telephone so the council meets its statutory deadlines for issuing the EHC plan
- failing to consider whether an annual review format with a range of professionals attending is the best one to allow the child or young person to participate fully in the assessment and planning process

When councils don't use the annual review meeting as the transfer review, it is usually down to poor forward planning or confusion about the new process. Often this adds to the administrative burden on families (and councils) rather than reducing it – because two meetings need to be held, sometimes in quick succession.

Case reference: [16 002 699](#)

Y was in year 11, his last year of secondary school and due to go on to post-16 provision. Y and Ms B wanted him to stay at his current school's sixth form because they felt it could meet his needs, and that he would not cope with changing to a bigger college. The council informed Ms B the annual review would actually be a transfer review meeting. It decided at this meeting that it would transfer Y to an EHC plan.

Ms B became concerned about the lack of planning for Y's post-16 education. She complained the council had not given her two weeks' notice of the transfer review and that it intended to move him from his current school without consulting her. She told the council she would not agree Y's post-16 provision until the EHC plan is finalised. The council had multiple discussions with Ms B about the draft EHC plan.

Around this time, Y's school informed Ms B that the current sixth form was full and there is not a place for her son. In a letter, the council stated the current school was not suitable for Y and encouraged Ms B to look at some local colleges. Ms B and Y visited another college further away than those suggested by the council. The college agreed it could meet Y's needs if he had home-to-school transport and funding for the appropriate support. The council eventually agreed to provide this.

Over this period, the council issued multiple draft EHC plans which it discussed with Ms B. Y started at the new college in September. Although the council completed the transfer review in October 2015, it did not move to draft EHC plan until April and had still not finalised the plan by November 2016. The significant delays in the process impacted on planning for Y's move to post-16 education, particularly decisions about where he would go and how he would be supported. They also caused him and his mother considerable uncertainty and distress. The council acknowledged it prioritised transfer reviews over drafting and finalising EHC plans.

How we put things right

The council had implemented service improvements and allocated increased resources to avoid these problems in the future. It also agreed to apologise to Ms B, finalise Y's EHC plan and pay her £500 to support Y's education and in recognition of the uncertainty and distress the council's actions had caused her.

Case reference: [16 002 185](#)

D had a Statement of SEN for nearly a decade. He attends an independent special school as directed by a SEND Tribunal. Following a formal diagnosis of obsessive compulsive disorder (OCD), D's parents asked the council to review his statement. The statement was not amended and the council did not issue a decision letter. This prevented them from appealing to the SEND tribunal.

Over time D became increasingly anxious about attending school. The council felt D would benefit from an EHC plan so his health and education needs could be considered holistically and provision for his OCD could be included. D's parents agreed but stressed this should not simply be a re-write of his Statement. D was being supported by the Children and Adolescent Mental Health Services (CAMHS), who had explained to the school he required a specific behavioural treatment for his OCD. CAMHS stressed the importance of this being delivered consistently at school and home. It was able to support D's family but it did not have the resources to provide this support to the school. CAMHS said mental health specialists delivering D's package in school must be appropriately supported and supervised, and the council would need to fund this as special educational provision.

At the next review, it quickly became clear that the council had not obtained advice from either D's psychiatrist or from the clinical psychologist advising the school. The review meeting only lasted 10 minutes. D's parents complained about the lack of progress in transferring to the EHC plan. The council responded suggesting D's parents appeared to be requesting a reassessment (rather than an EHC assessment) and this would take a further 14 weeks to complete. It amended the statement and issued a final version but neither the school nor D's parents received a copy, so they were not aware of their appeal rights. A conversion meeting was arranged the following month but the council still had not obtained information from CAMHS, and suggested D's parents seek this information themselves.

The council eventually issued a final EHC plan some 20 months after this option was first agreed. The plan confirmed D needs OCD support provision to access learning, so it is an educational as well as a health need.

The family complained to us when they received no response from the council to their complaint. Our investigation found the council should have sought clarification about what support D needed once it was aware of his OCD diagnosis. CAMHS had provided advice and the council failed to act on it. It also did not give formal notice to D's school or parents about the start of the EHC process or use the annual review meeting as a transfer/EHC assessment meeting. Council staff were confused about the EHC assessment process and sought to delegate obtaining medical advice to D's parents, despite the duty resting with the council. As a result, D was left without appropriate support for four school terms.

How we put things right

The council agreed to pay D £2,400 for educational or social benefit and pay his parents £600 for the time and trouble they were put to. It also agreed to take action to avoid similar mistakes affecting other families, including ensuring that it plans ahead to use annual reviews for EHC transfers, there are robust processes for requesting and receiving medical advice and staff know the duty to carry out an EHC assessment cannot be delegated.

Making decisions about placements and provision in a new EHC plan

After an EHC needs assessment, parents or families can make requests for personal budgets and ask for a specific school or college to be named in the plan. Based on our casework, problems can frequently arise when discussions about placements happen too late in the EHC needs assessment process. While the placement section of a draft EHC has to be left blank to allow parents to express their preference, this does not prevent councils from having early placement discussions with parents.

Making a placement decision in the final plan which has not been discussed in advance with the family can lead to disagreements and appeals. It can also mean families don't have enough information about the costs of different options, or miss out on the opportunity to consider if a personal budget or direct payments might be suitable.

In cases we see where EHC planning works well, there is regular and open communication and discussion with families throughout the process and they are kept informed of placements being considered. While there is no obligation on parents to share their preference before draft plan stage, early discussions about placement do not bind families to a particular option later on and may help minimise delay and disappointment.

Sometimes councils need to consult several schools before a suitable place is found and this time needs to be factored into the EHC process. We see cases where late consultation has led to pupils missing out on the start of the school year or being out of education.

Where a family might want a personal budget, councils should be able to estimate provision costs (which would include placement, transport, health and social care) and share this at a stage when the family has time to consider and propose alternatives.

We find councils sometimes don't have the necessary financial information to be able to properly consider parental preferences or requests for personal budgets. In particular, social care and transport costs are frequently not factored in when comparing the costs of placements. Sometimes this means councils are refusing the parent's preferred placement even when it is no more expensive in real terms, and should have been agreed.

Case reference: [16 004 435](#)

L had a diagnosis of Asperger's Syndrome, ADHD and a number of related conditions. He has had an SEN statement since primary school. He has difficulties with concentration, behaviour and social interaction. Miss B complained to us about how the council managed the transfer to an EHC plan for her son.

In January 2015, the council's SEN team held a review to consider L's transition from secondary school to post-16 provision in September. Following that, the council completed a draft EHC for L. At a meeting to finalise the plan, Miss B expressed her wish for L to continue in mainstream education and identified the school she felt would be most suitable. The council agreed to consult the school.

The council then issued the final EHC plan in April 2015. The educational provision set out in his plan included weekly sessions for L to work on managing his social skills, behaviour and emotions, as well as individual support to be provided by his teachers. The plan also identified health provision, which included work with CAMHS and ongoing therapeutic support.

The council named the school L was currently attending in the plan and stated he would go on to a further education college or sixth form to be confirmed following assessment. It

consulted the school indicated by Miss B as her preferred school but failed to follow-up when the school did not respond. It then decided to wait until the EHC plan had been updated with details from a CAMHS forensic assessment which L had received days earlier and his GSCE results before exploring further options.

In September, the council named the school in the final amended EHC plan and sent it the relevant documents. The amended version of the plan was not significantly different to the previous one but referred to concerns about L's behaviour in the forensic assessment. As a result, the school refused to admit L and argued it was not properly consulted. It also said it could not offer L the personalised provision he needed. Following a meeting with the school in October, the council accepted it was not suitable for L but failed to amend the EHC plan accordingly. The council wrote to Miss B in December with an offer of a different school instead, which she did not accept because she wanted L to remain in mainstream education.

In March 2016, in preparation for L's EHC Plan annual review in April, the council drafted an amended the EHC Plan. Miss B said she still wanted L to attend the first school, so the council consulted it with the draft amended EHC plan. The school replied and refused to admit L again on the grounds that there was little change from the previous plan and its concerns remained the same. Following legal advice, the council decided it could not accept the school's position and named it in L's final EHC plan. However, the council did not share information with Miss B during this period, which created significant uncertainty for her and L. After further discussions, the school agreed to admit L. He started attending at the beginning of term. The final EHC plan states that discussion of a personal budget will be followed up, without any further details.

We found the final EHC plan issued in April 2015 did not specify post-16 provision for L and the council did not confirm these details until September. The council should have also carried out a more robust consultation process with the school at an earlier stage. It should not have named it in the final EHC plan in September when it was clear the school had not received the consultation documents. If the council had acted sooner, it would have had more time to explore alternatives with the full involvement of L and Miss B, and to name a different school or college in the final EHC plan before September. This could have prevented L's education being delayed by a year. When Miss B disagreed with the Council's offer of a different school, she had no opportunity to make a meaningful appeal to the tribunal, because it was too late and the Plan still named the other school.

How we put things right

The council agreed to apologise for these faults and pay £2600 to acknowledge the impact on both Miss D and L. It also agreed to explain its decision about L's personal budget to Miss D. In addition, the council agreed to review its procedures to ensure that it follows up all EHC plan consultations with schools when no reply is received and also ensure it complies with the code of practice when completing final EHC plans for the transition to post-16 provision.

Case reference: [17 010 691](#)

Y was undergoing a phased transfer from secondary school to a post-16 institution, therefore the council had to issue a final EHC plan by 31 March 2017, naming Y's post-16 placement.

The annual review meeting for Y's EHC plan was held mid-March 2017. The council argued it only received the paperwork from Y's school in April, after which it started contacting post-16 institutions in May. One of the colleges responded it could provide the support Y needed other than the speech and language (SLT) or occupational therapy (OT) he needed. Mrs X requested the council provide a personal budget to cover these.

In September 2017, the council issued a draft amended EHC Plan from which it had removed OT. Mrs X complained to the council it had removed OT without notice and without supporting evidence. She said Y's EHC Plan should remain in place until the final EHC Plan was issued and therefore Y should have 1:1 support from a teaching assistant, SLT and OT. Yet, Y had started college with no support in place. The council issued Y's final EHC plan in October and took steps to set up the personal budget. Mrs X asked the council for funding so that Y could catch up on the sessions for OT and SLT he had missed.

We found the council did not arrange Y's annual review in good time, given the date it had to issue a final EHC plan. It also failed to make a decision whether to continue, amend or cease Y's EHC plan within four weeks of the annual review meeting, as required. While the time it took the council to liaise with colleges could not be avoided, it was aware in July 2017 that the college could not provide Y's therapies and Mrs X had asked for a personal budget to cover these. It did not agree to a personal budget until September.

There was also fault in that the council issued a draft amended EHC plan but failed to provide evidence to support the amendments. The council later explained the reason for the amendments with reference to the evidence relied on. It failed to issue the EHC plan on time and provide services under Y's EHC plan when he started college. The council later provided funding for both SLT and IT, up to the date the final EHC plan was issued, which enabled Y to catch up on missed provision. Because of the council's delays, Mrs X did not have the opportunity to resolve any problems with the draft EHC plan or to appeal the final EHC plan before Y started college, which caused avoidable stress and uncertainty.

How we put things right

The council agreed to apologise to Mrs X for failing to follow the process in amending Y's EHC plan and pay her £150 for the trouble she had been put to. It also agreed to review its procedures to ensure it has a process to monitor compliance with timescales, in relation to reviewing and amending EHC plans and take steps to ensure staff are aware of the council's obligations such as providing evidence to support amendments to an EHC plan and the duty to provide all services under any EHC plan until a final plan has been issued.

Failing to name a school in a final EHC plan

Our experience shows councils are issuing final EHC plans with no school or college named, often due to consulting schools too late. To comply with statutory timescales, some councils are issuing final plans with only a type of placement named, or no placement named at all. The extra time while any appeals are heard is then used as an extension to the EHC process, with councils issuing a second final EHC plans once a school place is identified.

There may be cases where despite the council's efforts, it is not possible to identify a suitable school place before the final EHC plan is due. If a council is unable to name a school placement in a final EHC plan, it can name a type of school but this should be a last resort.

We also see recurring instances of parents submitting an appeal against the school named in their child's EHC plan where the council concedes just before the appeal is heard, agreeing to the parents' preferred choice of school. These are matters we cannot investigate as parents will have initiated the appeal, however this causes significant frustration to parents as it deprives them of the opportunity to obtain some form of redress for the delay that has occurred.

Case reference: [17 000 943](#)

Following a request from Mrs B, the council agreed to assess her son C for an EHC plan. It started the assessment in June 2016 and gathered the relevant evidence from the different professionals and Mrs B. It issued a draft EHC plan in December and consulted her on her preferred school.

In January 2017, Mrs B's preferred school responded that it could not meet C's needs. The council therefore issued C's final EHC plan in February with a requirement for C to be placed in a mainstream school, rather than a named school. It then approached a second school which also raised concerns about its ability to meet his needs. The school wrote to the school contacted and said it would name it on C's EHC plan. The school resisted this move. After further discussions with Mrs. B, the council agreed to name her preferred school on the EHC plan and an amended final EHC plan was issued.

Our investigation found it took the council 41 weeks to issue a plan which named a type of provision. While there are no requirements on how long a council can take to name a school after it has named a type of provision in an EHC plan, this should be done as soon as practicable. In this case, it took the council a further 10 weeks to name the school. Some of this time was justified due to the difficulties the council had in engaging with the schools. However, there were also periods of inaction on the council's part which contributed to the overall delay. During the entire period, C was not receiving any education. There was also a failure by the council to arrange alternative provision for C.

How we put things right

In this case, the delay in issuing an EHC plan and in naming a school for C meant he ended up with a complete lack of provision for an entire school term. The council agreed to apologise to Mrs B and pay her £1250 to be used for his educational benefit.

Case reference: [16 016 665](#)

The council issued a draft EHC plan in August 2016, which named a type of provision but not a specific school for C to attend. It sent consultation letters to two schools on the same day. One of these schools was the council's preferred choice, and the other was Mrs B's. The council's preferred school made C an offer. Mrs B's school also offered to interview C.

Mrs B subsequently informed the council that C now wanted to be a boy. She provided supporting evidence from a psychiatrist and said she wanted the council to name her preferred school in C's EHC plan. She said she had already sent this evidence to her preferred school. The council sent the evidence to its preferred school to ask if the school could still meet C's needs. Despite Mrs B chasing several times, the council took no steps to ensure the school provided a quick response. Seven weeks later, its preferred school agreed it could meet C's needs. The council issued the final EHC plan in December.

The process of assessing C and issuing an EHC plan was completed within the statutory 20-week timescale. Although this plan did not name a specific school, the SEND code of practice allows the Council to do this. As a result, the council was not at fault in the actions it took up to that point. Once it had been provided psychiatric evidence of an additional need that C had, the council rightly contacted its preferred school to see whether it could still meet C's needs. However, given the school had already reviewed C's EHC plan and was aware of the child's other needs, the delays were not justified. This caused a five-week delay in which C was still in suitable education and Mrs B was unable to appeal against the named school.

How we put things right

The council agreed to write to Mrs B and apologise for the delay in naming a school on C's amended EHC plan.

Case reference: [16 015 563](#)

The council carried out S's transfer to an EHC plan. In March 2015, S applied for a place at a sixth form college and later that month he went for an interview. The Council sent Ms X a copy of the draft Plan in May. This did not specify the number of hours support S would receive. When the final plan was issued in July, the council failed to send her the final version and instead shared the draft plan again. As a result, Ms X was unaware the Council had specified 20 hours support in S's Plan.

The college offered S a place in August 2015 and he began a one year foundation course that September. However, the council did not send S's plan to the college until March 2016. By this time, S had not received any of the support specified in his plan for six months and his educational and behavioral needs were not fully met during this time.

In October 2016, S asked the Council to carry out his annual review. This is because he had not had a review for over 12 months. The council did not respond to his request and or when he made a further complaint. The council told the college to carry out the review and although there is evidence the council made efforts to ensure it did so at the beginning of 2017, these efforts ultimately failed. However, the statutory duty to carry out the review lies with the council. When the annual review was rescheduled in May 2017, Ms X and S refused to attend as they had not been sent the right documentation to input before the meeting. The meeting nonetheless went ahead without them.

In July 2017, S decided to leave the College because he felt it had not given him the support required by his plan. It had taken him two years to complete the one year foundation course. He was now attending a different college and studying for the next stage of his qualifications.

Because S started a sixth form college in September 2015, the council had until 31 May 2015 to move him to a plan. When we investigated, we found it had only finalised his plan six weeks later than the law allowed. It also took in total over 22 weeks to finalise his plan. The council had a duty to consult with the college once Ms X had named it as her preferred placement and also send it a copy of S's plan but failed to do so. It did not name a specific school or college in S's final plan despite this being indicated by Ms X in her response to the draft plan. It only specified the type of placement he would be attending.

Furthermore, the council issued the plan in July 2015, but did not carry out the first annual review until nearly two years later. It also failed to ensure S and Ms X were sent the right

documents which meant they were unable to contribute to the review. S's final plan stated he should receive 20 hours of teaching assistant support and 2 hours support from the Learning Support Team each week. However, S missed out on half of that provision for the two years he was at the college. The delays in carrying out the reviews meant the council lost the opportunity to identify he was not receiving the provision indicated in his plan.

How we put things right

In this case, the council agreed to apologise to Ms X for these failures and pay £1,600 for failing to provide S with all the support detailed in his plan for the two years. The council agreed to pay an additional £800 to Ms X for the time and trouble she had been put to and the distress caused due to the loss of support. It also agreed to review its processes to ensure it meets the statutory timescales for annual reviews and phase transfer reviews; it follows the statutory requirements to consult when young people transfer to sixth form colleges and schools provide the provision stipulated in EHC plans.

Fragmented redress system

To ensure the reforms achieve their intended goals, it is imperative that the integration of education, health and social care through these reforms is also supported by a single point of redress for complaints. The only gap that currently prevents us from providing a complete route of redress for EHC complaints is the lack of jurisdiction over the actions of schools. Ensures complaints regarding education are subject to the same mechanisms as the wider EHC plans would provide a more coherent system for parents and their children. If our jurisdiction was extended in this way, this would also allow us to provide an overview of the entire system, ensuring that lessons from one complaint can be used to drive continuous improvements in service delivery.

Good practice recommendations

Our focus report referred to previously made a number of recommendations to promote good practice to councils to ensure no children or young people miss on crucial support they need. They include:

- Have a strategic plan for how the remaining transfers and new EHC requests will be managed giving priority to urgent cases and key transfer dates
- The quality of EHC plans depends on the quality of advice obtained to inform them. Give professionals clear instructions about the advice required and that recommendations must be quantified and specified. Consider providing specific forms or guidance for professionals
- Have a proper mechanism in place with NHS partners to address delays or problems receiving professional advice. Oversight by senior officers can free up SEN officer time chasing overdue advice, reduce delays and identify where there are pressures on services or a shortage of specialist advice
- Plan ahead for transfers – the 20-week timescale is challenging but these families are already known to councils. Early discussion with families ahead of issuing the transfer notice can identify cases where significant changes in support are likely to be needed, or new assessments required to inform the EHC plan
- Ensure social care needs are properly considered in every EHC assessment or transfer. Not every child or young person will need an in-depth assessment but councils must be able to demonstrate how they have considered social care needs

- Discuss possible education placements and their relative costs (including social care and transport) early, so families can make informed choices and have the opportunity to suggest alternatives
- Consult possible education settings early and concurrently, not sequentially, to avoid unnecessary delay in reaching a decision
- Work closely with families throughout the EHC process and let families know if the council's views about needs or placement diverge from those of the family. There should be no shocks or surprises when the draft or final EHC plan arrives
- Ensure all those involved in SEN, including managers and panel members are properly trained in the law. Lack of training often leads to unnecessary mistakes, complaints, appeals and duplication of work
- Where complaints about EHC plans cover the actions of the council and health, it is good practice for councils and their partners to provide a co-ordinated response to the complaint, where that is feasible and in accordance with the wishes of the complainant.

We hope this evidence and information will be of use to the inquiry. We would also be pleased to give oral evidence to the committee if it would be helpful to expand on our experience of investigating complaints relating to the EHC system.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M King', with a horizontal line underneath.

Mr Michael King
Local Government and Social Care Ombudsman for England
Chair, Commission for Local Administration in England