

**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint against  
Norfolk County Council  
(reference number: 17 007 085)**

**31 October 2018**

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## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

### Key to names used

Miss X	The complainant
Y	The complainant's son
EP	Educational Psychologist
YEW	Youth Engagement Worker
School A	The secondary school where Y was enrolled
School B	The alternative provision provider
School C	A specialist school Miss X wanted Y to attend
School D	A specialist school Y secured a place at from September 2017

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## **Report summary**

### **Education – Special Educational Needs and Alternative Provision**

Miss X complains about the Council's delay in issuing her son's Education, Health and Care (EHC) Plan and its failure to provide him with suitable education provision.

### **Finding**

Fault found causing injustice and recommendations made.

### **Recommendations**

To remedy the injustice caused, we recommend the Council:

- pay Miss X a total of £250 for frustration, time and trouble caused by the delays in issuing Y's EHC Plan;
- pay a total of £4000 to Miss X and Y to acknowledge the injustice arising from the delay in issuing Y's final EHC Plan and failure to arrange suitable education provision for one academic year;
- review its processes to ensure that EHC Plans are completed within 20 weeks, needs are identified and provision is met;
- develop and implement a mechanism to assist it in identifying what advice is outstanding from professionals and record when this information is chased;
- arrange staff training to ensure all officers are aware of the Council's duties in providing alternative education provision in accordance with section 19 of the Education Act 1996;
- write to School A to remind it of its responsibilities and the Council's expectations in accordance with its policy on children missing school;
- provide us with written evidence that these service improvements have been actioned; and
- provide us with a copy of the new referral process it implemented on 4 June 2018.

We welcome the Council's positive agreement to our recommendations, its constructive commitment to provide a remedy for the complainant and implement the wider service improvements we have suggested for the future.

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## The complaint

1. The complainant, Miss X, complains the Council:
  - took nearly 46 weeks to issue her son's EHC Plan;
  - failed to provide her son, Y, with full time education for nearly two academic years; and
  - provided her with very little support during the period Y was not receiving full time education.

## Legal and administrative background

### The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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*)
3. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
4. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)

### Education, Health and Care (EHC) Plans

5. Children who have special educational needs may have an EHC Plan. This sets out the child's special educational needs (SEN) and the provision required to meet them.
6. The Special Educational Needs and Disability (SEND) Code of Practice Statutory Guidance provides the following:
  - The process of EHC needs assessment and EHC plan development **must** be carried out in a timely manner. The time limits set out below are the maximum time allowed. However, steps **must** be completed as soon as practicable. Local authorities should ensure that they have planned sufficient time for each step of the process, so that wherever possible, any issues or disagreements can be resolved within the statutory timescales (paragraph 9.39);
  - The whole process of EHC needs assessment and EHC plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority's attention) until the final EHC plan is issued, **must** take no more than 20 weeks (paragraph 9.40);
  - The following specific requirements apply (paragraph 9.41):
    - a) Local authorities must give their decision in response to any request for an EHC needs assessment within a maximum of 6 weeks from when the request was received or the point at which a child or young person was brought to the local authority's attention;

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- b) When local authorities request information as part of the EHC needs assessment process, those supplying the information must respond in a timely manner and within a maximum of 6 weeks from the date of the request;
  - c) If a local authority decides, following an EHC needs assessment, not to issue an EHC plan, it must inform the child's parent or the young person within a maximum of 16 weeks from the request for a EHC needs assessment; and
  - d) The child's parent or the young person must be given 15 calendar days to consider and provide views on a draft EHC plan and ask for a particular school or other institution to be named in it.
7. Local authorities have a duty to arrange for the special educational provision set out in an EHC Plan. (*Children and Families Act 2014, section 42*)

### **Alternative Education**

8. Councils have a duty to make arrangements for the provision of suitable full-time education at a school or elsewhere for children of compulsory school age who, *"by reason of illness, exclusion from school or otherwise may not for any period receive suitable education unless arrangements are made for them"*. (*Education Act 1996, section 19*)
9. 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 16(6)*)
10. Statutory guidance 'Alternative Provision' says while there is no statutory requirement as to when suitable full-time education should begin for children placed in alternative provision for reasons other than exclusion, councils should ensure children are placed as quickly as possible.
11. Statutory guidance 'Ensuring a good education for children who cannot attend school because of health needs' says councils should:
  - provide suitable full-time education (or as much education as the child's health condition allows) as soon as it is clear the child will be away from school for 15 days or more;
  - address the needs of individual children in arranging provision and not withhold or reduce provision because of how much it will cost; meeting the child's needs and providing a good education must be the determining factors; and
  - arrange alternative provision as quickly as possible where it is identified it is required and make every effort to minimise the disruption to a child's education.
12. The guidance says if a child receives one to one provision the hours of face-to-face provision could be fewer than full-time, as the provision is more concentrated.
13. Councils and schools can use various legal powers if a child is missing school to improve the child's attendance.
14. Councils must make reasonable enquiries, when notified by a school that a child has stopped attending, to satisfy itself the child is receiving suitable education (Statutory Guidance 'Children Missing Education').

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15. A council may take action against parents where it is not satisfied their child is receiving suitable education and the council considers it is appropriate the child should be attending school.
  16. The Education Act 1996 provides the following:
    - parents have a duty to ensure their children are receiving suitable full-time education (section 7);
    - a failure to meet this duty on the parent's part is an offence under section 444; and
    - section 436 of the Act requires councils to identify children not receiving an education.
  17. The Government issued statutory guidance to local authorities in January 2015, 'Ensuring a good education for children who cannot attend school because of health needs'. It says:
    - local authorities (LAs) must arrange suitable, full-time education (or as much education as the child's health condition allows) for children of compulsory school age who, because of illness, would otherwise not receive suitable education; and
    - where full-time education would not be in the best interests of a particular child because of reasons relating to their physical or mental health, LAs should provide part-time education on a basis they consider to be in the child's best interests.
  18. We issued a Focus Report in September 2011 amended in June 2016, '[Out of school...out of mind?](#)'. This gives guidance on how we expect local authorities to fulfil their responsibilities to provide education for children who, for whatever reason, do not attend school full-time.
  19. In the Focus Report, we made six recommendations based on examples of good practice seen. We said councils should:
    - consider the individual circumstances of each case and be aware that, potentially, a council may need to act whatever the reason for absence (with the exception of minor issues that schools deal with on a day-to-day basis) even when a child is on a school roll;
    - consult all the professionals involved in a child's education and welfare, taking account of the evidence in coming to decisions;
    - choose, based on all the evidence, whether to enforce attendance or provide the child with suitable alternative education;
    - keep all cases of part-time education under review with a view to increasing it if a child's capacity to learn increases;
    - adopt a strategic and planned approach to reintegrating children back into mainstream education where they are able to do so; and
    - put whatever action is chosen into practice without delay to ensure the child is back in education as soon as possible.

## **What we have investigated**

20. The delay in issuing Y's EHC Plan and the alternative education provision the Council arranged for him.

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## How we considered this complaint

21. We produced this report following the examination of relevant documents.
22. Specifically, we have considered:
  - Miss X's complaint and discussed it with her on the telephone;
  - information the Council sent in response to our initial enquiries and the further enquiries we made;
  - the Council's statement on supporting children who are unable to attend school because of health needs;
  - the Special Educational Needs and Disability Regulations 2014;
  - the Special Educational Needs and Disability Code of Practice 0-25 Years;
  - the Education Act 1996; and
  - [Out of school...out of mind?](#) How councils can do more to give children out of school a good education. Focus report: learning lessons from complaints. Published by the Local Government Ombudsman.
23. We gave Miss X and the Council a confidential draft of this report and invited their comments. We took the comments received into account before the report was finalised.
24. 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 our final report with OFSTED.

## What we found

### What happened

25. Y started School A, a secondary school, in 2014. He was bullied throughout Year 7 and this impacted upon his anxiety levels. By May 2015, Y was refusing to attend school one day a week.
26. Y was referred to Child and Adolescent Mental Health Services (CAMHS) and he attended six counselling sessions in January-February 2015.
27. In April and May 2015, the Council's Social Care department became aware of Y's challenging behaviour within the home and that he was being bullied both in and outside of school. No action was taken by Social Care.
28. In June 2015 Y was referred for a further six sessions of counselling. The counsellor provided Miss X with a letter about her concerns about Y and Miss X provided a copy of the letter to School A.
29. Y started Year 8 at School A in September 2015 but his anxiety prevented him from attending school on most days. Miss X met with the school to discuss the concerns she had about Y's health and his refusal to attend school.
30. In October 2015, School A sent a referral to an Educational Psychologist (EP). The Council was also made aware Y was not attending school full-time.
31. Miss X took Y to a Paediatrician who decided that Y may have Asperger Syndrome. Y was prescribed medication but refused to take it.
32. In October 2015, School A began taking action under Section 444 of the Education Act 1996. Miss X was informed by School A possible legal proceedings could be brought against her for Y's failure to attend school.

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33. The Council's Early Help Team became involved with the family. Miss X had requested support with Y's attendance at school and help to set boundaries within the home. A Youth Engagement Worker (YEW) was allocated to the family.
  34. The YEW held a meeting with the family to discuss the concerns about Y's attendance and what support they required.
  35. Miss X took five weeks off from work due to the stress caused by Y's school attendance and behaviour. Miss X said it put a strain on the family and she was prescribed medication to help her cope.
  36. In November 2015, School A held a meeting with Miss X and it was decided it would not proceed with taking any further action under section 444. The YEW accompanied Miss X to this meeting.
  37. A reduced timetable for Y was implemented and he was attending sessions with fewer pupils to help him with his anxiety of large class sizes. Miss X was unhappy with the work Y was being given to complete. Miss X informed the school she wanted Y to complete work in the core subjects such as Maths, English and Science. Miss X also requested work to be sent home for Y to complete but despite repeated attempts she says this did not happen.
  38. The Council received the report from the EP in November 2015 which identified Y would benefit from work to complete at home, a graduated approach to returning to education and regular reviews of his integration to determine if it was appropriate to consider alternative provision. The EP also recommended Cognitive Behavioural Therapy (CBT) sessions for Y.
  39. In December 2015, a further attendance meeting was held at School A where Miss X was accompanied by the YEW. The school highlighted Y's attendance had improved in line with the phased return and he was attending one hour a day. The meeting also highlighted the need for CBT, as recommended by the EP.
  40. In January 2016, Early Help wrote a letter to the Principal of School A on behalf of Miss X about her concerns.
  41. In February 2016, Miss X had a meeting with School A's Principal to discuss her concerns about Y's progress at school.
  42. Miss X and the YEW attended further meetings with School A where it was reported Y was making progress and was increasing his time at school from 1 hour a day to 3-4 hours a day. School A began implementing the recommendations from the EP's report.
  43. Also in February 2016, the YEW began work on a Family Support Plan.
  44. On 7 March 2016, Miss X informed the Council the school was not sending work home for Y as the EP had recommended and that School A was slow in implementing the other recommendations.
  45. On 8 March 2016, the YEW discussed making a request for an EHC assessment with Miss X.
  46. The Council received a request from Miss X on 25 April 2016 for an EHC needs assessment for Y.
  47. In May 2016, the Council wrote to Y's GP to seek her views on whether Y was unable to attend school due to illness. School A made a referral to School B, a short stay school for children with medical needs, because of Y's poor attendance.

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48. On 19 May 2016, the Council asked Y's GP for a recommendation on the number of hours of support Y should be provided and it arranged a planning meeting to confirm what arrangements would be put in place. Y's GP informed the Council on 1 June 2016 that her recommendation was five sessions of two hours a week for three months.
  49. The letter from the GP with her recommendation arrived after the planning meeting had been arranged so a default option of three sessions a week was offered and adopted by the Council.
  50. The Council agreed to assess Y's EHC needs on 16 June 2016.
  51. In June 2016, the Council arranged for Y to have six hours of home tuition a week. This was provided by School B.
  52. On 6 July 2016, the Council wrote to Miss X to inform her of its decision to assess Y's EHC needs.
  53. In September 2016, School B continued to provide home tuition to Y.
  54. In October 2016 Y was diagnosed with Autistic Spectrum Condition (ASC).
  55. Miss X was unhappy School A was not providing suitable work for School B to deliver to Y. The education provision was dependent upon School A providing suitable work to ensure Y continued to be educated according to the school's curriculum. In November 2016, the Council's Medical Needs Co-ordinator contacted School A and relayed Miss X's concerns. School A assured the Council it was aware and it was addressing the issue internally.
  56. In November 2016, School B informed the Council it could no longer meet Y's needs.
  57. In February 2017, a person-centred planning meeting was held to develop the draft EHC plan and agree outcomes with professionals and Miss X.
  58. The Council sent the draft EHC Plan to Miss X on 8 March 2017. Miss X responded on 11 March 2017. Miss X was happy with the content of the plan but she did not feel School A could meet Y's needs and she requested School C to be named on the plan. School C is a specialist school for children with ASC.
  59. On 16 March 2017, the Council approached School C. However, it stated it would not offer Y a place.
  60. Miss X said Y needed a specialist school. The Council consulted other schools in the area.
  61. Y's final EHC Plan was issued on 17 March 2017. The Council named School A on Y's final EHC Plan. The Council state it did this to expedite the final EHC Plan and enable the parental right of appeal pending the outcomes of consultations with the independent schools identified by Miss X.
  62. Miss X did not submit an appeal to the Tribunal as the Council agreed it would approach the independent schools she had identified.
  63. School B informed the Council that it would no longer provide provision to Y. Y's home tuition ended on 31 March 2017.
  64. Y refused to attend School A and did not receive any education for the whole duration of the summer term.
  65. In June 2017, the Council consulted School D, a specialist school for children with ASC. School D offered Y a place which started in September 2017.

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### **Miss X's complaint to the Council**

66. Miss X submitted her complaint to the Council on 29 April 2017. Miss X complained about the length of time it took to finalise Y's EHC Plan and that he had not been in receipt of full-time education for nearly two academic years.
67. The Council investigated Miss X's concerns and responded to her on 11 May 2017.
68. The Council stated that:
- it received a referral for Y in April 2016 and it agreed to assess Y in June 2016. However, the assessment was two weeks late as at week eight of the process, extra time was needed to gather existing evidence;
  - new advice from professionals was required to complete Y's EHC Plan but this was not received within the given timescales. Once the plan was finalised the Council was then in a position to consult alternative education providers; and
  - it recognised there were opportunities to improve timeliness and it apologised to Miss X and Y.
69. On 14 May 2017, Miss X emailed the Council and asked it to clarify what advice it had not received within the timescales. She asked the Council why it requested a second report from an EP when one was completed in November 2015, five months before the EHC Plan referral.
70. The Council responded to Miss X on 15 June 2017. It stated its previous response to her was incorrect and there was no outstanding information at week eight of the process. The Council had the information at this point but it decided to assess Y and asked professionals for new advice.
71. The Council informed Miss X the delays were due to the high volume of new referrals and although it encouraged professionals to respond in a timely manner, the advice was not forthcoming.
72. In relation to the lack of provision, the Council stated that it ended at Easter 2017 as it did not receive updated medical information. School B would have notified School A of this and it was up to School A to deliver provision to Y. Miss X was told to direct her complaint to School A.
73. The Council apologised for the delay in finalising Y's EHC Plan and stated it would implement additional resources within the relevant team to improve responsiveness.

### **Miss X's complaint to us**

74. Miss X was unhappy with the Council's response and complained to us.
75. After discussing Miss X's complaint with her, we made enquiries with the Council. It responded by acknowledging it had delayed in finalising Y's EHC plan and it offered a remedy of £1,500 for the delay and £150 to recognise the distress this caused to Miss X and Y. The Council also confirmed it would review its processes to prevent future delays.
76. We wrote back to the Council and asked them to respond to the specific enquiries we initially made as we were unable to investigate Miss X's complaint and assess the appropriateness of the remedy offered without the requested information.

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## **The Council's response to the complaint**

### **Delay in issuing Y's EHC Plan**

77. The Council told us it had reached a decision to assess Y eight weeks following the request. However, Miss X was not notified of the decision until eleven weeks following the initial request.
78. The Council stated the delays arose for the following reasons:
- The capacity of the workforce;
  - Delays in the Council acquiring the information it needed from agencies and professionals;
  - There were issues caused by the quality of advice received from professionals. They had not provided the requested information in a way that was suitable for the purposes of the needs assessments;
  - Delays in educational psychology advice. This was caused by capacity issues. This related to the competing demands for statutory advice arising from both the volume of new requests the Council was receiving for new EHC needs assessments as well as the transfers of statements to EHC plans; and
  - The Council's scheduling of the person-centered planning meeting on 7 February 2017 caused some delays to the overall timescales.
79. The Council acknowledged its delay in completing the EHC Plan, taking a total of 46 weeks rather than the statutory 20 weeks. It offered £1,650 to the family to acknowledge this.
80. The Council apologised to the family for this delay principally due to the unparalleled upsurge of EHC needs assessment requests which had risen by 100% since 2014. This impacted on the Council's capacity across the teams who lead the co-ordination of the EHC assessment and planning process.

### **Alternative Education**

81. After March 2017, when Y's EHC Plan had been issued by the Council, it had concluded there was no evidence to show that Y was unable to attend School A and therefore provision was not arranged under section 19. The Council stated it remained the duty of School A to provide this.
82. The Council states it did not consider its duty under section 19 earlier as School A was not identifying his absence from school as 'illness' but 'unauthorised'. There is no evidence the Council considered enforcement after March 2017.
83. The Council stated it did not arrange provision as procedures in place for children under section 19 were not followed or understood by the School or by council officers working with Miss X and Y.
84. The Council states it pursued School A once Miss X told it School A was not providing suitable work.
85. Following Miss X's complaint to us and in response to our enquiries, the Council informed us it was reviewing and improving the current system of referrals for children who require provision due to their medical needs. It implemented a new referral process on 4 June 2018 whereby referrals are sent directly to the Council

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with decision making and oversight being brought back in to the Council. It states it will implement provision within a week of a referral being accepted.

## **Findings**

### **Delay in issuing Y's EHC Plan**

86. The Council received a referral for a EHC Plan for Y on 25 April 2016.
87. The Council must decide whether or not to proceed with an EHC needs assessment within a maximum of six weeks from receiving the request. In relation to Y, the Council did not make its decision to conduct an EHC needs assessment until eight weeks following the request. This is fault.
88. The Council should also have communicated its decision to assess Y's needs within a maximum of six weeks but it notified Miss X eleven weeks after the referral. This is also fault.
89. Although the Council says this was due to outstanding information it was awaiting from other professionals and agencies, it is responsible for ensuring that there is effective co-ordination of the assessment and development process for an EHC Plan. The co-ordination should include ensuring relevant professionals have sufficient notice to be able to contribute to the process.
90. Councils should ensure they have planned sufficient time for each step of the process, so wherever possible, any issues or disagreements can be resolved within the statutory timescales.
91. The Council issued Y's final EHC Plan on 17 March 2017. It took nearly 46 weeks to issue his final EHC Plan when the whole process should take 20 weeks. This is fault.
92. The Council had not consulted the school it named on Y's EHC Plan. It had not completed the process set out in legislation and Government guidance when it issued Y's plan. This is also fault.

### **Alternative Education**

93. In response to our enquiries the Council has demonstrated that its understanding of its duties is that as long as the child is on a school roll, the Council is under no duty to provide alternative education unless the child is out of school for medical reasons. This is not our view and nor is it the law. The duty may arise in situations where the child is out of school for other reasons as well (see paragraph 9).

### **Between October 2015 and May 2016**

94. Miss X complains Y did not receive suitable education provision between October 2015 and May 2016 from School A. The Council has informed us it has no correspondence from this time period. However, there is evidence the Council's Early Help Team and its Social Care department were aware Y was not attending school, he was being assessed for Asperger Syndrome, he was refusing to take his medication and Miss X was struggling to cope with his challenging behaviour.
95. As the Council was aware there were concerns with Y's attendance during this period, the Council should have considered if it had a duty under section 19 to intervene.
96. During this period, there was an assessment by an EP and the Early Help Team were involved as a result of concerns around Y's attendance. A YEW was

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- allocated to the family who accompanied Miss X to meetings with School A. Early Help wrote letters to School A on behalf of Miss X.
97. In February 2016, the YEW accompanied Miss X to a meeting with School A to discuss the concerns around Y's progress at school. The focus of the meeting was on reintegration and the school using its best endeavors to meet Y's special educational needs.
98. There was a reintegration plan which did help to improve Y's attendance during the second half of the Autumn term and the first half of the Spring term. However, there is no evidence the Council obtained any medical evidence about how much education Y could manage. In the absence of medical evidence we cannot be sure if Y was receiving an appropriate amount of provision.
99. The Council says there was a delay by the school in implementing the EP's recommendations and the school not sending work home for Y to complete. We cannot look at the internal management of schools (see paragraph 4).
100. However, the Council was aware there were concerns about Y's attendance and health and that he was not receiving a full-time education. It did not have any evidence to say the reduced timetable was in Y's best interests. The reintegration plan went on for a term and a half which suggests it was not effective. The Council had a duty to intervene so Y received a full-time education.
101. Although there is evidence the Council worked with the family and School A, it should have considered arranging suitable full-time education for Y. This is fault.
102. In its response to our enquiries, the Council has accepted that the local procedures in place for children under section 19 were not followed or understood by those working with Y and his family.

#### **Between June 2016 to March 2017**

103. When the Council had medical evidence from Y's GP about his anxiety, the Council continued to provide alternative provision through School B. Once School B was notified of Y's diagnosis of ASC, it informed the Council on 2 November 2016 it could no longer meet his needs. Yet Y continued to receive unsuitable provision until 31 March 2017 because the Council had not arranged suitable alternative provision. This is fault. School B stopped the provision once Y's EHC Plan had been finalised.
104. When making a decision on how many hours of education Y should receive from School B, the Council asked Y's GP for her recommendations. The GP's response recommending five sessions a week for three months was received by the Council after the planning meeting. In the planning meeting the Council decided upon a default option of three sessions a week as it had not received the GP's letter. Although the Council's default option of three sessions a week (six hours) was discussed with Miss X, there is no evidence it considered the GP's recommendation of five sessions a week (ten hours). There is also no evidence this was discussed with Miss X. We consider this disregard of a medical professional's recommendation as fault.
105. But for this fault, it is likely Y would have received a further two sessions a week over a period of three months.
106. We also consider it fault for the Council to have a default option of the number of hours of provision without considering the individual needs of the child. This is not in accordance with its policy on supporting children unable to attend school because of health needs.

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107. Miss X also complained School A did not provide work for School B to deliver to Y during this period. Miss X had requested work from School A, as had the tutors from School B. The Council was aware of this as on 30 November 2016, its Medical Needs Co-ordinator contacted School A to raise concerns about the provision of suitable work to ensure Y continued to be educated according to the school's curriculum. This demonstrates the Council was aware of its duty under section 19 to provide suitable education to Y.
108. The Council was aware suitable work was not being provided to School B to deliver to Y and that his needs were not being met. Other than the telephone call, there is no evidence the Council did anything further to address this issue or ensure the provision was suitable. This is fault.
109. The Council's policy states that it expected schools to hold review meetings every six weeks to review the provision. There is no evidence this happened and there is no evidence the Council ensured the provision was being reviewed. This is also fault.

**Between April 2017 to July 2017 (the entire Summer term)**

110. Y's final EHC Plan was issued in March 2017. The Council named School A on the plan, a school he was already on roll at.
111. Miss X had a right of appeal in March but we consider it reasonable she did not use it as the Council had informed her it would consult with special schools for children with ASC.
112. The Council did not consult with School A before naming it on the Plan. There is no evidence the Council arranged suitable education provision for the Summer term and there is no evidence it ensured School A could meet Y's needs. This is fault.
113. After naming School A on the Plan, the medical needs provision provided by School B came to an end. Miss X did not consider School A could meet Y's needs and he refused to attend. Consequently, Y received no education for one full term (Summer 2017).
114. Knowing Y had stopped attending school, the Council had several options. It could have:
- considered taking enforcement action against the parents if it took the view that there was no good reason he should not be attending School A;
  - put in place support for Y to be delivered by School A;
  - advised Miss X to obtain medical evidence if she felt Y could not attend for health reasons; or
  - provided alternative education.
115. We have not seen any evidence the Council took any of these steps. This is fault.
116. The Council had a non-delegable duty to arrange the provision set out in Part F of Y's EHC Plan (section 42 Children and Families Act 2014). Unlike schools, the law does not say a council can argue 'it tried its best' to provide education, what it knows as a best endeavours 'defence'. A council cannot delegate the duty to ensure the provision contained in Part F is provided to a school.
117. Councils should be able to show they have checked a new EHC Plan is being complied with when it is issued and again at the annual (or any interim) review. This way a council can show when and how it has complied with its duties.

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118. Councils have various methods for checking the provision in a new plan is in place, for example:

- holding a 'settling in' review or meeting;
- asking schools to complete a checklist;
- carrying out monitoring visits or ask visiting professionals to do so; or
- asking for assurances via letter or telephone.

It is important councils also check the family are satisfied all the provision is in place and is working for the child as intended. Whichever method is chosen, councils must be able to demonstrate they have discharged their duty under Part F. We have not seen any evidence of this in this case.

119. At any time, if a council receives a complaint that provision is not being made, it must investigate to ensure it is not in breach of its duty to provide Part F and respond to the complaint directly. The complaint cannot be delegated to schools as the duty is owed by the council personally to the child. In this case, the Council was wrong to say the duty lies with School A.

120. The Council has failed to recognise it had a duty to provide education between April 2017 and July 2017. The Council did not consult with School A when it named it on the plan and there is no evidence the Council took any steps to check the provision in Part F of the plan was implemented. This is fault.

### **Similar cases we have investigated**

121. Over the last two years, we have investigated and upheld nine complaints against this Council about similar issues Miss X has complained to us about. Clearly Miss X's experience has not been an isolated concern. This report is in part a reflection of our concern at this worrying pattern.

## **Conclusions**

### **Fault**

122. The fault can be summarised as follows:

- there was a two week delay by the Council in making its decision to conduct an EHC needs assessment of Y;
- there was a four week delay by the Council in communicating its decision to assess Y's needs to Miss X;
- there was a delay of nearly 26 weeks in issuing Y's EHC Plan;
- the Council did not consult the school it named on Y's EHC Plan;
- between October 2015 and May 2016 the Council did not consider arranging suitable full time education;
- from 2 November 2016 to 31 March 2017, the Council failed to provide suitable education provision to Y when it was aware the provision he was receiving was unsuitable and that it was not meeting his needs;
- the Council did not take into account a medical professional's recommendation when making a decision on how many hours of provision were suitable for Y;
- the Council's practice of a default option regarding the number of hours of provision is fault. It should consider the individual needs of a child;

- the Council did not do enough to ensure suitable provision was being provided to School B to deliver to Y;
- the Council failed to take appropriate steps when it became aware that Y was not attending school;
- the Council failed to check if the provision in Y's EHC Plan was implemented;
- the Council was wrong to state the duty to ensure provision is being made lies with the school;
- the Council failed to recognise it had a duty to provide education to Y between April 2017 to July 2017, an entire summer term; and
- it failed to consider that the duty to provide the special education provision in part F of Y's Plan lay with the Council.

### **The injustice**

123. The Council acknowledges Y's EHC Plan was delayed.
124. In assessing the injustice, we have decided Y lost one academic year of education between September 2016 and September 2017, due to the delays by the Council in issuing the EHC Plan. Although there was limited provision in place during this 12-month period, it was unsuitable for Y because there was not enough of it and it was made by a provider which could not meet his special educational needs.
125. In particular, the decision is based on the following reasoning:
- Miss X requested an EHC needs assessment for Y on 25 April 2016. If there were no delays the Council would have been in a position to issue the final EHC Plan by 12 September 2016. Comprehensive provision could have been in place by the start of the academic year 2016/17;
  - suitable provision in accordance with Y's EHC Plan was not secured until 17 August 2017 and Y's placement began at School D in September 2017;
  - there was some provision in place during this 12-month period however it was unsuitable because:
    - the Council disregarded the advice of a medical professional who had been working with Y when making a decision on the number of hours of provision he should be provided with;
    - the alternative education provider, School B, informed the Council on 2 November 2016 that it could no longer meet Y's special educational needs however, because of the Council's failures, it had to continue providing unsuitable provision until 30 March 2017; and
    - Y's attendance to education sessions was irregular.
126. The Council accepted the first response to Miss X's complaint contained factually incorrect information about the delays in issuing Y's EHC Plan. Therefore, Miss X was put to the time and trouble of pursuing her complaint further.
127. Miss X has spent time contacting the Council to request updates on when Y's EHC Plan would be issued. Miss X has spent time contacting School A and the Council about it not providing suitable provision to Y. This caused anxiety and distress to both Miss X and Y.

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128. Miss X states Y's anxiety increased the longer he was not in a school setting. Miss X is a single, working parent and the Council's delays and failure to provide suitable provision has caused them both distress.
129. The Council, in its responses to Miss X's complaint and also when responding to us has:
- apologised for the delay in issuing the EHC Plan;
  - offered £1500 for the delay in issuing the EHC Plan and £150 to recognise the distress this caused to Miss X and Y;
  - confirmed it would review its processes to prevent future delays;
  - informed us it was reviewing and improving the system of the referral process. It implemented a new referral process on 4 June 2018 whereby referrals were sent directly to the Council with decision making and oversight being brought back in to the Council. It also stated that provision will be implemented within a week of a referral being accepted.
130. The next section explains our view about appropriate ways to address the impact of the Council's failings on Miss X and on Y.

### **Recommended action**

131. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
132. In addition to the requirements set out above, to remedy the injustice to Miss X and Y, the Council has agreed to do the following within three months from the date of this report:
- pay Miss X a total of £250 for frustration, time and trouble caused by the delays in issuing Y's EHC Plan; and
  - pay a total of £4000 to Miss X and Y to acknowledge the injustice arising from the delay in issuing Y's final EHC Plan and the failure to arrange suitable education provision for one academic year. When arriving at this figure, we considered our [Guidance on Remedies](#) which suggests a financial remedy between £200 and £600 for each month of lost provision. We also took into account the circumstances of this case.
133. The Council has also agreed to make the following service improvements within three months from the date of this report:
- review its processes to ensure that EHC Plans are completed within 20 weeks, needs are identified and provision is met;
  - develop and implement a mechanism to assist the Council in identifying what advice is outstanding from professionals and record when this information is chased;
  - arrange staff training to ensure all officers are aware of the Council's duties in providing alternative education provision in accordance with section 19 of the Education Act 1996;
  - write to School A to remind it of its responsibilities and the Council's expectations in accordance with its policy on children missing school;

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- provide us with written evidence that these service improvements have been actioned; and
  - provide us with a copy of the new referral process it implemented on 4 June 2018.

134. We welcome the Council's positive agreement to our recommendations, its constructive commitment to provide a remedy for the complainant and implement the wider service improvements we have suggested for the future.

### **Decision**

135. We have completed our investigation into this complaint. We have found evidence of fault causing injustice. We have recommended action to remedy the injustice caused.

### **Parts of the complaint that we did not investigate**

136. We have not investigated the role of School A in Y's SEN provision because the internal management of schools is currently outside our jurisdiction.