

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

**Investigation into a complaint against
Cornwall Council
(reference number: 17 016 736)**

23 January 2019

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	Her eldest son
Z	Her youngest son

Report summary

Education – Special Educational Needs and Alternative Provision

Miss X complains the Council has failed to provide her son with a suitable full time education since he was excluded from Primary School in October 2015. She says there were delays in the Council assessing her son's educational needs and it sent him to a school some distance away and failed to provide help with transport costs.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council should take the following action to remedy the injustice we have identified:

- Pay the family £2,500 to recognise the injustice caused as a result of the education Y missed and the additional time and trouble and distress this caused Miss X.
- Due to the prolonged period Y has been without education the Council should pay Miss X £1,000. This would allow her to fund additional activities for Y outside of school suitable for his needs.
- Write to the family to apologise for the Council's failure to assess Y for an Education Health and Care Plan (EHCP) in 2015 and August 2016.

The Council should take this action within three months of the date of this report.

In addition to this the Council should also:

- produce guidance for its children's services and education departments regarding information sharing and responsibilities around children with special educational needs (SEN) and children who are either out of education or not receiving full time education; and
- amend its guidance on children eligible for an EHCP assessment to ensure these are lawful and in line with the legislation, guidance and case law. The Council should also ensure any guidance makes it clear that it is prepared to depart from its own criteria where there is a compelling reason to do so.

The Council should take this action within six months of the date of this report and provide us with a copy of its guidance and details of its review of its guidelines.

The Council has agreed to take the action we have recommended.

The complaint

1. Miss X complains the Council has failed to provide her son, whom we shall call Y, with a suitable full time education since he was excluded from Primary School in October 2015. She says there were delays in the Council assessing her son's educational needs and it sent him to a school some distance away and failed to provide help with transport costs.

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. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. 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*)
5. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
6. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
7. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

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.

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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. 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.
 14. 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.

Education Health and Care Plans (EHCPs)

15. Children who have special educational needs may have an EHCP. This sets out the child's special educational needs (SEN) and the provision required to meet them.
16. The Special Educational Needs and Disability (SEND) Code of Practice Statutory Guidance provides the following:
 - The process of EHCP needs assessment and EHCP 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. Councils 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).

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- The whole process of EHCP needs assessment and EHCP 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 EHCP is issued, **must** take no more than 20 weeks (paragraph 9.40).
 - The following specific requirements apply (paragraph 9.41):
 - Local authorities must give their decision in response to any request for an EHCP 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.
 - When local authorities request information as part of the EHCP 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.
 - If a local authority decides, following an EHCP assessment, not to issue an EHCP, it must inform the child's parent or the young person within a maximum of 16 weeks from the request for a EHCP assessment.
 - The child's parent or the young person must be given 15 calendar days to consider and provide views on a draft EHCP and ask for a particular school or other institution to be named in it.
17. The Statutory Guidance sets out what a council should take into account when it considers a request for an EHCP assessment. The Guidance says the council should *"take into account a wide range of evidence"* and should pay particular attention to:
- evidence of a child's academic attainment and rate of progress;
 - information about the nature, extent and context of the child's SEN;
 - evidence of the action already being taken by a school to meet a child's SEN;
 - evidence that where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided;
 - evidence of the child or young person's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet those needs by other agencies.
18. In *Cambridgeshire County Council v FL-J* [2016] UKUT 0225 the judge said:
"The authority or tribunal does not have to decide at this initial stage whether special educational provision 'is necessary'... that question only arises when an assessment has been made... the issue at the initial stage is a provisional and predictive one; it is only when an assessment has been made that a definitive decision has to be made".
19. The Guidance says councils can develop criteria as guidelines to help them decide when it is necessary to carry out an EHCP assessment. The Council in this case has produced its own guidance which says it will carry out an EHCP assessment for children with SEN where there is *"clear evidence"* that:
- the SEN are long term, severe and complex; and
 - the level/severity of SEN remains, despite sustained, relevant and purposeful measures taken by the educational setting and external agencies; and

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- the necessary SEN provision cannot reasonably be provided within the resources normally available to mainstream educational settings.
20. The Council defines “*long term, severe and complex needs*” as “*significantly greater than the majority of children of the same age, are long-term and require specific resources or provision in order to achieve long-term positive outcomes*”.
21. The Statutory Guidance says councils who produce their own guidelines “**must** be prepared to depart from those criteria where there is a compelling reason to do so in any particular case and demonstrate their willingness to do so where individual circumstances warrant such a departure”.
22. Parents have a right to appeal to Tribunal if they disagree with a council’s decision:
- not to assess their child for an EHCP;
 - not to provide an EHCP on completion of its assessment;
 - any aspect of an EHCP which they disagree with.
23. In October 2017 we published a focus report looking at [our first 100 investigations of complaints about Education, Health and Care Plans](#). The report looks at common issues we see when investigating complaints and the impact this has on children and families.

How we considered this complaint

24. We produced this report following the examination of relevant documents.
25. 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 Special Educational Needs and Disability Regulations 2014;
 - the Special Educational Needs and Disability Code of Practice 0-25 Years;
 - the Education Act 1996;
 - Out of school...out of mind? How councils can do more to give children out of school a good education. Focus report published by the Local Government Ombudsman in September 2011 and amended in January 2016; and
 - Education, Health and Care Plans: our first 100 investigations. Focus report published by the Local Government and Social Care Ombudsman published in October 2017.
26. We gave Miss X and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.
27. 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

28. Miss X has two sons, Y and his younger brother whom we shall call Z. Both were attending the same Primary School (School A).
29. In July 2015 the Council made Y and Z subject to a Child Protection Plan after Miss X hit Y. Miss X said she was struggling with Y's behaviour and lost control. Miss X said she felt she had no support and everything got on top of her. There had been no reported injuries to Y or Z before.
30. The Child Protection Plan said the Council was *"worried that [Y] receive a [diagnosis] of [autism] and in the past there has been the lack of targeted support for [Y] and [Miss X]. [Y's] behaviour has recently become very difficult and aggressive and he is posing a risk to himself and others"*.
31. Y was diagnosed as Autistic in May 2015.
32. Y's school was struggling to manage Y's behaviour. It was reported that Y could become distressed and physically violent towards other children without provocation.
33. As part of the Child Protection Plan the Council's Autism Needs Advisor contacted Miss X to say they would attend School A on 17 September 2015. The Autism Needs Advisor said this was to complete *"a planning and intervention form with the class teacher re strategies to support [Y] in school"*.
34. On 17 September 2015 the Autism Needs Adviser e-mailed the Headteacher at School A with details of their observations. The Adviser said the School had been given action points including:
 - using a "now and next" visual timetable;
 - using a "lining up spot" with staff supervision at lining up time;
 - five minutes "mediated and modelled play" at break and lunch times; and
 - experiment with different "pencil grips".
35. The Autism Needs Adviser also said they had given Miss X details of support groups for parents of Autistic children. The Adviser said their service would continue to support Miss X.
36. Miss X spoke to the Social Worker allocated to her case on 6 October 2015. She said Y's behaviour was becoming more difficult and he had been sent home from School for hurting another child and had also recently had to be restrained at School. The Social Worker discussed the possibility of having an Educational Psychologist look at the support available for Y at School. Miss X said she would take Y to her GP to ask for a referral to Children and Adolescent Mental Health Services (CAMHS).
37. Miss X contacted the Council on 8 October 2015 to say she had visited her GP to ask for a referral to CAMHS. Miss X also advised that the School kept sending Y home as it could not manage his behaviour.
38. The Social Worker visited School A on 9 October 2015 to observe Y. The School advised the Social Worker that Y's behaviour *"has been more [challenging] over the past week where he appears destructive trying to [break] toys and wants to disrupt his peers in class"*.

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39. On 13 October 2015 there was a review of the Child Protection Plan for Y and Z. At the meeting the School said on 2 October 2015 Y was *“out of control and a danger to himself and others which has not happened before”*. The School said it would pay for a psychological assessment for Y and refer Y for an assessment for an Education Health and Care Plan (EHCP). It was agreed Y would not attend School until after the half term holiday.
 40. At the meeting the Autism Needs Advisor said Y would need *“visual support”* to understand what was happening. They said Y *“would benefit from a Nurture Group environment in the short to medium term. Explained that as he is in such a heightened state that incidents that he would previously been able... to tolerate are now unbearable for him, leading to major outbursts and increased aggression”*.
 41. On 3 November 2015 an Educational Psychologist from the Council visited the School to observe Y. The Educational Psychologist agreed a plan with the School for re-integrating Y after a period out of education. The Educational Psychologist’s notes say it was agreed Y would have two-to-one support to begin with and attend for two hours a day. The School said it would refer Y for an EHCP assessment.
 42. The School e-mailed Miss X on 3 November 2015 setting out a timetable for Y’s reintroduction to education. The School said Y would attend for two hours a day for the next two weeks. Y would receive two-to-one support *“with the aim of reducing that to 1:1 within the next few weeks”*. The School said Y would be *“doing activities designed to build trust and relationships so that he can begin to feel safe and secure at school”*.
 43. On 17 November 2015 there was a review of the Child Protection Plan for Y and Z. At the meeting the School said Y’s reintegration was going well. The Educational Psychologist said she would be at the School over the coming weeks and would work *“closely with them to consider how best to re-integrate [Y] into class”*. The School confirmed it had completed the EHCP referral and it would be sent that week.
 44. The notes of the core group meeting also said that Y was on a waiting list to see CAMHS and may be waiting for up to three months. The Council also said it had referred Miss X for Direct Payments to allow her to employ someone to look after Y so she could carry out domestic tasks and spend one-to-one time with Z.
 45. The Educational Psychologist visited the School on 24 November 2015. The School said Y was still having difficulties and the School was concerned it would be unable to fund two-to-one support if Y’s hours were increased. The School said it would discuss funding with Y’s Social Worker.
 46. School A submitted the EHCP referral to the Council on 24 November 2015. In the referral, the School said *“[Y’s] behaviour has proved too difficult to manage within a classroom environment, since he began to show violent behaviour he has not attended school in agreement from all professionals listed below. He is currently being integrated back into school although this is a very slow programme with 2 to 1 care outside the classroom”*. The referral form gave details of the Social Worker and Autism Needs Adviser and said Y was on a Child Protection Plan.

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47. The Educational Psychologist spoke to the Social Worker on 25 November 2015 and advised *“it will take longer to reintegrate him back into school than originally thought”*. The notes say the Educational Psychologist and Social Worker discussed the possibility of Y attending a specialist school but it was agreed this would not be in Y’s best interests.
 48. The Social Worker spoke to the School on the same day. The School explained that it could not fund two-to-one support for Y as his hours increased. The School asked if Y was *“medically ok for school”*. The Social Worker said they would ask for an assessment and chase CAMHS about the possibility of financial support.
 49. The Autism Needs Adviser also spoke to the School on 25 November 2015. The notes of the conversation say the Adviser suggested *“clear daily structure with provision including regular sensory regulation activities, DT, gardening, cooking etc”*. The Adviser said they also gave the School *“advice re putting together a personalised curriculum for [Y] to meet his needs, particularly in light of current escalated levels of anxiety. CAMHS are not giving support despite urgent referrals”*.
 50. On 4 December 2015 the School contacted the Council to say Y would be attending on a reduced timetable as *“he is not coping and becoming violent again, especially in the mornings”*. The School asked the Council if it could contact CAMHS about the referral.
 51. The Council’s Education Health and Care Panel met on 7 December 2015 to discuss the referral for Y for an EHCP. The note of its decision says:
“Panel recognise that [Y] may have complex and persistent needs however evidence of educational need and actions taken to address them have not been provided. Level of current attainments not provided, information about engagement of outside agencies and implementation of recommendations e.g. [Autism Needs Adviser] is missing and what is his timetable and who supporting and how, what is timescale for integration”.
 52. The Panel considered information provided by the School, Miss X and a report from its Autism Spectrum Disorder Assessment Team.
 53. The Panel notified the School of its decision on 8 December 2015 and wrote to Miss X on 11 December 2015. The letter to Miss X said:
“The special educational needs (SEN) that have been identified can be met at SEN support. SEN support includes planning and reviewing what extra or different provision needs to be in place and how well this is working. There are resources available in all Cornish mainstream schools to enable school staff to plan, and arrange, a range of different things for pupils with SEN. As part of the regular reviews [Y’s] progress will be checked. The Local Authority can be asked to consider undertaking an education, health and care assessment again in the future if expected progress is not made”.
 54. The letter explained Miss X could appeal to Tribunal if she was unhappy with the decision not to assess Y for an EHCP.
 55. Miss X spoke to the Social Worker on 14 December 2015 and said she was unhappy the ECHP had not been agreed. The Social Worker said she would *“also be contacting them to note my concerns”*.
 56. On the same day the Social Worker spoke to the Educational Psychologist. The Educational Psychologist said Y was not making progress and may need more specialist help. It was noted that the School wanted Y to attend another school

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- (School B) which could provide more support for Y. School A said it would fund Y's placement at School B. The Educational Psychologist said transport would be provided to School B and School B would assist in resubmitting a referral for an EHCP assessment. The plan was for the placement to be for two terms.
57. There was a Child Protection Plan core group meeting on 15 December 2015. The notes say there *"was a discussion around the ECH plan and all in attendance were surprised it had been deemed unnecessary at this time... it was recommended that [School A] reapply and if [Y] was to go to [School B] this could be viewed as an assessment period"*.
 58. At the next Child Protection Plan core group meeting on 15 January 2016 School A said Y was still attending on a reduced timetable and was avoiding contact with his classmates by refusing to go into the classroom or outside at break and lunchtimes. Y was due to begin attending School B the following week. Miss X agreed to take Y to School B for the *"first week or two"* before introducing him to going in a taxi.
 59. On 24 February 2016 a further Child Protection Plan core group meeting took place. At the meeting Miss X said Y did not like School B and *"will cry and curl up in a ball"*. The Council shared comments from School B that Miss X's behaviour was contributing to Y's difficulties going in to the school. Miss X disputed this.
 60. The next Child Protection Plan core group meeting took place on 23 March 2016. At the meeting the Educational Psychologist said Y was making good progress at School B and *"seems more happy generally"*. At the meeting a plan to transition Y back to School A in September was discussed. School A said it was referring Y for an EHCP assessment and School B was supporting the referral.
 61. At the next Child Protection Plan core group meeting on 19 April 2016 the Council urged School A and School B to complete the EHCP referral as soon as possible. It was noted that Y's behaviour had been unsettled since Easter.
 62. The Educational Psychologist visited Y at School B on 13 May 2016. It was noted that EHCP referral paperwork was still with School A and had not been submitted. The Educational Psychologist noted Y was unsettled as he had just returned from a two week holiday. The Educational Psychologist discussed the plan for reintroducing Y to School A and the need for Y to establish a relationship with key staff.
 63. The Child Protection Plan core group met on 24 May 2016. At the meeting Y's reintegration to School A was discussed. It was hoped Y would return to School A in September and be back on a full timetable by December 2016.
 64. School A submitted a referral for an EHCP assessment in June 2016.
 65. On 6 July 2016 the Child Protection Plan core group met and agreed that Y and Z no longer needed to be subject to a Child Protection Plan. This was because they were no longer considered to be at risk. However, it was noted that School A *"believe he is not in control of his emotions. His behaviour at school is still erratic. His moods fluctuate in the extreme and he can be violent to other children without provocation"*.
 66. On 12 July 2016 the Autism Needs Adviser visited Y at School B. They found that Y had settled down since starting the School due to support put in place. The Adviser recommended further activities and said they would provide some resources *"to support planning and assessment"*.

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67. On 3 August 2016 the Council's EHC Panel wrote to Miss X to say it would not assess Y for an EHCP. The Panel said *"the paperwork provided does not evidence special educational needs which cannot be met at SEN support. There is no evidence of strategies being implemented as a result of professional advices [sic] and the impact of consequent interventions"*.
68. The letter advised Miss X she could appeal its decision at Tribunal.
69. Miss X wrote to the Council on 10 August 2016 to complain about its decision to refuse to do an EHCP assessment for Y.
70. The Council wrote to Miss X on 30 August 2016. The Council said the information sent to the EHC Panel *"did not provide evidence that [Y] has special educational needs which could not be met within the 17 units of delegated funding available to all schools. No evidence was provided that strategies advised by professionals, such as the Autism Spectrum Team, had been implemented and the impact of consequent interventions. It may well be that [School A] and [School B] did not provide all the evidence available and a meeting with [both Schools] would be a good opportunity to identify if there is further information they can provide. It would also be useful to share the reintegration plan"*.
71. The Council met with Miss X on 15 September 2016. The meeting was attended by the Headteacher from School A, a special educational needs teacher from School B and an Officer from the Council's Education department.
72. At the meeting School A said they were concerned that the Council had refused to carry out an EHCP assessment. The Council said *"the description of [Y's] needs were detailed clearly but the panel want to know what the school are doing to meet those needs in relation to the advice and recommendations from the professionals"*. School A said the fact Y had attended specialist provision at School B and been allocated two full time teaching assistants should be sufficient evidence for an assessment to be carried out.
73. School A said it would support Miss X to appeal the Council's decision not to assess Y for an EHCP. It was agreed School A would submit another referral for an EHCP assessment and the Council would provide examples of good practice for filling out a referral.
74. The Educational Psychologist visited School A on 17 October 2016 and met with staff at the School and Miss X. The Psychologist noted there were *"a number of instances of physical intervention when [Y] presented a danger to himself or others"*. The Psychologist said staff at School A needed further training and there needed to be *"a low arousal space available for [Y] near the classrooms"*. The Psychologist said Y was not ready for further reintegration to School A beyond the one day a week he was currently attending.
75. On 18 October 2016 the Autism Needs Adviser e-mailed the Headteacher of School A. In the e-mail the Autism Needs Adviser said:
"I... need us to set some goals and agree actions... we can do this by phone/e-mail. I was going to do this with [School A's Special Educational Needs Teacher] in January then I had car trouble and [an Autism Worker] did the visit for me but workers can't write the [form]. [The Special Educational Needs Teacher] and I then agreed to do it by phone but she was out on a course at the time we'd agreed and after that [Y] was at [School B] so we left it".
76. The Autism Needs Adviser asked School A to provide some information about the current situation and plan for Y reintegrating back to School A.

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77. On 1 November 2016 the Educational Psychologist met with School A. It was noted that Y's behaviour had deteriorated and he was refusing to engage. He was on a fixed term exclusion "*for attacking a member of staff*". It was also noted that the Autism Needs Adviser was going to work with both School A and School B "*to support consistency and provision*".
 78. The Educational Psychologist met with School A again on 14 November 2016. School B said it could no longer meet Y's needs and so alternative schooling needed to be found.
 79. The Headteacher from School A e-mailed the Social Worker on the same day to say he was resubmitting an EHCP referral for Y and was requesting funding for some therapy.
 80. Miss X also e-mailed the Council's Education department on 14 November 2016 to say she was unhappy about the lack of support for Y. She said he was not able to go back to School B and the family were "*at crisis point*".
 81. Miss X e-mailed the Council's Education department again on 25 November 2016. She said Y was currently attending another school (School C) for one day a week. She said there was no support in place. She said School A was not willing to have Y back but had not permanently excluded him.
 82. The Council wrote to Miss X on 28 November 2016. It said it could offer Y a place at another school (School D) where his needs could be met. The Council said it had placed children with similar needs to Y in School D. The Council said that it was assessing Y for an EHCP but this process would be completed more quickly if Y was attending school. The Council said it would provide Y with transport to School D.
 83. Miss X e-mailed the Council on 29 November 2016. She said she would consider School D but was concerned the provision would be similar to School B and she felt this would not be suitable for Y.
 84. Y began attending School D in January 2017. Y attended School D for four hours a week, one day a week at School C supported by School A and two hours a week at an outdoor educational facility.
 85. The Council issued a draft EHCP for Y on 4 February 2017.
 86. The Council issued the final EHCP for Y on 4 April 2017. The EHCP set out a significant amount of support that should be available to Y to allow him to receive an education and manage his emotions and behaviour. There is nothing in the EHCP which indicates Y would not be able to receive a full time education with support.
 87. Y began reintegration back to School A in September 2017 with support in place as agreed in the EHCP. The EHCP was amended to name School A as the school Y would attend. The EHCP said another more suitable school had been identified but Miss X had chosen to send Y to School A. Miss X was unhappy with the Plan and said it did not provide an appropriate level of support for Y.
 88. On 16 October 2017 Miss X complained to the Council about the lack of support she had received since 2015 regarding Y's education. Miss X said Y had missed out on full time education as a result of the Council not providing him with an EHCP earlier and there had been delays in drawing up the EHCP. Miss X also said the Council failed to ensure that Y was receiving a full time education from 2015.

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89. The Council wrote to Miss X on 9 November 2017. It said it could not comment on Miss X's statements "*regarding the Council being aware of the reduced timetable information back in 2015 as have been unable to find a report of same submitted by [School A]*". The Council said the delays in finalising Y's EHCP were due to meetings between Miss X and the Council regarding the plan.
90. In the Council's response to my enquiries it said it only became aware that Y was on a reduced timetable when Miss X complained in November 2016.

Findings

Our jurisdiction

91. We have investigated what happened since September 2015. Miss X has experienced significant stress due to the disruption to Y's education and the fact he and his brother were subject to a Child Protection Plan. Therefore, we do not consider it reasonable for her to have complained earlier.
92. There are significant records of what has happened since September 2015 and these are consistent and clear. Therefore, we consider it possible to reach a fair, sound and meaningful decision on this complaint.
93. We have also considered whether it was reasonable for Miss X to appeal to Tribunal about the Council's decisions regarding the requests for an EHCP.
94. We do not consider it was reasonable to expect Miss X to appeal to Tribunal regarding the Council's refusal to assess Y for an EHCP in December 2015 and August 2016. This is because Miss X was supported by a number of professionals at the time including a Council Social Worker, School A and B and an Educational Psychologist who gave her advice that they would continue to deal with the matter. Therefore, we have investigated the way the Council reached its decision to refuse to assess Y for an EHCP on those occasions.
95. We consider it was reasonable for Miss X to appeal the content of the Council's EHCPs issued in April and September 2017. Miss X was the only party unhappy with the content of the plans and so it was open to her to appeal.
96. We cannot investigate the actions of any of the schools involved. However, we have made enquiries with School A to obtain its records of contact with the Council.

The provision of education and SEN support

97. There is fault in the Council's decision not to assess Y for an EHCP in December 2015. The Council's EHC Panel refused to assess Y because School A did not provide evidence of what interventions and support it had put in place and what effect this had on Y's behaviour.
98. However, the Council's Educational Psychologist and Autism Needs Adviser were regularly attending School A and had recommended a range of support and interventions which should be implemented. It appears that these were not successful which led to Y being temporarily excluded from the School. There is no evidence the Panel were provided with evidence from the Psychologist nor that this was requested. The Panel did consider the measures recommended by the Autism Needs Adviser but did not seek evidence of whether these had been successful.

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99. The Panel were also aware that Y was on a Child Protection Plan but there is no evidence the Social Worker provided any evidence to support the request for an EHCP nor that the Panel invited the Social Worker to contribute.
 100. Overall there is no evidence that the Council, as an organisation, was sharing information and working across departments and teams to consider Y's needs. This is fault. Parts of the Council were aware that Y had significant difficulties attending School A, had displayed extreme behaviour and were working with the School to address this. However, another part of the Council decided there was insufficient evidence of measures being put in place to support Y's SEN and how effective those measures were.
 101. In its response to Miss X's complaint and our enquiries, the Council said it was not aware Y was on a reduced timetable at School A and B until November 2016. However, the Council, as an organisation, had been aware this was the case since October 2015. The Council's Social Worker, Educational Psychologist and Autism Needs Adviser were all aware Y was on a reduced timetable. This is further evidence the Council was delivering a fragmented service to the detriment of Y's needs.
 102. It seems likely that the Council would have assessed Y for an EHCP and provided such a plan if it had shared information between departments and teams in 2015.
 103. The Council, through its EHC Panel and its own assessment guidance, is also applying too high a threshold in deciding whether to carry out an assessment for an EHCP. The threshold for deciding an assessment should be carried out is low. The Council only has to be satisfied that a child may have special educational needs and may require provision. The Council does not have to be satisfied that a child has special educational needs or that provision is absolutely necessary before carrying out an assessment.
 104. As a result of the fault we have identified Y has missed out on education and appropriate support for a period of 12 months between December 2015 and January 2017.
 105. Given Y's needs, and what happened, it seems likely he would have needed two terms on reduced hours in specialist education whilst support was put in place to allow him to attend mainstream school on a full time basis. That was the plan when Y attended School B, however without a formal plan in place setting out the support Y needed it was bound to fail.
 106. Once the Council began to assess Y's needs he spent two terms in specialist education from January 2017 before successfully transitioning back to School A in September 2017. Y now attends School A on a full time basis with an EHCP in place.
 107. If the Council had assessed Y for an EHCP in December 2015 it seems likely Y would have been able to successfully transition back to School A from September 2016.
 108. As a result of the fault we have identified Y received unsuitable part time education for eight months and no education for two months. Miss X has also been put to significant time and trouble and caused significant distress as a result of the Council's failings.

Transport costs

109. Transport has been provided for Y to and from the schools, except for School A which is near to his home. Miss X was asked to transport Y to School B initially to assist with his settling in but a taxi service was offered after this. Therefore there is no fault in the way the Council dealt with this as transport costs were covered.

Recommendations

110. 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*)
111. In addition to the requirement set out above the Council has agreed to take the following action to remedy the injustice we have identified:
- Pay the family £2,500 to recognise the injustice caused as a result of the education Y missed and the additional time and trouble and distress this caused Miss X.
 - Due to the prolonged period Y has been without education pay Miss X £1,000. This would allow her to fund additional activities for Y outside of school suitable for his needs.
 - Write to the family to apologise for their failure to assess Y for an EHCP in 2015 and August 2016.
112. The Council should take this action within three months of the date of this final report.
113. In addition to this the Council has also agreed to:
- produce guidance for its children's services and education departments regarding information sharing and responsibilities around children with SEN and children who are either out of education or not receiving full time education; and
 - amend its guidance on children eligible for an EHCP assessment to ensure these are lawful and in line with the legislation, guidance and case law. It should also ensure any guidance makes it clear that it must be prepared to depart from its own criteria where there is a compelling reason to do so.
114. The Council should take this action within six months of the date of this final report and provide us with a copy of its guidance and details of its review of its guidelines.
115. The Council has agreed to take the action we have recommended.

Decision

116. We have completed our investigation. This is because we have found fault causing injustice and the action we have recommended is a suitable way of remedying this.