

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

**Investigation into a complaint against  
Dorset County Council (now Dorset Council)  
(reference number: 18 016 599)**

**15 August 2019**

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## The Ombudsman's role

For more than 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

Mr B	The complainant
C	His son

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## Report summary

### Special Educational Needs provision and Education, Health and Care plans

Mr B complains the Council has failed to ensure his son C received the provision detailed in his Education, Health and Care plan. He also complains it failed to arrange suitable alternative provision whilst C was out of mainstream education.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations (Full details can be found on pages 15 and 16)

We recommend the Council:

- Allocates £4,000 of funding to be used to benefit C's education. It should consult him and his parents before deciding how this money should be spent. If an agreement cannot be reached, the money should be put in a trust fund which C can access when he is 18 years old. Importantly, this funding must be over and above that used to provide any ongoing, day-to-day support that C is currently receiving.
- Pays C £1,000 for the distress its actions caused. There should be no restrictions on how C should spend this money.
- Pays C's parents £300 each to remedy the injustice they were caused.
- Holds a meeting to discuss C's education with everyone involved in his case and plan what it should do next. It should invite C, his parents, his school, a representative from the farm, and any other relevant party who can give an insight into his needs. It should also ensure the SEN Team chairs this meeting and that one of its educational psychologists attends.
- Writes to C and his parents to apologise for the stress and inconvenience it caused, acknowledging the impact of its faults.
- Creates and issues staff guidance about EHC needs assessments. This guidance should refer to the SEN Code of Practice and state the threshold at which the SEN Team should seek to initiate an assessment.
- Develops procedures to help staff when they need to identify and secure alternative provision. These procedures should refer to the relevant statutory guidance about this matter and the Council's Approved Provider Checklist. They should stress the importance of using this Checklist and considering how any provision identified will help the child achieve their academic objectives or outcomes in their EHC plan. Similarly, the procedures should highlight the importance of monitoring the child's progress and give direction about what staff should do when they are struggling to place a child or find them suitable provision.
- Revises its Local Offer to include details of the alternative provision it will arrange for those children that are not in full-time education. It should ensure it provides a range of options so it can meet the various needs and circumstances of those children in its area.

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- Delivers a briefing to all staff in the SEN Team once the guidance and procedures mentioned above are complete. This briefing should familiarise staff with the new guidance and procedures, as well as discuss the learning points from this report.
  - Provides complaint handling training to those in the SEN Team that deal with complaints. This training should focus on the need to address the key points raised by a complainant and investigate anything that might have gone wrong. Likewise, it should emphasise the importance of assessing any injustice the complainant was caused and how this might be remedied.

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## Introduction

1. The complainant, who we shall refer to as Mr B, complains the Council failed to ensure his son C received the provision detailed in his Education, Health and Care plan. He also complains it failed to arrange suitable alternative provision whilst C was out of mainstream education.

## Legal and administrative background

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. 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*)
4. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
5. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
6. 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*)
7. A child with special educational needs may have an Education, Health and Care (EHC) plan. This sets out the child’s needs and what arrangements should be made to meet them. The EHC plan is set out in sections. We cannot direct changes to the sections about education, or name a different school. Only the SEND tribunal can do this.
8. We can consider the other sections of an EHC plan. We do this by checking the Council followed the correct process, and took account of all relevant information, in deciding what to include. If we find fault affected the outcome, we may ask the Council to reconsider.
9. The Council is responsible for making sure that arrangements specified in the EHC plan are put in place. We can look at complaints about this, such as where support set out in the EHC plan has not been provided, or where there have been delays in the process.
10. 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 this decision with OFSTED.

## How we considered this complaint

11. We produced this report after examining documents provided by the complainant and relevant employees of the Council.
12. We gave the complainant 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.

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## What we found

### Legislation and guidance

#### Education, Health and Care plans and needs assessments

13. The Children and Families Act 2014 stipulates that a child with Special Educational Needs (SEN) may have an EHC plan. An EHC plan sets out the child's needs and what arrangements should be made to meet them. Local authorities are responsible for writing EHC plans and ensuring they are reviewed on an annual basis. They are also responsible for ensuring the provision detailed in plans is delivered.
14. EHC needs assessments are normally carried out by local authorities before they issue a child with an EHC plan for the first time. These assessments help to establish the extent of the child's needs and the level of support or provision they require to meet these needs.
15. Statutory guidance contained in the SEN Code of Practice outlines the circumstances in which a re-assessment must take place. It states:

*“Local authorities must conduct a re-assessment of a child or young person’s EHC plan if a request is made by the child’s parent or the young person, or the governing body, proprietor or principal of the educational institution attended by the child or young person, or the CCG (or NHS England where relevant). A local authority may also decide to initiate a re-assessment without a request if it thinks one is necessary.”*
16. It also states a re-assessment may be appropriate when a child's needs have changed significantly.
17. When a child moves from one local authority area to another their EHC plan should be transferred to the new local authority. Once the plan has been transferred, the SEN Code of practice states:

*“The new authority must tell the child’s parent or the young person, within six weeks of the date of transfer, when they will review the plan... and whether they propose to make an EHC needs assessment.”*

#### School exclusions and alternative provision

18. Statutory guidance about school exclusion states that local authorities must arrange suitable full-time education if a child is permanently excluded for more than six days. In cases where the child has an EHC plan, the guidance states:

*“... the local authority may need to review the plan or reassess the child’s needs, in consultation with parents, with a view to identifying a new placement.”*
19. Further statutory guidance about alternative educational provision says it should be “good quality, registered where appropriate, and delivered by high quality staff with suitable training, experience and safeguarding checks”. In addition, it states those who commission the provision remain responsible for it and they should “maintain on-going contact with the provider and pupil, with clear procedures in place to exchange information, monitor progress and provide pastoral support”.

### What happened

20. In March 2015, a council in the North of England issued C with an EHC plan when he was 11 years old. The plan noted he struggled with anxiety and managing relationships, adding he was waiting to undergo an extensive Autism Spectrum

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Disorder (ASD) assessment. It also noted he was in mainstream education and would attend a secondary school the following September. In terms of provision, the plan stated C should be given daily support by his school in both an individual and group setting. It also outlined the strategies which should be used to help C achieve his outcomes, such as adopting a ‘cognitive-behaviour’ approach to improve his self-esteem. Moreover, it stipulated he should be assessed at least twice a year by a speech and language therapist.

21. In September 2015, C started attending a secondary school in Dorset after moving to the South of England with his mother. Prior to the move he had been diagnosed as having an ASD and Attention Deficit Hyperactivity Disorder (ADHD).
22. In February 2016, the school held a meeting to initiate the annual review of C’s EHC plan. In the review paperwork, it noted he was receiving 22.5 hours of support from a Teaching Assistant (TA) in class per week and highlighted there were problems concerning his behaviour. Nevertheless, it recommended the Council maintained the EHC plan without making any amendments to it.
23. In January 2017, the school held a meeting to initiate another annual review of C’s EHC plan. It noted his behavioural issues were ongoing but again recommended that the plan be maintained with no amendments.
24. In mid-May 2017, the school held an interim annual review meeting to discuss C’s EHC plan. It noted his behaviour was challenging, he was no longer willing to work with TAs and he was refusing to attend school. Both the school and C’s parents felt he could not cope in a mainstream setting and the school felt he needed to move to a new placement, highlighting he was close to permanent exclusion. Consequently, it recommended that C’s EHC plan be amended.
25. In September 2017, C did not return to school at the beginning of the new academic year. The Council states it was agreed he would be kept on roll at the school whilst it sought a specialist placement, adding there was no expectation he would return to the school. When the new school year started, C began receiving six hours of home tuition per week.
26. At the beginning of October 2017, the Council increased C’s provision when he started attending a two-hour, one-to-one mentoring session every week.
27. In mid-November 2017, the Council started consulting with several schools and other educational providers to enquire whether they were able to meet C’s needs and offer him a full-time placement.
28. In mid-January 2018, the Council responded to a complaint that Mr B and C’s mother had made in December about the amount of education their son was receiving. It noted it was in the process of seeking a suitable placement at another school for C but had not received any offers of one. It also said:

*“It would help to know if [C’s] social, emotional and mental health needs have been assessed here in Dorset to clarify which school might meet his needs in the local area.”*
29. A few days later, the Council asked its Educational Psychologist (EP) for her opinion on whether C could attend a mainstream school.
30. Shortly after this, C’s school held a meeting to initiate the annual review of his EHC plan as he was still on roll there. No one from the Council’s SEN Team attended the meeting but the EP did. The paperwork detailing the review notes that C was being given home tuition and the school recommended that the plan be maintained. A week later, the Council wrote to both Mr B and C’s mother to

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- notify them it would not make any changes to their son's EHC plan following the annual review meeting. It also notified them of their right to appeal its decision to the Special Educational Needs and Disability (SEND) Tribunal.
31. At the end of the month, the Council increased C's provision when he started attending a community farm for eight hours per week. This comprised of two sessions lasting four hours each. The farm is open to the public and provides an educational facility for children.
  32. At the beginning of February 2018, the Council's EP completed a report on C concluding it would be "very difficult" to meet his educational and emotional needs in a mainstream educational setting. Given his needs, she also felt that online learning would be unsuitable.
  33. At the end of March 2018, the Council sent out another round of consultation requests to try and secure a suitable placement for C.
  34. At the beginning of April 2018, the Council exchanged emails with another of its EPs about C's case. It noted it was considering obtaining updated advice from an EP and acknowledged it needed to transfer C's EHC plan to a local one, as C's EHC Plan was still registered to his previous local authority. In addition, it noted Mr B had reported a change in his son's behaviour over the past seven months. In response, the EP advised a new psychological assessment might be needed, including a cognitive assessment.
  35. In the middle of the month, the Council agreed to increase C's hours at the farm from eight to 15.
  36. In mid-May 2018, the EP who previously assessed C wrote another report on his needs after conducting a new assessment. She reiterated some of the findings from her previous report, again asserting it would be very difficult to meet C's needs in a mainstream environment. However, she did note he had progressed socially and emotionally over the previous six months. She also stated he required an individualised curriculum and:

*"... a plan to increase engagement with a variety of subjects over time so that he copes with a variety of GCSEs which he could intellectually achieve if he were to apply himself as asked and when asked."*
  37. At the beginning of April 2018, the Council sent out another round of consultation requests to try and secure a suitable placement for C.
  38. In July 2018, Mr B contacted the Council to say he wanted his son to attend the farm on a full-time basis when the new school year started. He highlighted he had spoken to the farm and it had said C could sit GCSE Maths and English with the aim of achieving a NOCN Level 2 diploma, adding this would enable him to go to college after Year 12.
  39. At the beginning of September 2018, C started attending the farm on a full-time basis.
  40. Toward the end of the month, C's previous school inspected the farm and reviewed the suitability of the placement. It did this as C was still on its roll and a recent OFSTED inspection had highlighted issues relating to alternative provision and out-of-school students. It found the farm was not OFSTED registered despite offering full-time provision and it lacked several policies, procedures and risk assessments which a school or educational establishment should have in place. Consequently, it concluded the placement was not safe or suitable for C.

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41. The Council subsequently decided to remove C from the farm.
42. At the beginning of October 2018, the Council inspected the farm. The officers who conducted the inspection noted two other pupils were attending the farm and concluded:
- “We recognise that these placements have been made because there are no viable alternatives in the area so to pull the children out would result in them having no provision at all. Whilst we would recommend that no new placements are made, we feel that the immediate risk of harm is relatively low therefore the boys could continue attending in the short term until more appropriate provision can be found. However, as things stand, this is not suitable long term provision and SEN Commissioning will need to consider placing these children in appropriate provision elsewhere as soon as possible”.*
43. The Council then decided to keep C at the farm. However, it changed its decision after his school insisted he was removed.
44. In the middle of the month, Mr B contacted the Council to request an early review of his son’s EHC plan. He also submitted a complaint about the way it removed C from the farm, noting this had caused him a significant amount of anxiety and distress.
45. A few days later, the Council, C’s school and his parents met to discuss his case. Mr B and C’s mother stated they wanted their son to continue attending the farm but the Council said this was not possible at that time. It added it was working with the farm to help it achieve the necessary standards to be included on its Approved Provider Checklist, noting this would take some time. It also stated it was working to secure other alternative provision for C.
46. The day after the meeting, Mr B submitted another complaint to the Council. He said it had failed to ensure the provision in his son’s EHC plan was delivered and complained about the level of alternative provision it had arranged.
47. At the beginning of November 2018, C began receiving six hours of home tuition per week.
48. At the end of the month, the Council responded to Mr B’s complaint. It noted he wanted C to start receiving provision from a regional education centre and stated it was working to arrange this. Regarding the complaint, it apologised for the time taken to reach a “satisfactory conclusion” and acknowledged this caused the family distress. In conclusion, it stated the complaint was “mostly justified on this occasion”.
49. Around this time, the Council increased C’s provision when he started attending a two-hour, one-to-one mentoring session every week again.
50. At the beginning of December 2018, C started attending the regional education centre for 12 hours each week. This private setting offers alternative provision and caters for children with SEN and autism. It is registered with OFSTED and was rated good when C started attending.
51. A couple of days later, the school held a meeting to initiate a review of C’s EHC plan following Mr B’s request. This was attended by the Council’s SEN Team. The paperwork detailing the review noted C would start attending the regional education centre on a full-time basis after Christmas, where he was on a graduated reintegration package. All those who attended agreed the EHC plan should be amended.

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52. In the middle of the month, the Council noted the regional education centre would not deliver full-time provision to C until it had received its OFSTED registration. It added it would consider whether there was another way to increase his provision.
  53. At the beginning of January 2019, Mr B emailed the Council and asked it to escalate his complaint. He said his son was not being given a full-time education and asked how it would remedy the lack of education he had received since September 2017.
  54. In the middle of the month, the Council responded to Mr B's complaint. It outlined the provision C was receiving and stated it was liaising with outdoor education providers to explore how it could increase his timetable. It also said his current providers would devise a programme to enable him to meet the objectives in his EHC plan. In conclusion, it again stated the complaint was "mostly justified on this occasion".
  55. At the end of the month, Mr B withdrew his son from the regional education centre over concerns about the level of provision it was delivering and the behaviour of other students. He also noted that C did not want to attend. In response, the Council put in place four hours of home tuition per week.
  56. At this time, Mr B complained to the Ombudsman.
  57. In mid-February 2019, the Council sent out another round of consultation requests to try and secure a suitable placement for C.
  58. At the end of the month, the home tuition provision ended.
  59. At the end of March 2019, the Council noted the farm had met the required standards and had been added to its Approved Provider Checklist.
  60. In mid-April 2019, C returned to the farm for 15 hours provision per week. At the same time, he started receiving three hours of home tuition.
  61. In his complaint to the Ombudsman, Mr B states the Council's failings have had a significant impact on C as he has effectively been out of full-time education for the past two school years and has spent a considerable amount of time isolated at home. Consequently, he says his son's education has been set back, his anxiety has increased, and his confidence and ability to act independently have been negatively affected. In addition, he states the failings have had a big impact on him and his parents, given that C has been at home for a large part of the last two years.
  62. To rectify its failings, he wants the Council to undertake its statutory duty and ensure his son receives suitable, full-time educational provision. He also wants it to consider making a payment to C in recognition of the provision he has lost, and that this be used to benefit his education and wellbeing.

## **Conclusions**

63. In September 2015, C moved to the Council's area with an EHC plan issued by a different local authority. Within six weeks of the move, it was required to inform C's parents whether it proposed to carry out an EHC needs assessment, or re-assessment in this instance. It did not do this and there is no evidence it considered conducting a re-assessment. The SEN Code of Practice states re-assessments may be appropriate when a child's needs have changed significantly and the process can be initiated by local authorities if necessary. In this case, we believe it should have given serious consideration to conducting a

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- re-assessment. This is because C's existing EHC plan was written whilst he was at primary school and before he had undertaken a life-changing move across the country. More importantly, C had received a diagnosis of ASD and ADHD after it was written, indicating there may have been a significant change in his needs.
64. C's behaviour deteriorated after he started attending secondary school which culminated in an interim annual review being held in May 2017. Both the school and C's parents felt he could not cope in a mainstream setting and the school felt he needed to move to a new placement, highlighting he was close to permanent exclusion. It also recommended that his EHC plan be amended. Considering the school's views, the continual deterioration in C's behaviour, and his diagnosis of ASD and ADHD, the Council should have initiated an EHC needs assessment at this point. However, it did not do this. The Council effectively endorsed the unofficial exclusions from the School, and did not even inform C's parents whether it would amend the plan, thus depriving them of an opportunity to appeal any decision it made to the SEND Tribunal.
  65. Rather than initiate an EHC needs assessment when it should have done, the Council focused on securing a placement and alternative provision for C. In response to its consultations, several specialist providers stated they were unable to offer him a place as they could not meet his needs. However, it is clear the Council carried out these consultations without knowing what his needs were. For example, an internal email sent at the end of May 2018 shows it felt C's needs were related more to ASD than Social, Emotional, and Mental Health. Yet, when it wrote to his parents at the beginning of July 2018 it notified them he would not be offered a place at a local college because it felt his main area of need was Social, Emotional, and Mental Health, not ASD.
  66. We note the Council did ask for an opinion from its EP in January 2018 but question why it did not do this earlier, given the interim review in May 2017 indicated that urgent action was required. Moreover, the EP later advised C should not attend a mainstream school and that he needed an individualised curriculum and plan. This indicates the Council should have amended the EHC plan at the very least, if not carried out a full EHC needs assessment. However, it did neither of these things.
  67. Another annual review meeting was carried out in December 2018 and the school recommended that C's EHC plan be amended. To date, the plan is yet to be amended and the Council expects to issue a draft soon. This means the EHC plan that was issued by the previous local authority in March 2015 remains in place and has not been updated in over four years.
  68. Considering the points above, we have found the Council was at fault for failing to consider whether C required an EHC needs assessment. It was also at fault for not following the annual review process correctly after the school recommended the EHC plan be amended in May 2017 and December 2018.
  69. We note Mr B has raised concerns about the alternative provision that his son was given and we share those concerns. Statutory guidance states alternative provision should be safe and have clear objectives focusing on "personal and academic attainment". Similarly, it states that pupils should have their progress monitored. Moreover, institutions which provide full-time education for one or more pupils of compulsory school age with an EHC plan must be registered with the Department for Education. However, we have not seen any evidence the Council adhered to the statutory guidance or checked whether the full-time provision it arranged was registered.

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70. When C started receiving private tuition in September 2017, the Council was responsible for ensuring the provision it commissioned met his needs and was planned appropriately. To some extent, it was unable to do this because C's EHC plan contained outcomes that were set in March 2015 and thus, to some extent, were out-of-date. Therefore, the Council's failure to consider an EHC needs assessment or follow the annual review process hindered its ability to ensure suitable alternative provision was put in place.
71. It is also important to note that no one from the Council's SEN Team attended the annual review meeting held at the school in January 2018. We understand the school oversaw the meeting as C was still on roll there, but at the point his education was being directed by the Council. Consequently, it should have sent someone from its SEN Team to this meeting given the key role it had in planning and coordinating C's education. This indicates it was not proactively monitoring C's progress.
72. In addition, it is clear there were periods when C did not receive a full-time education or a suitable equivalent, nor did he receive the provision detailed in his EHC plan. Furthermore, the Council put him into two placements that could not deliver full-time education despite expecting that they could. Worryingly, one of these placements did not have adequate processes and procedures in place and was potentially unsafe, meaning it put C at risk of harm. This indicates there are flaws in the Council's commissioning procedure.
73. Consequently, we have found the Council was at fault for failing to arrange suitable alternative educational provision for C. We acknowledge that parental preference, a lack of suitable alternative provision in the area, and a high workload impacted on the Council's ability to secure this provision. Nonetheless, it had sufficient time to resolve these issues given that C's situation was made apparent at the interim annual review in May 2017. Moreover, it was under a statutory duty to arrange a suitable education but failed to do so.
74. We have also found the Council was at fault for the way it handled Mr B's complaint about these matters. The responses it gave mainly sought to update him on its ongoing efforts to secure his son a suitable education. It did accept his complaints were "mostly justified" but it did not say why, or attempt to explore what had gone wrong. Similarly, it did not assess any injustice its actions caused or consider how it could remedy this.

### **Injustice**

75. The Council's faults have had a significant impact on C's education and wellbeing. Its failure to assess his needs at an early stage or follow the annual review process means his EHC plan has not been updated since he was at primary school. After this plan was issued in March 2015 he was diagnosed with ASD and ADHD, made a life-changing move across the country, and faced an unsettled home life. If the Council took these factors into account and followed the correct processes it may have prevented the subsequent deterioration in his behaviour. However, it did not do this and C was eventually "unofficially excluded" from school prior to the start of Year 9. Clearly, this has impacted on his ability to undertake his GCSE exams and affected his future prospects.
76. Additionally, the Council's faults impacted on its ability to arrange suitable alternative provision or secure a new placement for C when he was out of school. It failed to establish what his needs were therefore it was not in a position to decide how these should be met. Also, it could not plan or track his progress as

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his EHC plan was effectively out-of-date. As a result, it is difficult to know whether the provision it arranged benefited C and if so, to what extent. However, we can say, on balance, that the Council did not always ensure full-time provision was put in place. Likewise, its decision to put C in the farm then the regional education centre did not provide a viable long-term solution or provide the stability or continuity that he required. These decisions also caused him considerable distress and anxiety when it had to remove him from the farm due to concerns about the safety of the provision, which it failed to consider before placing him there.

77. It is important the Council remedies this injustice therefore we have considered how it should do this. We cannot say that C's behaviour would not have deteriorated had the Council conducted an EHC needs assessment or amended his EHC plan. Similarly, we cannot be sure it would have secured a suitable placement had it established what his needs were. Consequently, its actions, or inaction in this case has caused uncertainty. In addition, it caused him undue stress and frustration when it removed him from the farm, which it could have avoided. Moreover, its failure to decide whether to amend the EHC plan following the interim annual review in May 2017 deprived his parents of the opportunity to appeal to the SEND Tribunal and thus influence events. Similarly, they lost another right of appeal when C initially moved to the area in September 2015 when the Council should have decided whether it would conduct an EHC needs assessment. We have calculated that C has lost approximately eight months of educational provision since September 2017, taking into account the provision he was given and school holidays. Our Guidance on Remedies says we can recommend that a local authority makes a financial payment to a complainant in recognition of such a loss. It states the figure recommended should be between £200 and £600 per month of lost education, depending on a number of factors. In this case, we recommend the Council makes a payment of £500 per month, meaning a total payment of £4,000. Our recommendation is at the higher end of the scale to reflect the fact that C was at a key stage of his education when he lost this provision and his future prospects have been affected. These funds should be used to benefit his education and be over and above that used to provide any ongoing, day-to-day support that C is currently receiving.
78. Our Guidance on Remedies says we can also recommend payments for distress (which encompasses uncertainty, stress, frustration and lost opportunity) and any time and trouble incurred in making a complaint. In this case, it is clear the Council's faults caused C a significant amount of distress therefore we recommend the Council pays him £1,000 to recognise this. In addition, it is evident his parents both suffered distress and pursued complaints against the Council to try and resolve these matters, during what was a particularly difficult period for them. C's mother states he was aggressive and violent when at home and not in education, which often required police intervention. She says this had a considerable impact on her and her other son, who also has needs and was off school at the same time. She states these circumstances led to a significant decline in her mental health and caused her other son trauma and severe anxiety. Therefore, we also recommend it pays her and Mr B £300 each to remedy the injustice they were caused.
79. Unfortunately, payments alone will not remedy the injustice that C was caused. His needs have not been assessed in over four years and he still does not have an EHC plan issued by the Council. Moreover, it is not clear whether the current

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provision at the farm meets his needs or is an adequate long-term solution that will allow him to fulfil his potential.

80. Consequently, we recommend the Council arranges a meeting so it can discuss C's education with everyone involved in his case and plan what it should do next. It should invite C, his parents, his school, a representative from the farm, and any other relevant party who can give an insight into his needs. It should also ensure the SEN Team chairs this meeting and that one of its EPs attends. Its agenda should encompass the following topics:
- Whether C requires an EHC needs assessment. If it is decided he does, this should be initiated without delay and carried out in accordance with the SEN Code of Practice. Likewise, if the Council decides an assessment is not required but C's parents disagree, it should inform them of their right to appeal its decision to the SEND Tribunal.
  - When it will amend and update C's EHC plan, be it after an EHC needs assessment or without one. In either case, it should ensure it does this without delay.
  - Identify what C's short and long-term academic objectives are and discuss whether his current provision will enable him to meet those objectives.
  - Consider whether any specialist school or college could offer a more suitable placement. If so but it is felt a place would not be offered, the Council should consider whether to use its powers under Sections 96 and 97 of the School Standards and Framework Act 1998 to direct a school or college to admit C.
  - Discuss how the £4,000 payment should be used and whether additional provision could be obtained in the short-term to help C achieve his academic objectives.

### **Linked complaints and recurring faults**

81. We decided to issue this report after identifying similar faults in several other cases we have investigated concerning the Council. For reference, we have provided brief details of these cases below and the date on which we issued our final decision:
- [\*\*17001524 \(15 March 2018\)\*\*](#) – We found the Council took too long to issue an EHC plan and find the complainant's son a new school. Its actions caused them distress and time and trouble therefore it agreed to pay £750 to remedy this injustice.
  - [\*\*17013051 \(12 June 2018\)\*\*](#) – The Council took too long to issue an EHC plan and delayed by approximately eight months. This fault impaired the amount and type of education provision that the complainant's son received. It agreed to pay the complainant £1,400 to remedy the injustice it caused.
  - [\*\*18003390 \(7 September 2018\)\*\*](#) – The Council was at fault for failing to arrange alternative provision for the complainant's son which caused him to miss approximately six months' worth of education. Consequently, it agreed to pay him £3,400 in recognition of the provision that was lost and the distress it caused.
  - [\*\*18001971 \(27 September 2018\)\*\*](#) – The Council took too long to issue an EHC plan and delayed unnecessarily by approximately 19 weeks. It acknowledged

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this resulted in the complainants' daughter losing educational support therefore it agreed to pay £1,666 to remedy this injustice.

- [18001255 \(3 October 2018\)](#) – We found the Council was at fault for failing to arrange alternative provision for the complainant's son and it took too long to issue his EHC plan. This caused him to miss two years of education therefore the Council agreed to pay £6,000 to remedy this injustice. It also agreed to pay a further £750 for the inconvenience, stress and uncertainty it caused.
  - [18003467 \(12 October 2018\)](#) – The Council failed to arrange alternative provision for the complainant's son and took too long to issue his EHC plan which resulted in a four-month delay. It agreed to pay £1,000 in recognition of the lost provision and another £200 to remedy the distress, time and trouble it caused.
  - [18005153 \(13 February 2019\)](#) – The Council was at fault for failing to arrange alternative provision for the complainant's son and agreed to pay £1,200 for three months' worth of lost education.
  - [18004705 \(18 March 2019\)](#) – We found the Council was at fault for taking too long to complete the annual review process and amend the EHC plan held by the complainant's son. This caused uncertainty therefore it agreed to pay a token amount to remedy this injustice.
82. These cases highlight the Council has failed repeatedly to issue EHC plans in a timely manner or arrange suitable alternative educational provision. This is concerning and indicates there are wider, systemic problems that need to be addressed.
83. It is important to note that Dorset County Council was superseded by Dorset Council in April 2019. In addition, the latter has recently appointed a new Director of Children's Services who acknowledges the systemic problems mentioned above and is working to address them. We welcome these developments and believe they provide the new Council with an ideal opportunity to refine its processes and learn from the mistakes of its predecessor.
84. In response to the complaints listed above, we acknowledge the Council has acted to try and resolve these problems and has made some progress. However, given these complaints were made relatively recently we are concerned that all of the problems have not been addressed. Therefore, we have identified several recurring or significant issues that we think it should consider in order to decide what further action is required. These are as follows:
- **Capacity and resource constraints** – In the cases we have investigated it is evident the Council's SEN Team did its best to provide a good service but was constrained by a lack of resources. This was exacerbated by the requirement to transfer all Statements of SEN to EHC plans by 1 April 2018, which put extra demands on its workload. This is apparent in its approach to annual review meetings; its policy is not to send a representative to these meetings unless its attendance is necessary. We understand why it took this approach but this complaint has highlighted it is applying its policy too rigidly and is not attending meetings where its input and direction is sorely needed. Consequently, the Council should consider what it can do to increase the capacity of the SEN Team.
  - **Use of panels to aid decision making** – In some cases the delay in issuing an EHC plan and naming a suitable placement was exacerbated by its use of panels. Whilst there is nothing wrong with using panels to aid decision making

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the Council is still committed to meeting the timescales outlined in the SEN Code of Practice. Therefore, it should ensure its use of panels does not impact on its ability to meet these timescales; if it does, it should consider streamlining its processes. Similarly, it should ensure that all decisions made by its panels are properly considered and fully documented as our investigations indicate this does not always happen. We understand it has acted to address these issues and has implemented several measures to ensure they do not reoccur, which we welcome.

- **Poor knowledge of the SEN Code of Practice** – The repeated failure to follow the annual review process or issue an EHC plan in a timely manner indicates some staff do not have a sound understanding of the statutory guidance. Ongoing staff training should help to address this issue.
- **Lack of Council policy or procedures about EHC needs assessments** – In this case it is clear the SEN Team should have given serious consideration to initiating an EHC needs assessment. The SEN Code of Practice says local authorities may initiate this process if they think it is necessary. It also says a re-assessment should take place if a child's needs have changed significantly, meaning local authorities retain discretion when deciding whether to initiate an assessment, or re-assessment. The evidence in this case suggests the SEN Team was not aware it could initiate an assessment or what the threshold for doing so might be. This indicates the Council needs to develop a policy or procedure to help guide its staff on this matter.
- **Lack of Council policy or procedures about alternative provision** – The cases above indicate the Council is consistently failing to put suitable alternative provision in place when needed. This case highlights specific shortcomings. Firstly, little planning or thought was put into what provision was needed and whether this would meet the needs of the child or his academic objectives. Similarly, progress against these objectives or the outcomes in the EHC plan was not monitored. Secondly, the Council secured two placements that were not viable, one of which was potentially unsafe. It did this despite having an Approved Provider Checklist in place. It is clear the SEN Team was desperate to secure some provision as it was having difficulty placing the child, but this led it to choosing providers that were unsuitable. These points indicate the SEN Team requires more guidance and support to help it plan, identify and secure suitable alternative provision, especially in cases where it is having difficulty placing a child.
- **Lack of suitable alternative education providers** – Linked to the point above, it is clear the SEN Team's efforts to secure alternative provision were hampered by a lack of providers in some of these cases. We understand it is currently addressing this issue by setting up a number of specialist placements and holding discussions with several alternative education providers, some of which are awaiting their OFSTED registration. We are glad to see the Council is taking action to resolve this matter.
- **Poor complaint handling** – Finally, it is evident that some of the complaints we have investigated could have been resolved without being escalated to us. For instance, in some cases the SEN Team did not explore the reasons why it was at fault in any detail or consider how it could put things right. We suspect this is partly due to the capacity and resource constraints mentioned above, which may have prevented it from dedicating enough time to dealing with complaints. Therefore, it should consider what it can do to resolve this matter

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and whether it could dedicate more resources to complaint handling. We understand it has appointed a dedicated complaint manager to work in the SEN Team, which is a welcome development. However, it should also deliver training to staff on complaint handling to help it address this issue.

85. The Council has already acted to make service improvements in some of these areas in response to recommendations we made in our earlier investigations. Therefore, we do not see the need to make widespread recommendations in this case. Rather, we have made some recommendations to address the new issues that we have identified during this investigation.

## Recommendations

86. Within one month of our final report (unless otherwise stated), we recommend the Council:
- Allocates £4,000 of funding to be used to benefit C's education. It should consult him and his parents before deciding how this money should be spent. If an agreement cannot be reached, the money should be put in a trust fund which C can access when he is 18 years old. Importantly, this funding must be over and above that used to provide any ongoing, day-to-day support that C is currently receiving.
  - Pays C £1,000 for the distress its actions caused. There should be no restrictions on how C should spend this money.
  - Pays C's parents £300 each to remedy the injustice they were caused.
  - Holds a meeting to discuss C's education with everyone involved in his case and plan what it should do next, within one month of the start of the new school term. It should invite C, his parents, his school, a representative from the farm, and any other relevant party who can give an insight into his needs. It should also ensure the SEN Team chairs this meeting and that one of its EPs attends. Its agenda should encompass the following topics:
    - i. Whether C requires an EHC needs assessment. If it is decided he does, this should be initiated without delay and carried out in accordance with the SEN Code of Practice. Likewise, if the Council decides an assessment is not required but C's parents disagree, it should inform them of their right to appeal its decision to the SEND Tribunal.
    - ii. When it will amend and update C's EHC plan, be it after an EHC needs assessment or without one. In either case, it should ensure it does this without delay.
    - iii. Identify what C's short and long-term academic objectives are and discuss whether his current provision will enable him to meet those objectives.
    - iv. Consider whether any specialist school or college could offer a more suitable placement. If so but is felt a place would not be offered, the Council should consider whether to use its powers under Sections 96 and 97 of the School Standards and Framework Act 1998 to direct a school or college to admit C.
    - v. Discuss how the £4,000 payment should be used and whether additional provision could be obtained in the short-term to help C achieve his academic objectives.

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- Writes to C and his parents to apologise for the stress and inconvenience it caused, acknowledging the impact of its faults.
87. Within six months of our final report, we recommend the Council:
- Creates and issues staff guidance about EHC needs assessments. This guidance should refer to the SEN Code of Practice and state the threshold at which the SEN Team should seek to initiate an assessment.
  - Develops procedures to help staff when they need to identify and secure alternative provision. These procedures should refer to the relevant statutory guidance about this matter and the Council's Approved Provider Checklist. They should stress the importance of using this Checklist and considering how any provision identified will help the child achieve their academic objectives or outcomes in their EHC plan. Similarly, the procedures should highlight the importance of monitoring the child's progress and give direction about what staff should do when they are struggling to place a child or find them suitable provision.
  - Revises its Local Offer to include details of the alternative provision it will arrange for those children that are not in full-time education. It should ensure it provides a range of options so it can meet the various needs and circumstances of those children in its area.
  - Delivers a briefing to all staff in the SEN Team once the guidance and procedures mentioned above are complete. This briefing should familiarise staff with the new guidance and procedures, as well as discuss the learning points from this report.
  - Provides complaint handling training to those in the SEN Team that deal with complaints. This training should focus on the need to address the key points raised by a complainant and investigate anything that might have gone wrong. Likewise, it should emphasise the importance of assessing any injustice the complainant was caused and how this might be remedied.
88. 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*)

## **Final decision**

89. The Council was at fault for failing to consider whether C required an EHC needs assessment and not following the annual review process correctly. It was also at fault for failing to arrange suitable alternative educational provision for C and the way it handled Mr B's complaint about these matters.