

The Ombudsman's final decision

Summary: Ms B complained about delays in the Education, Health and Care (EHC) process. She complained the Council failed to issue her son, C's, final EHC plan within the statutory timeframe. We found fault with the Council. The Council agreed actions to remedy the injustice to Ms B.

The complaint

1. Ms B complained about delays in the Education, Health and Care (EHC) process for her son, C.
2. She also complained the Council failed to consult relevant professionals during its assessment.
3. Ms B said the delay caused distress and frustration. She also said C missed out on provision and her right of appeal was delayed.

The Ombudsman's role and powers

4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
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. 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*)
8. 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 I considered this complaint

9. I spoke to Ms B and considered the information she provided with her complaint. I made enquiries with the Council and considered its response along with relevant law and guidance.
10. Ms B and the Council had the opportunity to comment on my draft decision. I carefully considered their comments before making a final decision.

What I found

Law and guidance

Education, Health and Care plans (EHCP's)

11. The special education needs and disability code of practice 2015 (The Code) provides statutory guidance on the duties Councils have in relation to part three of the Children and Families Act 2014. It relates to children and young people with special education needs (SEN) and disabled children and young people.
12. A child with special educational needs may have an Education, Health and Care plan (EHCP). This sets out the child's needs and what arrangements should be made to meet them. The EHCP is set out in sections. We cannot direct changes to the sections about education, or name a different school. Only the tribunal can do this.
13. The Council is responsible for making sure that arrangements specified in the EHCP are put in place. We can look at complaints about this, such as where support set out in the EHCP has not been provided, or where there have been delays in the process.
14. If parents or a young person disagrees with the content of an EHCP or the proposed placement, they can appeal the First Tier Tribunal Special Educational Needs and Disabilities (SEND) Tribunal.
15. The process of EHC needs assessment and EHC plan development must be carried out in a timely manner. The time limits are the maximum time allowed.
16. The whole process of EHC needs assessment and EHC plan development, from the point when an assessment is requested until the final EHC plan is issued, must take no more than 20 weeks.

What happened

17. What follows is a brief chronology of key events. It does not contain all the information I reviewed during my investigation.
18. C's school asked the Council to assess him for an EHCP in January 2021. The Council agreed to the assessment and told Ms B in February 2021.
19. As part of the assessment the Council asked for information from social care, health and Bristol Autism Service (BAT).
20. Ms B complained to the Council in May 2021. She complained about the delays and the Council had not told her if it had decided whether to issue an EHCP.
21. The final EHCP should have been issued by 3 June 2021, 20 weeks from when the assessment was requested.
22. Ms B complained again in June 2021. She had not received a response to her complaint and the Council had not met the timeframes to issue the final EHCP.

She also said it had failed to obtain information or advice from the professionals she requested.

23. The Council responded in July 2021. It upheld her complaint about the delays. It partially upheld her complaint about the information and advice from professionals during the assessment. It apologised to Ms B and explained the difficulties it had with the service and some of the steps it was taking.
24. Ms B was not happy with the response. The Council considered the complaint at stage two of its complaint process. It gave its final response in August 2021. It agreed with the stage one response. It said there were other cases that had exceeded the 20-week timeframe and the service was working through them in chronological order. It said it could not prioritise C's assessment as it was not fair on other families. It also said it could not give her a date by which the assessment would be completed.
25. The stage two response explained what services it had requested advice and information from as part of the assessment.
26. In August 2021 the Council chased the response from health about the request for occupational therapy advice and information for the assessment. Health said C was on the waiting list.
27. In November 2021 the Council allocated a case coordinator from the SEN assessment team, officer A.
28. The Council decided to issue an EHCP at its panel in early November 2021. It issued the first draft EHCP the next day.
29. During November and December 2021 officer A and Ms B corresponded about changes to the draft EHCP and schools for consultation.
30. The Council sent Ms B a copy of the revised draft EHCP in January 2022.
31. At the end of January 2022 Ms B agreed for the final EHCP to be issued naming a type of school rather than a specific educational establishment. Ms B agreed and said she was happy with the content of the revised draft EHCP.
32. The final EHCP was issued in February 2022.
33. C remained at his existing school during the period subject of this complaint.
34. Ms B complained to the Ombudsman because she was unhappy with the delays and did not feel the Council's complaint responses properly addressed the issues causing the delays.

My findings

Delays

35. I found fault with the Council for significant delays in the EHC process.
36. The final EHCP for C should have been issued by 3 June 2021. It was issued eight months late.
37. In its response to my investigation the Council explained the SEN team were operating at a reduced capacity from February to July 2021. It recruited additional staff to address the shortfall and a case coordinator was allocated to C in November 2021.
38. The Council said it has made "*considerable progress*" since a joint Ofsted and CQC inspection identified significant concerns about the Council's SEND system

in 2019. The Council produced a written statement of action in response the concerns.

39. The Council said:

“The data and feedback from many families, evidence that we have come a long way since the inspection, but we are acutely aware that many more families are yet to experience real change and are still waiting too long for their children and young people’s needs to be met effectively”.

40. The information the Council provided during my investigation suggests that many other families are experiencing the same delays as Ms B and her case is indicative of a wider service issue. Although the Council has taken steps to improve its SEND system the EHC process is still letting many children and families down because it is failing to meet the statutory deadlines.

Information and advice from other services and professionals

41. I found fault with the Council for delays in obtaining information and advice from other services and professionals during the EHC assessment.

42. Section nine of The Code explains the process for gathering information and advice from relevant professionals for the assessment. It sets out the Council’s duties.

43. It says the Council must gather advice from relevant professionals about the child’s education, health and care needs, desired outcomes and special educational, health and care provision that may be required to meet identified needs and achieve desired outcomes.

44. Advice and information requested by the Council must be provided within six weeks of the request, and should be provided more quickly wherever possible, to enable a timely process.

45. In this case the decision to assess C was made on 23 February 2021. Other than the parental and social care information all the other information the Council requested was not provided within six weeks.

46. Whilst this delay was not because of the Council there was also no evidence of any real effort to progress the case and chase the missing information until Officer A was allocated in November 2021. Officer A actively progressed the case, regularly updated Ms B and replied to all her emails.

47. The occupational therapy information was not provided until February 2022, a year after the decision to assess was made. In cases such as this the Council should consider commissioning its own assessment, if necessary, and recovering the cost from the CCG.

48. The delay obtaining information was fault, but I do not think it was the sole cause of the delay issuing the final EHCP. There were other delays throughout the process that also contributed to a lack of timely progress. Even if the Council had commissioned assessments, I do not think it would have issued the EHCP on time or earlier.

Injustice

49. I found fault with the Council. I considered whether the fault caused injustice to Ms B or C.

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50. Ms B experienced frustration caused by the significant delays in the EHC process. The Council also delayed responding to her initial complaint in May 2021.
51. The Council found fault during its own investigation. But it missed an opportunity to remedy the injustice to Ms B. Ms B was put to the additional time and trouble of bringing her complaint to us.
52. There are other parts of the complaint where I do not think the fault caused an injustice or I cannot assess the injustice.
53. I cannot say what injustice the delay to Ms B's appeal right caused. This is because I did not know whether Ms B would decide to use her right of appeal.
54. The final EHCP was not issued in the period of time my investigation considered, so I could not assess the potential injustice to C from the delays. I have addressed potential injustice to C in paragraph 56 below.
55. Ms B also has a right of appeal to the Tribunal when the final EHCP was issued.

Agreed action

56. Within one month of my final decision the Council agrees to:
- Compare the provision set out in C's final EHCP with the provision he has had in place since May 2021. If it identifies any gaps in provision the Council should offer Ms B a suitable financial remedy for missing provision during this period.
 - The Council should refer to our Guidance on Remedies to assist its calculation.
 - Pay Ms B £300 to recognise the frustration, time and trouble it caused her.
57. Within three months of my final decision the Council agrees to:
- Update the Ombudsman with the Council's progress in relation to reducing the number of live EHC assessment case that are over the 20-week statutory timescale.
 - Send a copy of the final decision to the relevant scrutiny committee so there is democratic oversight of the extent of the problems affecting children and families waiting for EHC assessments in Bristol.
58. Within six months of my final decision the Council agrees to:
- Develop and implement a mechanism to assist it record when it has chased outstanding information from professionals for EHC assessments.
59. The Council should provide the Ombudsman with evidence it has completed the agreed actions.

Final decision

60. I found fault with the Council causing injustice. I completed my investigation.

Investigator's decision on behalf of the Ombudsman