



**Author/Lead Officer of Report:** Jayne Ludlam,  
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**Report of:** *Jayne Ludlam*

**Report to:** *Cabinet*

**Date of Decision:** *11 December 2017*

**Subject:** *Report of the Local Government & Social Care Ombudsman*

|  |                              |  |
|--|------------------------------|--|
| Is this a Key Decision? If Yes, reason Key Decision:-  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| - Expenditure and/or savings over £500,000   | <input type="checkbox"/>     |  |
| - Affects 2 or more Wards  | <input type="checkbox"/>     |  |
| Which Cabinet Member Portfolio does this relate to? <i>Children, Young People &amp; Families</i>   |                              |  |
| Which Scrutiny and Policy Development Committee does this relate to? <i>Children, Young People and Family Support Scrutiny and Policy Development Committee</i>  |                              |  |
| Has an Equality Impact Assessment (EIA) been undertaken?   | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>  |                              |  |
| Does the report contain confidential or exempt information?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-  |                              |  |
| <i>“The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended).”</i> |                              |  |

**Purpose of Report:**

In line with the requirements of the Local Government & Social Care Ombudsman, the report outlines for Cabinet, the Ombudsman's report on a complaint made by Mrs X about the Council's actions in assessing her son, Y's, special educational needs and putting provision named in his Education, Health and Care Plan in place. The report also gives the Council's response to the Ombudsman's report.

**Recommendations:**

That the Cabinet notes the findings of the report and the actions taken in response, namely:

1. Arrange a review of Y's Education, Health and Care Plan;
2. Apologise to Y and Mrs X;
3. Pay £1,500 to Mrs X for Y's educational benefit; and
4. Pay £300 to Mrs X to acknowledge the frustration, time and trouble and uncertainty its faults caused her.
5. Develop an action plan to ensure that the faults identified by the Ombudsman do not occur again.

| Lead Officer to complete:-  |  |  |
|---|--|--|
| 1   | I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.   | Finance: <i>Helen Damon</i>                    |
|   |  | Legal: <i>Nadine Wynter</i>                    |
|   |  | Equalities: <i>Michael Bowles</i>              |
| <i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i> |  |  |
| 2   | <b>EMT member who approved submission:</b>   | <i>Jayne Ludlam</i>                            |
| 3   | <b>Cabinet Member consulted:</b>   | <i>Jackie Drayton</i>                          |
| 4   | I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1. |  |
|   | <b>Lead Officer Name:</b><br><i>Jayne Ludlam</i>   | <b>Job Title:</b><br><i>Executive Director</i> |
|   | <b>Date:</b>   |  |

## 1. PROPOSAL

- 1.1 This report summarises the findings of a formal report (appendix A) by the Local Government & Social Care Ombudsman regarding a complaint made by Mrs X and her son, Y. The report also provides a response from the Council.
- 1.2 Mrs X complained about the Council's actions in assessing her son's special educational needs and putting provision named in his Education, Health and Care Plan (EHC Plan) in place. She also complained about the Council's subsequent handling of her complaint.
- 1.3 The Ombudsman found that the Council was at fault when it:
- delayed issuing Y's EHC Plan by six months;
  - issued the wrong version of the final EHC Plan;
  - delayed providing the provision named in the EHC Plan;
  - delayed holding an annual review in 2017;
  - failed to communicate properly with Mrs X, and delayed its review of her complaint.

These faults led to:

- Y missing 18 months of support being delivered in his education placement that was subsequently named in his EHC Plan that he was entitled to receive;
  - distress for Y;
  - uncertainty for Mrs X about how Y would have progressed differently were it not for the faults, especially given he is in his GCSE years; and
  - frustration, time and trouble for Mrs X in pursuing her complaints.
- 1.4 To remedy the injustice caused to Mrs X and Y, the Ombudsman recommended the Council should:
- arrange a review of Y's EHC Plan;
  - apologise to Y and Mrs X;
  - pay £1,500 to Mrs X for Y's educational benefit;
  - pay £300 to Mrs X to acknowledge the frustration, time and trouble and uncertainty its faults caused her.

The Ombudsman also recommend the Council should:

- measure the impact of the steps it has taken to meet the timescales required to finalise EHC Plans and annual reviews;
- put in place measures to identify when annual reviews are outstanding and
- take action to ensure they are completed within 12 months of the

last review;

- monitor whether young people are receiving the support specified in section F of their EHC Plans.

1.5 The Council has reviewed the case in depth in order to understand what went wrong and what learning can be taken from this case to improve practice. In particular the council has identified that its current funding routes for high needs learners are not developed to support children with additional needs who live in Sheffield but access their education in a school outside of the city. Had Sheffield got a funding model in place for children in other Local Authority schools then funding would have been agreed when the plan was. It should be noted that the level of funding requested by the school did not match the funding model that Derbyshire use as their host Local Authority, a funding model which was sought to be utilised by the Council to resolve the dispute. The Council identified that communication between the school and the SEN service was poor leading to delays in resolution. The council has also identified that the systems in place within the SEN team to manage complaints have historically not been robust, leading to issues remaining outstanding and not resolved. The Council has developed an action plan (appendix B) to ensure the issues identified in the report and the Council's own review will not be repeated for other service users.

1.6 The Council has accepted the Ombudsman's recommendations, and has taken steps to remedy the injustice caused by its actions. An apology has been issued and financial recompense made. An annual review was held by the school.

1.7 The Council is working hard to address significant issues and challenges in regards to supporting Children and Young People with Special Educational Needs both through the statutory assessment process and more widely through provision in the city. A cabinet report approved in November 2017 details a review and engagement with key stakeholders on how our provision is delivered and developed to better meet the needs of our Children, Young People and their families.

1.8 Investment is being made in the SEN Assessment Team, including in regards to complaints management, to improve practice and performance, including a workforce development plan and additional resources so as to address the current concerns in regards to practice.

## **2. HOW DOES THIS DECISION CONTRIBUTE?**

2.1 This report has implications for the 'In Touch Organisation' priority in 2015 – 2018 Corporate Plan. The Council is committed to listening and being responsive to its residents. In this case it will aim to respond to the issues raised in this case by:

- Resolving the issues relating to Y's EHC Plan

- Learning from this complaint by reviewing how the SEND Assessment Service communicates with customers and progresses statutory requirements including how they resolve conflicts and complaints during that process.

### **3. HAS THERE BEEN ANY CONSULTATION?**

- 3.1 The report has been prepared in response to a public report issued by the Local Government & Social Care Ombudsman on 5 October 2017 following his investigation of a complaint against Sheffield City Council.
- 3.2 The Council has developed the attached Action Plan (Appendix B), which will be monitored by the Head of Service and Director of Commissioning, Inclusion & Learning.

### **4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION**

#### **4.1 Equality of Opportunity Implications**

4.1.1 As a Public Authority, we have legal requirements under Section 149 and 158 of the Equality Act 2010. These are often collectively referred to as the 'general duties to promote equality'. To help us meet the general equality duties, we also have specific duties, as set out in the Equality Act 2010 (Specific Duties) Regulations 2011.

4.1.2 We have considered our obligations under this Duty in this report and in particular those relating to disabled people and the Council is committed to ensuring that all citizens, particularly those who are most vulnerable, have access to the information and support they need to access services and make decisions about their lives.

#### **4.2 Financial and Commercial Implications**

4.2.1 In accordance with Section 30 of the Local Government Act 1974, the Council is required to place a Public Notice in a local newspaper and on a website confirming that a report had been issued by the Parliamentary and Health Service Ombudsman and Local Government Ombudsman advising the public where copies of the report were being made available. The cost of the notices was £1,416 and this has been met from existing People Portfolio budgets in the 2017/18 financial year.

4.2.2 The financial remedy of £1,800 recommended by the Ombudsman has been met from existing People Portfolio budgets in the 2017/18 financial year.

4.2.3 As per para 1.7 and the action plan in appendix B, additional resource is being made available for the SEN Assessment Team. The cost of this resource is covered by one off funding in 2017/18, but from 2018/19 will need to be funded from existing budgets following a wider service restructure.

#### 4.3 Legal Implications

- 4.3.1 Section 92 Local Government Act 2000 provides that where a local authority considers that a person has been adversely affected by its maladministration it may make payments or provide other benefits to that person. The Ombudsman's findings and recommendations have been accepted and the Council is therefore able to make the compensation detailed in this report. The Director of Legal and Governance under the Council's Constitution is authorised to approve payment in those circumstances.
- 4.3.2 Any actions arising out of the Reviews will be implemented as separate decisions, subject to consultations and Equality Impact Assessments as required by relevant legislation.

### **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The Council could choose to contest the findings of the Ombudsman. However the Council accepts the Ombudsman's view that there has been fault causing injustice to Y and Mrs X.
- 5.2 The Council could contest the recommendations of the Ombudsman, but as it acknowledges the failings in this case, it believes it should accept the recommendations the Ombudsman has proposed to remedy these failures.

### **6. REASONS FOR RECOMMENDATIONS**

- 6.1 The Council has considered the findings of the Ombudsman in this case and believes that they are accurate. The Council is working to ensure that the issues identified in the report are addressed for Y and Mrs X and not repeated for other service users.

**Investigation into a complaint against  
Sheffield City Council**

**(reference number: 16 009 691)**

**5 October 2017**

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



## Report summary

### Education – Special educational needs provision and Education, Health and Care Plans

Mrs X complains about the Council's actions in assessing her son Y's special educational needs and putting provision named in Y's Education, Health and Care Plan (EHC Plan) in place. She also complains about the Council's subsequent handling of her complaint.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice caused to Mrs X and Y the Council should:

- arrange a review of Y's EHC Plan;
- apologise to Y and Mrs X;
- pay £1,500 to Mrs X for Y's educational benefit; and
- pay £300 to Mrs X to acknowledge the frustration, time and trouble and uncertainty its faults caused her.

We also recommend the Council should:

- measure the impact of the steps it has taken to meet the timescales required to finalise EHC Plans and annual reviews;
- put in place measures to identify when annual reviews are outstanding and take action to ensure they are completed within 12 months of the last review; and
- monitor whether young people are receiving the support specified in section F of their EHC Plans.

The Council has accepted our recommendations.

### The complaint

Mrs X complained the Council:

- delayed completing her son's Education, Health and Care Plan (EHC Plan);
- changed the content of the EHC Plan without her agreement;
- failed to ensure the educational provision in the EHC Plan was in place;
- did not communicate properly with her; and
- delayed assigning an appropriate person to review her complaint.

### Legal and administrative background

#### The Ombudsman's role

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**)

We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (**Local Government Act 1974, section 26D and 34E, as amended**)

The law says we cannot normally investigate a complaint when someone can appeal to a tribunal such as the Special Educational Needs and Disability Chamber of the First Tier Tribunal (the 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**)

Councils have responsibility for completing EHC Plans for children who have special educational needs that mean there is a need for special educational provision. The EHC Plan is a legal document which sets out a description of a child's needs. It says what education, health and social care support will meet those needs. We cannot change an EHC Plan; only the Tribunal can do that.

The Council is responsible for making sure all the arrangements specified in the EHC Plan are put in place. We cannot look at complaints about what is in the EHC Plan but can look at other matters, such as where support set out in an EHC Plan has not been provided or where there have been delays in the process.

### **The EHC assessment process**

The Special Educational Needs Code of Practice 2014 sets out the law and guidance for councils to follow in assessing and providing for pupils with special educational needs. It says:

- all children are entitled to an education ... that is appropriate to their needs (**SEN Code of Practice, paragraph 6.1**); and
- councils must consult with parents and have regard to the outcomes they wish to achieve and support they need to achieve them throughout the process of assessment and production of the EHC Plan (**SEN Code of Practice, paragraph 9.21**).

The whole process of issuing a finalised EHC Plan must take no longer than 20 weeks aside from in limited exceptional circumstances (**Special Educational Needs and Disability Regulations 2014, Regulation 13(2)**).

Councils are responsible for ensuring there is effective coordination of the assessment and development process for an EHC Plan. Councils must carry out the process of EHC needs assessment and EHC Plan development in a timely manner.

### **The EHC Plan**

If a council decides to issue an EHC Plan it must first issue a draft for the parents or young person to consider. The final EHC Plan must be the same as

the draft version agreed or modified in light of representations made about the draft version. (**SEN Code of Practice paragraph 9.125**)

Provision must be detailed and specific and should normally be quantified, stating for example the type, hours and frequency of support and the level of expertise.

Parents do not have a right of appeal against the contents of an EHC Plan until a council issues a final EHC Plan and sends a decision letter, even if the process takes more than 20 weeks.

### **Delivering provision named in an EHC Plan**

Councils are required to arrange educational provision from the date an EHC Plan is finalised.

Schools are required to put in place the provision set out in an EHC Plan on a day to day basis. However councils have the ultimate binding legal duty to ensure the special educational provision in section F of an EHC Plan is delivered. Councils may expect a school or college named in the EHC Plan to do this, but if this does not happen, the council must step in and provide the special educational provision. In *R v London Borough of Harrow ex parte M [1997]* a council argued that because it had made a request to a health authority to arrange provision, it had fulfilled its own duty. The Judge disagreed and ruled the council's duty is owed personally to the child and is non-delegable.

We usually expect straightforward provision to be in place as soon as possible and at the latest no more than four weeks after the issue of the final EHC Plan. Planning for complex provision should start in advance of the EHC Plan being finalised and be available within no more than half a term from when a final EHC Plan is issued or amended.

The special educational provision named in an EHC Plan can include provision funded from the school's budget share, and more specialist provision funded wholly or partly from a council's high needs funding.

Funding from a council's high needs budget will vary depending on how it funds services locally and what it expects schools and colleges to provide as part of the council's Local Offer. This may lead to difficulties in agreeing funding arrangements where children attend schools in different council areas to where they live.

### **Reviewing EHC Plans**

Councils must review EHC Plans no later than 12 months after an EHC Plan is finalised and then within 12 months of any previous review. Councils must then notify the child's parents of the outcome within four weeks of the review meeting. (**SEN Code of Practice paragraph 9.166 and 9.169**)

Councils can require schools to convene and hold EHC reviews on their behalf (**SEN Code of Practice paragraph 9.173**).

### **The Council's complaints procedure**

The Council's complaints procedure says it will send a complainant a written response within 28 calendar days of the start of the investigation. If it cannot meet this timescale it will write to the complainant to explain this.

If a complainant asks the Council to review their complaint, the Council completes an investigation review. Its procedure does not specify how long this review will take.

## **How we considered this complaint**

We have produced this report following the examination of relevant files and documents and an interview with the complainant.

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.

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 have shared this decision with Ofsted.

## **What we found**

### **The EHC Plan**

#### **What happened**

Mrs X's son, Y, attends a school in a neighbouring council's area (Council B). Y has special educational needs. Y has difficulties with short-term auditory memory, organisation, motor skills and writing, and he has dyslexia.

On 15 July 2015, when Y was in Year 8, the Council agreed to begin an assessment of his needs. The law says the Council has 20 weeks to complete the assessment and issue a final EHC Plan, therefore it was due for completion on or before 2 December 2015.

The Council held a multiagency meeting on 5 November 2015 to co-produce the content of the draft EHC Plan.

The Council issued the draft EHC Plan on 15 February 2016 and gave Mrs X 15 working days to make any comments.

After the Council received Mrs X's comments in early March 2016, it amended the draft EHC Plan and sent it to Mrs X to sign. The Council said it would issue the final EHC Plan within two weeks.

The Council issued the final EHC Plan for Y on 6 May 2016. However, Mrs X and the School told the Council this was not the version of the EHC Plan that had been agreed by all parties at the draft stage. In addition, Mrs X told the Council the School did not have the funding in place to make the special educational needs provision specified in section F of the EHC Plan. The School told the Council it was not happy with the funding arrangement.

In June the Council agreed the final EHC Plan it had issued in May was incorrect and not in line with the agreed draft. It issued an amended final EHC Plan on 2 June. This was six months outside the time limit allowed to issue the EHC Plan.

In response to Mrs X's later complaint, the Council accepted there was a delay in issuing the final EHC Plan. It said this was as a result of not being able to arrange a meeting to discuss the EHC Plan until November 2015. It accepted this was not a requirement but it considered a meeting good practice, despite causing delay. It said it was aware other families in its area were also experiencing these delays and so it had since put in extra resources.

The final EHC Plan issued in June said Y needed provision which included the following:

- *“Classroom learning which is supplemented by supported small group and individualised programmes.”*
- *“Regular and consistent 1 to 1 literacy and numeracy tuition.”*
- *“To have constant access to alternative means of reading and recording – for example, using technology readers, dictation software, laptop, tablet or word processes, drawings, diagrams, mind-maps, a scribe or reader - should be considered where appropriate. Where possible staff should utilise these methods for the whole class so that [Y] does not feel 'different' to his peers.”*
- *“Support to develop his organisational skills; this should include a keyworker who [Y] trusts and has a good relationship with each day to look at his planner with him and discuss what he needs to do and assess his mental frame of mind.”*
- *“A meeting once a week with a mentor who will support [Y] to express any concerns he is having in his academic subject areas and to help formulate an ongoing action plan for success.”*

However the EHC Plan did not clearly specify length and frequency of support.

Mrs X informed the Council in October 2016 that Y was not receiving the support set out in section F of his EHC Plan. This appears to have been as a result of the continuing disagreement between the Council and the School about the funding arrangements for the support.

In November 2016, as a result of the Council's investigation into a complaint by Mrs X, the investigating officer recommended the Council hold an urgent review of Y's EHC Plan so it could discuss with the School how to ensure Y received his provision.

In January 2017 Mrs X wrote to the Council as it had still not arranged the review of Y's EHC Plan recommended in November 2016.

From January to March 2017 the Council and the School continued to discuss the funding needed to provide the support in section F of Y's EHC Plan.

In February 2017, following a further investigation of Mrs X's complaint by the Council, the investigator pointed out the Council had failed to conduct the urgent

review of Y's EHC Plan recommended in November. It repeated this recommendation for an urgent review and said it was likely at this review the Council would agree to provide Y with additional support beyond what was specified in Y's EHC Plan. However, the Council did not arrange this review. The Council arranged a meeting with the School in March, which Mrs X joined, but this meeting was to discuss further the issues around funding arrangements.

In March and May the Council's Special Educational Needs (SEN) Panel considered the funding requirements.

Following the summer 2017 term the Council informed us the provision specified in Y's EHC Plan was in place and it had sent its first payment to the School. It did not clarify what, if any, provision the School is providing to Y above that named in his EHC Plan to help him to catch up as agreed by the Council in February 2017.

Y's EHC Plan was due for an annual review in June 2017 but the Council has not completed the review. It says it asked the School to arrange the review.

### **Analysis**

The Council delayed completing Y's EHC Plan. It should have issued a final EHC Plan by December 2015 but it did not complete it until May 2016. The Council then amended the EHC Plan soon after, in June, when it accepted it had not issued the correct version. There was a six month delay in issuing a final EHC Plan. This is fault.

The Council changed the EHC Plan's content after the draft EHC Plan was issued in March. This is fault. This added a further one month delay to finalising the EHC Plan. We have taken this into account when calculating there was a six month delay in issuing the final EHC Plan.

Mrs X had to go to the time and trouble of attending mediation when the Council issued the wrong version of the EHC Plan.

The Council told us "*Regrettably there were clearly missed opportunities to meet with or provide challenge to the school regarding provision and funding*"... "*and the Council is sincerely sorry about this*".

The Council failed to ensure Y received the special educational provision in his EHC Plan. This is fault. Mrs X made the Council aware Y was not receiving the support in October 2016. However Mrs X had forewarned the Council in May the School may not be able to put the provision in place.

The Council's delay in putting Y's provision in place was due to it failing to resolve its dispute with the School about the amount of funding that was needed to provide the provision for Y. We cannot investigate the content of the EHC Plan as any disagreements about this are for the Tribunal. However the wording of the EHC Plan led to differences in opinion between the Council and the School about what it meant.

If it were not for the delays outlined above, the Council should have put in place the special educational provision for Y by January 2016. The Council did not resolve the funding issues before the end of the summer term in 2017. The provision was in place by September 2017. The disagreement over funding does not remove the Council's obligation to ensure the provision was put in place. It has a duty to Y which it cannot delegate.

There was an 18 month period from January 2016 to July 2017 when, if it were not for fault by the Council, Y should have received the support specified in his EHC Plan. As the Council had identified he needed the support set out in his EHC Plan, this caused him a disadvantage.

The delay also led to frustration for Mrs X who needed to chase the Council. She went to time and trouble in trying to get the Council to issue the EHC Plan and to try to resolve the lack of support to Y.

The Council failed to ensure Y's EHC Plan was reviewed within 12 months, by June 2017. This is fault. It meant the Council missed the opportunity to review Y's EHC Plan and resolve some of the issues. However as the provision had not yet been put in place it could not realistically assess its impact on Y and decide whether it was working.

It is not possible to say how Y would have progressed differently were it not for fault by the Council, but we are satisfied he was caused a disadvantage. This leaves Mrs X and Y with uncertainty given he is now in his GCSE years. Mrs X says Y reduced the number of GCSEs he would study based on what he thought he would be able to do without the support in his EHC Plan. Mrs X says this caused him distress and she is concerned his life choices will now be affected.

When considering how to remedy the injustice caused by fault by the Council, we must consider actions the Council has already taken. The Council says Y will have one-to-one catch-up sessions, and that the funding agreed will provide for this. However the panel did not agree to fund any provision aside from that named in Y's EHC Plan. The Council has not shown how it has calculated the funding. We have recommended a remedy that assumes Y's provision and additional one-to-one catch-up sessions will be provided using the funding agreed by the Council, from September 2017. If Y does not receive catch-up sessions within the budget agreed by the Council, it is open to Mrs X to make a further complaint to us.

The Council must review Y's EHC Plan within 12 months from the last review. The review of Y's EHC Plan was due in June 2017 but has not yet taken place. Despite the Council's assurance it asked the School to arrange the review, as it has not occurred within 12 months, this is fault.

## **Communication with Mrs X and her complaint**

### **What happened**

On 20 April 2016 Mrs X complained to the Council about its failure to complete her son's EHC Plan by December 2015. Her MP also wrote to the Council in support of her complaint.

At the end of June 2016 the Council replied to Mrs X's MP apologising for its delay in issuing Y's EHC Plan and for the delay in responding to the complaint.

Mrs X complained to the Council again in October 2016. She said the Council's failure to complete the EHC Plan by December 2015 meant the support was not in place while Y was choosing his GCSE options. She said the lack of support led him to reduce the number of GCSEs he would study. She told the Council Y was not receiving the support as set out in his EHC Plan in June 2016.

The Council responded in November 2016. This was within its complaint timescales. It accepted there had been delays and an error in issuing the wrong version of the final EHC Plan. It apologised for the effect the delay had on Y as his mental health had worsened and it had caused the family additional stress.

Mrs X remained dissatisfied and asked the Council to review the complaint. The Council said it would appoint an investigator and respond by 14 December.

The Council completed its review in February 2017, two months later than it had agreed. The delay appears partly to have been due to the Council allocating an investigating officer who was an employee of one of the officers Mrs X complained about. It then allocated a different investigating officer.

The Council accepted there had been multiple times when it could have communicated better with Mrs X and the investigating officer recommended the Council review why the problems persisted.

### **Analysis**

The Council delayed assigning an appropriate person to review the Council's complaint response. This delayed its response to Mrs X, as it sent its response to her complaint two months later than it said it would.

It is disappointing that the complaint review investigation of February 2017 had to repeat the same findings and recommendations as the one before in November 2016, as the Council had taken no action to hold a review of Y's EHC Plan. This added to Mrs X's frustration and the Council lost the opportunity to put things right sooner.

The Council has already accepted it failed to communicate properly with Mrs X. It has apologised and said it has provided staff training on standards of casework, including expectations for responses to parents. This is an appropriate response to try to prevent a recurrence of the fault. However, we recommend the Council makes a payment to Mrs X to acknowledge the time and trouble this fault caused her.

Mrs X had to chase the Council on many occasions, sometimes via her MP, and she went to time and trouble because of the Council's failure to communicate with her.

### **Others affected**



The Council's response to Mrs X's complaint acknowledged the delays she experienced had also been experienced by other young people. We are aware of three other recent complaints to us for the same faults by this Council.

The Council says as a result of the complaints it has reviewed its procedures and identified it needs to:

- monitor the performance of its case management system, keeping timescales under regular review. It will monitor cases weekly;
- review its processes;
- monitor correspondence with parents and streamline processes, giving more time for case officers to resolve parental concerns. It will arrange training for this;
- ensure Special Educational Needs and Disability (SEND) officers know how to
- manage cross-border funding policies. This will include a review of how the Council manages this. Training has begun;
- provide training on the complaints process to the SEND team.

## **Conclusions**

The Council was at fault when it :

- delayed issuing Y's EHC Plan by six months;
- issued the wrong version of the final EHC Plan;
- delayed providing the provision named in the EHC Plan;
- delayed holding an annual review in 2017;
- failed to communicate properly with Mrs X; and
- delayed its review of her complaint.

These faults led to the injustice of:

- Y missing 18 months of provision named in his EHC Plan that he was entitled to receive;
- distress for Y;
- uncertainty for Mrs X about how Y would have progressed differently were it not for the faults, especially given he is in his GCSE years; and
- frustration, time and trouble for Mrs X in pursuing her complaints.

The Council has confirmed it is taking steps in response to the previous complaints to us. It is too early to see the results of these actions because they are still ongoing. More young people are likely to have been affected by these faults.

## **Recommendations**

To remedy the injustice caused to Mrs X and Y, within three months of this report the Council should:

- review Y's EHC Plan as a matter of urgency, as recommended by its complaint investigations, showing clearly how it calculates the level of funding agreed. This review will also give Mrs X a right of appeal to the

Tribunal if she disagrees with the provision specified in section F of the EHC Plan;

- apologise in writing to Mrs X and Y to recognise the injustice caused to them by the faults identified;
- pay Mrs X £1,500 to use for Y's educational benefit, for example for tuition or additional equipment, to try to make up for the lack of provision to Y for 18 months;
- pay £300 to Mrs X to acknowledge the frustration, time and trouble and uncertainty its faults caused her.

Within three months, the Council should also:

- measure the impact of the steps it has taken to meet the timescales required to finalise EHC Plans and annual reviews;
- put in place measures to ascertain when annual reviews are outstanding and take action to ensure they are completed within 12 months of the last review;
- monitor whether young people are receiving the support specified in section F of their EHC Plans.

The Council has accepted our recommendations.

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 or Cabinet and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

## **Decision**

We have found fault causing injustice. The Council has agreed to take action to remedy the injustice caused to Mrs X, Y and others who may be affected.

## Action Plan

|     | Area of concern                        | Action   | What we have already done  | How will we improve this?  | Timeframe | How will this be monitored  |
|-----|--|--|--|--|-----------|---|
| 1.1 | Communication with parents and schools | Clear protocols in place to respond to parents and carers within 3 working days in line with the council communication policy  | <ul style="list-style-type: none"> <li>• Training on phone management and techniques for business support staff</li> <li>• Additional Business Support staff in place to co-ordinate the EHC Needs Assessment process, including effective communication with parents at key points</li> <li>• Regular discussion both within team meetings and in supervision about expectations re communication.</li> </ul> | 1. Further training for team on expectations and time management   | Dec-17    | Training session complete   |
| 1.2 |  |  |  | 2. Use of capita ONE database to ensure actions are logged and monitored   | Apr-18    | Reports will show that actions are responded to within 3 working days |
| 2.1 | Delay in issue of EHC Plan             | We will increase the percentage of EHC Needs Assessments completed within a 20 week timeframe from 10% for those begun in academic year 2016/17 to 50% for those begun in academic year 2017/18 with further year on year increases. | <ul style="list-style-type: none"> <li>• Full review of the EHC Needs Assessment Process</li> <li>• End to end timeline created and in operation using the Capita ONE system</li> <li>• Additional business support staff to administer the EHC Needs Assessment, including monitoring of timeframes.</li> <li>• Training programme for all staff to cover all areas of SEN</li> </ul>                         | 1. Further training on how to complete EHC plans in a timely manner  | Dec-17    | Training session complete   |
| 2.2 |  |  |  | 2. Review of all EHC Paperwork and report templates to ensure clearer, more consistent plan writing, within shorter timescales | Jan-18    | New paperwork will be published for use                               |
| 2.3 |  |  |  | 3. Effective monitoring through monthly supervision to support and challenge   | Jan-18    | All supervisions for locality managers will record case               |

|     | Area of concern        | Action  | What we have already done   | How will we improve this?   | Timeframe | How will this be monitored  |
|-----|------------------------|---|---|---|-----------|---|
|     |                        |   | <ul style="list-style-type: none"> <li>Weekly case management monitoring in place.</li> </ul>   | cases at risk of not being completed within timeframe   |           | management discussions. Monthly data returns will show improvement in EHC Needs Assessment completed in timeframe |
| 2.4 |                        |   |   | 4. Recruitment of Service Manager to lead and oversee performance of service on a daily basis                       | Dec-17    | Service manager in post   |
| 2.5 |                        |   |   | 5. Further recruitment to ensure full staffing levels are in place to cover each locality area                      | Dec-17    | One remaining Locality Manager in post  |
| 3.1 | Handling of complaints | All complaints responded to within Council policy timeframe with a clear action plan as to how the complaint will be resolved, setting out clear timeframes for completion that will then be adhered to | <ul style="list-style-type: none"> <li>complaints process reviewed in line with corporate complaints process</li> <li>allocated administrator agreed to oversee complaints process, including developing complaints monitoring within the Capita ONE system. Currently agency staff whilst recruitment being completed</li> <li>complaints handling training</li> </ul> | 1. Creation of internal tracking and monitoring document for complaints   | Dec-17    | Internal tracking document completed, agreed and in use   |
| 3.2 |                        |   |   | 2. Recruitment and training of allocated administrator to oversee complaints process                                | Dec-17    | Administrator in post   |
| 3.3 |                        |   |   | 3. training for all staff on complaints process to ensure that complaints are responded to within timeframe with an | Jan-18    | Training complete   |

|     | Area of concern              | Action   | What we have already done  | How will we improve this?  | Timeframe | How will this be monitored  |
|-----|------------------------------|--|--|--|-----------|---|
|     |                              |  | for staff with further training to follow  | appropriate action plan  |           |   |
| 3.4 |                              |  |  | 4. Weekly complaints review meeting to ensure complaints are being responded to and actions are being monitored  | Jan-18    | Weekly mtg in diary with recorded outcomes and actions  |
| 3.5 |                              |  |  | 5. Utilisation of Capita ONE system to monitor outcomes and actions relating to complaints to ensure that they are addressed and completed. Report created to ensure internal tracking and monitoring. | Mar-18    | Reports able to be generated on capita ONE on outstanding complaints and actions                            |
| 3.6 |                              |  |  | 6. Development of whole service performance monitoring system to ensure oversight of performance of the service  | Mar-18    | Performance framework in place and discussed by management on a weekly basis                                |
| 3.7 |                              |  |  | 7. Utilisation of individual supervision to address areas of complaints to ensure actions are completed  | Mar-18    | All supervisions for locality managers will record complaint discussions utilising monthly complaint report |
| 4.1 | Monitoring of annual reviews | A robust process in place to monitor annual reviews and ensure local authority | <ul style="list-style-type: none"> <li>all cases allocated to officers within our Capita system ONE</li> </ul> | 1. Review of annual review paperwork to ensure all appropriate information is  | Mar-18    | New paperwork will be published for use   |

|     | Area of concern       | Action  | What we have already done   | How will we improve this?  | Timeframe | How will this be monitored   |
|-----|-----------------------|---|---|--|-----------|--|
|     |                       | representation is in place where required       | system  | gathered   |           |  |
| 4.2 |                       |   | <ul style="list-style-type: none"> <li>additional business support to ensure that appropriate reminders are flagged and attendance is arranged</li> </ul> | 2. Develop a timeline and process for annual reviews to be completed for both internal and external use detailing what must be done when and by whom | Jan-18    | Timeline in place for Capita, internal use and external publishing   |
| 4.3 |                       |   |   | 3. Additional training on annual reviews and the process to be followed for schools, local authority staff and other agencies                        | Mar-18    | Training dates published and in place  |
| 4.4 |                       |   |   | 4. Ensure that annual review information in Capita ONE is complete and accurate  | Jan-18    | Report will show annual review date against all cases  |
| 4.5 |                       |   |   | 5. Ensure a termly list sent to all schools of annual reviews to be completed the following term   | Jan-18    | Report and process in place to allow termly report to be sent to all schools   |
| 4.6 |                       |   |   | 6. Termly monitoring of annual reviews (complete, attended) and reminders to schools where necessary   | Jan-18    | Cross reference report will be created that identifies gaps in reviews and attendance. Officers trained to follow these up |
| 5.1 | Monitoring of whether | We will have effective systems that allow us to | We currently expect schools to deliver provision detailed in  | 1. Establish what monitoring systems other local   | Dec-17    | Feedback gathered from Y&H Partners  |

|     | Area of concern                              | Action   | What we have already done   | How will we improve this?  | Timeframe | How will this be monitored   |
|-----|--|--|---|--|-----------|--|
|     | provision detailed in EHC Plans is delivered | monitor whether provision detailed in an EHC Plan is in place or not within a school setting | Section F of an EHC Plan and raise concerns either via annual review or when a parent or service raises concerns that provision is not in place | authorities use to ensure provision is in place  |           | as to how they monitor provision   |
| 5.2 |  |  |   | 2. Develop localised process for monitoring provision via LA services and key-working approach   | Jan-18    | Local process in place and articulated on the local offer                                |
| 5.3 |  |  |   | 3. Review our funding models to ensure that appropriate resources can be made available to schools as top-up funding, whether in or out of district. Develop the process to ensure this is agreed and provided in individual cases | Mar-18    | Review complete as part of strategic review and new processes presented to schools forum |
| 5.4 |  |  |   | 4. Creation of audit process for EHC plans to monitor provision in place   | Mar-18    | Audit process in place to monitor provision  |

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