

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

**Investigation into a complaint about
Trafford Council
(reference number: 23 019 685)**

18 December 2024

The Ombudsman's role

We independently and impartially investigate complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

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

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

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

Mrs X	The complainant
Y	Her child
Officer B	Y's SEN worker

Report summary

Education and Children's Services – Special educational needs (SEN) provision and Education, Health and Care (EHC) Plans

Mrs X complained about the Council's failure to provide tutoring for her child Y, when Y could not go to school, and delay approving funding for a special school place. As a result, Y was out of education until April 2024 and Mrs X could not work and experienced avoidable distress and frustration.

Finding

Fault found causing injustice and recommendations made.

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, 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)

In addition, the Council should take the following action within four weeks of the date of this report to remedy the injustice to Mrs X and Y from the fault we have identified:

- apologise to Mrs X in line with our guidance on [Making an effective apology](#);
- apologise to Y, in an age appropriate way, to recognise that Y was lonely and isolated when not at school because of the Council's fault;
- pay Y £3,600, being £2,400 for each term of missed education and SEN provision; and
- pay Mrs X £750 to recognise her significant and avoidable distress and frustration over a prolonged period.

The Council should also take the following action to improve its services:

- share a copy of this decision with staff in the relevant departments to consider the lessons that can be learned from this case;
- refer the learning outcomes and this decision to the relevant scrutiny committee;
- review current arrangements for making decisions about EHC assessments and plans to ensure the Council can make the decisions required within the statutory timescales and without causing avoidable injustice to children with SEN; and
- ensure that the Council's records contain sufficient detail to demonstrate its decision making in individual cases.

The Council has accepted our recommendations.

The complaint

1. Mrs X complained about the Council's actions when her child, Y, could not go to school. In particular, that the Council:
 - delayed issuing Y's EHC Plan after an emergency review in November 2023;
 - failed to put in place the one-to-one tuition at home agreed at the emergency review; and
 - delayed approving the funding for a special school.
2. As a result, Y was out of education until April 2024 and Mrs X could not work and experienced avoidable distress and frustration.

Legal and administrative background

The Ombudsman's role and powers

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 a fault which has caused an injustice, we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
4. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

EHC Plans

5. A child or young person with special educational needs (SEN) may have an Education, Health and Care (EHC) Plan. This document sets out the child's needs and what arrangements should be made to meet them.
6. The council has a duty to make sure the child or young person receives the special educational provision set out in section F of an EHC Plan (Section 42 Children and Families Act). The Courts have said the duty to arrange this provision is owed personally to the child and is non-delegable. This means if the council asks another organisation to make the provision and that organisation fails to do so, the council remains liable (R v London Borough of Harrow ex parte M [1997] ELR 62), (R v North Tyneside Borough Council [2010] EWCA Civ 135)
7. When the Council reviews an EHC Plan, which it must do at least annually, the whole process should take no more than 12 weeks.

Alternative provision

8. Councils must arrange suitable education at school or elsewhere for pupils who are out of school because of exclusion, illness or for other reasons, if they would not receive suitable education without such arrangements. (Education Act 1996, section 19.) We refer to this as section 19 or alternative education provision.
9. This applies to all children of compulsory school age living in the local council area, whether or not they are on the roll of a school. (Statutory guidance 'Alternative Provision' January 2013)
10. The courts have considered the circumstances where the section 19 duty applies. Caselaw has established that a council will have a duty to provide alternative education under section 19 if there is no suitable education available to the child which is "reasonably practicable" for the child to access. The "acid test" is whether

educational provision the council has offered is “available and accessible to the child”. (R (on the application of DS) v Wolverhampton City Council 2017)

How we considered this report

11. We considered the complaint and the information Mrs X provided.
12. We made written enquiries of the Council and considered its response along with relevant law and guidance.
13. We referred to our [Guidance on Remedies](#).
14. 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.

What we found

The Council’s decision making process

15. The Council has a multi-agency panel of senior officers which makes all decisions about EHC Plans. This includes:
 - whether to carry out an EHC needs assessment;
 - whether to issue an EHC Plan following assessment;
 - whether to cease, amend, or maintain an EHC Plan following a review; and
 - how much funding to award to meet the provision in an EHC Plan.
16. The panel's terms of reference say its purpose is:
 - "To ensure decision making, in relation to the statutory framework for special educational needs and disabilities (SEND), is lawful, rational and fair."
 - "To ensure timeliness of decision making is in keeping with the statutory timescales."
17. The panel meets once a week for three hours. Allocated SEN officers make referrals to the panel. They do not usually attend the panel but can be called in to answer questions.

What happened

18. Y has special educational needs (SEN). In July 2023, the Council issued an EHC Plan setting out the provision to meet Y’s needs. The plan named a mainstream school in Section I.
19. In September 2023, Mrs X told the Council Y was not going to school. She asked for support to deal with Y’s school-related anxiety.
20. After discussion with Y’s school, the Council recommended the school hold an emergency review of Y’s EHC Plan. The school held the review in mid-November. Y’s allocated SEN officer (Officer B) from the Council attended the meeting. The review found:
 - Y’s attendance was very low;
 - the school, Mrs X, and the specialist who recently assessed Y all agreed that the school could not meet Y’s needs;
 - Y “cannot manage in a mainstream setting” and the small specialist class (SSC) within the school “has also proved too overwhelming”; and

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- Y needed a more specialist setting.
21. The agreed actions following the review were:
 - the school would look into providing tutoring for Y at home and tell the Council if it needed anything to provide this “and continue providing it, depending how long [a] new placement takes”; and
 - the Council would send consultations to any special schools requested by Mrs X or the panel.
 22. At the end of November, the school told the Council it had found a tutor for Y. The tutor had previously been one of Y’s teachers at the school and had extensive experience with children with Y’s diagnosis. The school asked the Council to fund the tutoring.
 23. On the same day, Officer B asked the panel to consider Y’s case urgently. The referral asked the panel both to approve funding for 10 hours of tutoring a week and for a change of placement to an independent special school.
 24. In December, Officer B consulted with two schools identified by Mrs X. Mrs X asked for an update on the panel outcome.
 25. The records show that Y’s case was on the panel’s agenda at the end of November. It was deferred to the first panel in December. It was then deferred again at each panel in December. The administrator for the panel told Officer B that Y’s case was still on the “urgent list”.
 26. In January 2024, the school asked the Council for an update, pointing out that Y was missing education with no provision.
 27. In mid-January, both special schools offered Y a place. Mrs X’s preferred school said Y could start as soon as the Council agreed to fund the place. Officer B updated the panel referral to include the school place offer.
 28. The panel considered Y’s case in January, but only the request for tutoring and not the placement offer. Officer B pointed out that as the placement could start immediately, tutoring would not be needed if the panel approved it. Officer B said the Council was “letting [Y] down” by having to go back to the panel again.
 29. In February, Mrs X complained to the Council. She said:
 - Y was currently unable to go to school;
 - the emergency review agreed 10 hours a week of tutoring at home but the Council did not provide it;
 - the panel’s delay in approving funding was preventing Y taking up an available school place;
 - Y’s EHC Plan had not been amended since the review in November 2023; and
 - Mrs X was unable to work while Y was out of school.
 30. The panel considered Y’s case again in early February. The recorded outcome was “[p]anel feel that we need to explore a local option first. Panel to speak with [school] SSC as an alternative before making a decision or offer to the family”. Officer B pointed out that Y had attended an SSC at school and the review had found this was unsuccessful.
 31. Mrs X chased the Council for updates throughout February and March.
 32. The Council responded to Mrs X’s complaint in early March. The Council:

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- recognised it had a duty to secure the provision in Y's EHC Plan;
 - acknowledged delays in the panel process meant it had delayed "taking on its duty to secure suitable provision" for Y;
 - said the reason it had not provided tutoring was that by the time the case got to panel "there was a school offer" and so the Council prioritised this as securing an immediate and long term solution;
 - accepted it had delayed making a decision about the identified school place;
 - apologised for the impact of the delay on Y and the family; and
 - said it was changing the way the panels work to be more timely and effective.
33. Mrs X asked the Council to consider the complaint at stage two. She said Y was "socially isolated, lonely and is fully aware of the injustice [they are] facing".
34. The Council told Mrs X that while waiting for a final decision on the school placement it would be happy to "press forward" with finding a tutor from its existing framework of providers. Mrs X asked the Council to do this.
35. Also in March, the Council approached the SSC identified by the panel. After discussing Y with the previous school, it told the Council it could not meet Y's needs.
36. In mid-March, the panel approved funding for Y's placement at the special school. The next day, the Council sent out Y's amended EHC Plan naming this school.
37. Y started at the school in April 2024.

Conclusions

38. As it recognised in its response to Mrs X's complaint, the Council took much too long to put in place the recommendations of the emergency review.
39. The school identified a tutor for Y within two weeks of the review meeting in November 2023. Despite this, Y got no education until starting at the new school in April 2024. The Council accepted that Y could not go to the school. It therefore had a statutory duty to secure alternative provision. Its failure to do so for Y was fault.
40. The Council has a statutory duty to secure the provision in an EHC Plan. Its failure to do so for Y was fault. As a result, Y missed out on one and a half terms of education and received none of the provision required to meet their SEN. This is a significant injustice to Y.
41. Officer B was proactive in consulting with schools and updating the panel referral and Mrs X was proactive in taking Y to visit them and telling the Council about her preferences. As a result, by January 2024 there was an identified school place, where Y could start immediately. Despite this, the panel did not consider the case until February and did not approve the placement until March. This delay was fault. It denied Y the opportunity to start school almost a full term sooner. Mrs X says Y was lonely and isolated at this time. This is a significant injustice to Y.
42. We recognise that the special school place is more expensive than a mainstream placement and that the Council must spend public money carefully. However, in this case its decision to consult with another SSC before approving the placement was fault. The review meeting, attended by all those who knew Y best, agreed that an SSC was not suitable for Y. The panel had this information as part of the referral. The records of the panel's decision making are too brief, comprising only

one line and no minutes to reflect the discussion, to demonstrate why it nonetheless considered an SSC to be appropriate for Y.

43. The panel's repeated delays meant the Council failed to meet the statutory timescale for issuing an amended EHC Plan after a review. It should have issued the plan within 12 weeks of the review meeting. It missed this deadline by more than six weeks. This was fault.

The panel

44. The terms of reference for the panel say that all decisions relating to EHC Plans are made by the panel, which meets once a week. This includes initial decisions about whether to carry out an assessment and decisions about whether to issue an EHC Plan.
45. The records show that the volume of such decisions was the reason Y's case was deferred so many times despite being listed as urgent. The panel is therefore failing in its stated purpose to "ensure timeliness of decision making is in keeping with the statutory timescales". The Council's solution to this is to add a new panel, looking only at funding decisions for independent special schools.
46. We are concerned that this will not address the problem. Our [Principles of Good Administrative Practice](#) sets out how we expect councils to deliver services. The first principle is "Getting it right". This includes "providing effective services, using appropriately trained and competent staff" and "taking reasonable, timely decisions, based on all relevant considerations".
47. We also provide examples of what good looks like in "Getting it right". This includes:
- complying with service timescales with a statutory basis by planning and prioritising resources; and
 - giving staff free rein to use their professional judgement to meet properly assessed service needs.
48. It is for the Council to decide how to use its resources and structure its decision making. However, reserving all decisions to a panel does not extend the statutory timeframes for EHC decisions. Nor does it remove or diminish the expectation that it be able to demonstrate the reasons for its decisions. It must not get in the way of providing an effective service.
49. The evidence shows that the Council's internal bureaucracy was the cause of the delay in this case. This delay was avoidable and it caused significant injustice to Mrs X and Y. It is likely other children have and are experiencing similar injustice.

Steps the Council is taking to improve

50. In response to a draft of this report, the Council told us about the actions it is taking to improve the timeliness of its decision making and provide education to children who cannot go to school.
- An independent expert provided staff training on the section 19 duty and the Council is currently redrafting its policy to reflect this training.
 - In addition to adding new panels, the Council provided training for panel members to ensure the terms of reference are clear and decision making is transparent.
 - There will be new posts within a restructured EHC team from January 2025.

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- The Council is developing practice standards to make sure all staff are clear about their responsibility and to promote consistent decision making.
 - It set up a Learning and Improvement Steering Group, which includes parent representatives.
51. We welcome these efforts and the Council's commitment to improving its service. We recommend further service improvements to add to this work below.

Recommendations

52. 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)
53. In addition, the Council has agreed take the following action to remedy the injustice to Mrs X and Y from the fault we have identified:
- apologise to Mrs X in line with our guidance on [Making an effective apology](#);
 - apologise to Y, in an age appropriate way, to recognise that Y was lonely and isolated when not at school because of the Council's fault;
 - pay Y £3,600, being £2,400 for each term of missed education and SEN provision; and
 - pay Mrs X £750 to recognise her significant and avoidable distress and frustration over a prolonged period.
54. The Council should take this action within four weeks of the date of this report.
55. The Council should also take the following action to improve its services:
- share a copy of this decision with staff in the relevant departments to consider the lessons that can be learned from this case;
 - refer the learning outcomes and this decision to the relevant scrutiny committee;
 - review current arrangements for making decisions about EHC assessments and plans to ensure the Council can make the decisions required within the statutory timescales and without causing avoidable injustice to children with SEN; and
 - ensure that the Council's records contain sufficient detail to demonstrate its decision making in individual cases.
56. The Council has accepted our recommendations.

Decision

57. We have completed our investigation. There was fault by the Council. The action we have recommended is a suitable remedy for the injustice caused.