

The Ombudsman's final decision

Summary: There was fault in the way the Council managed the transfer of C's statement of special educational needs to an education, health and care plan and in its response to the complaints by C's mother, Ms B. The Ombudsman recommends the Council apologises to Ms B and C pays the sum of £650 to reflect the distress suffered by the delay and Ms B's time and trouble in pursuing the complaint.

The complaint

1. Ms B complains on behalf of her son C. She says:
 - C absconded when he was looked after by the Council between September and October 2016 and the Council failed to inform her when C absconded from care on 2 October 2016.
 - The Council was meant to hold six weekly meetings between Ms B, the Council and the school, but this did not happen.
 - The Council has not provided a child in need plan or held child in need meetings and failed to offer support.
 - C's Special Educational Needs Statement dates from September 2014. The Council failed to review the statement and there was a delay in providing the Education, Health and Care Plan (EHCP).
 - Ms B disagrees with the EHCP.
 - The Council has not responded to her complaint and has not considered her complaint under the statutory procedure for complaints about children services.

What I have investigated

2. I have investigated Ms B's complaints except for complaints for which Ms B has a right of appeal at a tribunal or judicial review in court and complaints that are over a year old.

The Ombudsman's role and powers

3. 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*)

4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
6. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Chamber of the First Tier Tribunal ('SEND')*) 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. The law sets out a three stage procedure for councils to follow when looking at complaints about children's social care services. At stage 2 of this procedure, the Council appoints an Independent Investigator and an Independent Person (who is responsible for overseeing the investigation). If a complainant is unhappy with the outcome of the stage 2 investigation, they can ask for a stage 3 review.
8. 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*)

How I considered this complaint

9. I have discussed the complaint with Ms B and I have considered the documents she and the Council have sent and their comments on the draft decision. I have also considered the relevant law, guidance and the Council's policies.
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.

What I found

11. I have separated Ms B's complaints in three sections: social care support, EHCP and response to her complaint.

Social care support

Law and guidance

Child in need

12. Section 17 of the Children Act 1989 says councils have a duty to safeguard and promote the welfare of 'children in need' in their area. A 'child in need' is a child with disabilities or a child who needs extra services to reach a reasonable standard of health or development.

Chronology of social care events

13. There was a history of social services' involvement with the family relating to on-going family difficulties. C had a statement of special educational needs dated September 2014 because he had social and behavioural difficulties.
14. C also had mental health problems and was receiving support from the Children and Adolescents Mental Health Service (CAMHS). CAMHS diagnosed C with attention deficit hyperactivity disorder (ADHD) and said he did not present with the full picture of autistic spectrum disorder (ASD) although he had some of the features (2014 assessment).
15. In April 2016, the Council's Early Help Service started to support C after a referral from CAMHS who expressed concerns about C.
16. The Council said it would provide:
 - Domestic abuse support to Ms B.
 - Direct work with C.
 - Support from an independent organisation that provides parenting support to parents of children with special educational needs.
 - Liaison with CAMHS.
17. The Council carried out a risk assessment of the family and held a meeting of the 'team around the family' on 26 June 2016.
18. There were several call outs to the police in the following months because C, who was 14 years old at the time, physically attacked Ms B. The Council carried out a child and family assessment which recommended continued involvement by the Council's Families Together team. This was a team which provided intensive support to children and Families where family breakdown may occur and result in the child becoming looked after. The Council also offered to accommodate C on a voluntary basis and recommended a family group conference.
19. On 6 September 2016, the police attended Ms B's home following an attack by C. The Council placed C with foster carers, with Ms B's agreement.
20. The Council completed a children's single assessment on 15 September 2016. This said the Council had offered Early Help Services but Ms B was not cooperating with their advice.
21. The assessment made the following recommendations of support:
 - C and Ms B to engage with a family therapist at CAMHS.
 - C to continue to engage with a project that provides learning programmes and with the Council's Youth Service.
 - Ms B to engage with an organisation which provided services for people with ASD and their family and with a parenting programme.
 - The Council would convene a family group conference to see who could support Ms B in the family.
 - The Council would contact the paternal family to find out if they could help.
22. C returned to live with Ms B on 4 October 2016 and she then revoked her agreement for C to be in foster care. The Council held a looked after child review on the same day. The Council had prepared a looked after child plan, but it was agreed at the review that C should be made subject to a child in need plan now

that he was living back home. The Council has been unable to send me a copy of the child in need plan that was made.

23. The Council held a child in need review meetings on 8 December 2016. This referred to actions relating to CAMHS and referrals to hospital (presumably for further assessments). It said Ms B had been referred to a programme at the Council's Children Centre which empowers parents to have a greater understanding about the developmental process of their teenage child and helps them handle conflict and aggression management. Ms B was also referred to Victim Support.
24. There was a further child in need review meeting on 26 January 2017. The Council held a family group conference on 27 February 2017 where a plan of support by the family was agreed.
25. There was a child in need review meeting on 9 March 2017. The minutes of the meeting say the plan was working and C had made a lot of progress. His attendance over the last three weeks was 100% and his behaviour had greatly improved. He was engaging with staff. Ms B had declined a range of support services the Council had offered because the situation had improved. She said she felt confident that CAMHS and education support were the support she needed. Ms B said she would attend courses such as SEN training and parent advocacy. As the family had made such good progress it was agreed that the child in need plan would end.
26. Sadly, things deteriorated in the following months and the Council continues to be involved.

The complaints:

Absconding from care

27. Ms B says C absconded several times when he was looked after by the Council in September and October 2016. She says he absconded on 2 October 2016 and that she was not informed by the Council. The Council says it informed Ms B every time C absconded.
28. The Council has a 'Missing from Home, Care or Education Protocol'. This says that, if a child goes missing from care, the residential staff or the foster carer should first make enquiries with relatives and search the accommodation and local area. Once this has happened and, if the child has not been found, they should report the child as missing to the police, inform the social worker, senior management and the parent and report it to the placing authority.
29. C was placed in residential care from 6 September 2016 until 4 October 2016. I asked the Council to send me all the incident records for any incidents when C absconded while he was in residential care.
30. These show that, on 2 October 2016, C packed his bags at 13.30. The Council assumed he was going to Ms B and rang Ms B at 14:00, but Ms B said C was not with her. The Council reported C missing with the police.
31. The next record dated 14:31 said C had turned up at a family member's home. The police was informed. Ms B told the Council C would return to the unit in the evening. C returned at 19:14, but went missing again at 23:18. The Council reported him as missing to the police. The next record is dated 00:37 and said the Council had contacted Ms B and she had told them he was at her house.

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32. There are no other records of C absconding. C returned to live with Ms B on 4 October 2016.

Analysis

33. I find no fault with the Council's actions when C went missing the first time on 2 October 2016. The residential unit worker contacted Ms B after C went missing to find out if he was there. There was then a further conversation with Ms B half an hour later when C had turned up at a family member's house.
34. There is fault in the way the Council responded to the second time C went missing. There is no record of the worker contacting Ms B when C went missing again at 23.18. This should have happened, if only to establish that he was not with Ms B. It appears the worker immediately contacted the police without checking with Ms B first. Also, after contacting the police the worker should then have contacted Ms B to let her know that C was missing, but failed to do so.

Child in need plan

35. I have investigated the first period when C was made the subject of a child in need plan (October 2016 until March 2017). I have not investigated the current child in need plan as this is subject to a judicial review challenge.
36. Ms B says the Council told her that, after C returned from his time in care in October 2016 there would be six weekly meetings between her, the Council and the school and this failed to happen. She says there was no child in need plan and no meetings and the family was not supported.
37. The Council says the six weekly reviews refer to the child in need meetings which were held regularly. It says it has offered a variety of support to Ms B and C but she said she did not need it as things had improved. The plan was closed as C had made a lot of progress.

Analysis

38. C was considered to be a child in need after he was accommodated in September and October 2016. The Council has sent me the looked after child plan dated October 2016, but not the child in need plan so it is difficult to say what was in the plan. I do accept there was a child in need plan as the minutes of the child in need meeting dated 8 December 2016 refer to the 5 actions points in the plan.
39. There were further child in need meetings in January 2017 and March 2017. There is therefore evidence the Council held the meetings as required. The Council took C off the plan after the last review meeting in March 2017 as C had made substantial progress.
40. I can not comment on the content of the child plan as the Council does not have a copy. The Council should have kept a record of the plan. However, I note that a family group conference was held and that various support agencies were suggested in the September 2016 assessment which presumably formed the basis of the October 2016 child in need plan. The minutes of the March meeting show that Ms B agreed that progress had been made and that she had declined support as she felt the CAMHS support and the SEN support were sufficient. There is therefore evidence the Council offered support.

EHCP complaint

41. Ms B says the Council has delayed providing an EHCP to C and this has meant that C was not receiving the educational support he needed. She says there have been no proper reviews. The Council acknowledges there was a delay but says

that this was partly because it wanted to reach agreement with Ms B. It says it continued to offer appropriate education to C while the plan was being formulated.

Law and guidance

42. The Children and Families Act 2014 introduced Education, Health and Care Plans (EHCP) for children with special needs. Before the 2014 Act, a child with special educational needs (SEN) may have a statement.
43. There is statutory guidance on EHCPs and the transition process from SEN statement to EHCP.
44. The EHCP sets out the child's special educational, health and social care needs and the corresponding provision to meet the needs. If there is an EHCP, the Council must secure the special educational provision specified in the plan.
45. Until the EHCP is in place the council should comply with the old law including its requirement to maintain the statement, review the statement annually and have due regard to the Code of Practice.
46. If a child already has an SEN statement councils are required to transfer these into an EHCP by April 2018. Local authorities must conduct a transfer review. This is an EHC needs assessment in accordance with the 2014 regulations.
47. The guidance says the process of EHC assessment and the development of the EHCP must be carried out in a timely manner. The Council has a maximum of 20 weeks to complete the EHCP once it has started the process of transfer.
48. The Council has its own conversion plan which sets out the timescales for conversion from SEN statement to EHCP for the different school years.

Chronology of events in education

49. C was assessed by an educational psychologist in 2013. His SEN statement dated 23 September 2014 said he presented with 'social and behavioural difficulties' and had an 'inconsistent approach to learning'. It said he had been supported by CAMHS due to witnessing domestic violence. There were no concerns regarding his academic ability.
50. The statement said he should attend a mainstream secondary school and receive 25 hours learning support assistance per week.
51. CAMHS carried out a psychiatric assessment of C in December 2014. This said C had attention deficit hyperactivity disorder (ADHD) and some features of autistic spectrum disorder (ASD) although he did not present the full picture of ASD.
52. There was an emergency review meeting in February 2015 as the school said it could not meet C's needs and there were concerns regarding his behaviour and his failure to attend.
53. There was no formal review of the SEN statement, but a report from the school dated December 2015 shows C started attending a pupil referral unit. He received 3 hour sessions five times a week by a specialist education programme and attended a Pupil Referral Unit 4 afternoons per week.
54. The Council says it began the transfer from SEN statement to EHCP in September 2015. The process should have been completed sometime in February 2016.
55. The Council sent an annual review of the EHCP document on 8 December 2016. It is not clear what this relates to as C did not have an EHCP at this stage. The document was mostly empty.

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56. The Council sent its first draft EHCP on 30 December 2016. The section on C's SEN was virtually identical to the SEN statement from 2014. The Council summarised the outcome of the psychiatric report from December 2014 in the health needs section. The EHCP said the Council would provide 15 hours tutoring a week, 3 afternoons at an organisation which provided practical courses and workshops and 2 afternoons with a mentor.
 57. The Council completed another annual review of the EHCP on 3 November 2017 although C still did not have an EHCP.
 58. Around the same time CAMHS provided a report based on a two-day psychiatric assessment it carried out in June 2017. The report said C had a diagnosis of mild symptoms of social communication disorder, along with ADHD and traits of oppositional defiant disorder.
 59. The Council also commissioned an educational psychologist to assess C in December 2017. This consisted of discussions with Ms B and C, but the psychologist carried out no formal testing of C's ability or any assessment of the learning difficulties he may have.
 60. The Council sent out another draft EHCP in December 2017. In terms of SEN it said C presented with 'social difficulties' and that he had an 'inconsistent approach to learning'. It updated the health section with the new report from CAMHS. In terms of provision it said there should be a 'full time alternative provision' but did not name the educational setting. It said college staff should support him where needed.
 61. The final EHCP was sent out in February 2018. Ms B is appealing the educational provision in the EHCP. She says C has had a new assessment by an educational psychologist. They said he met the diagnosis of ASD and was significantly behind in academic achievement.

Analysis

62. Clearly, there has been a very long delay in completing the EHCP. The Council started the process in September 2015 and did not complete it until February 2018, almost two and a half years later. The guidance says the transfer should be done in a timely fashion and within 20 weeks at the most.
63. I appreciate the Council wanted to reach agreement with Ms B, but that does not justify a delay of that length. Ultimately the Council is in control of the process and, if agreement cannot be reached, then it should issue the EHCP. There appear to have been long stretches of time where no progress was made at all and the case was drifting.
64. I question why, if the process was started in September 2015, the first EHCP was not sent until December 2016, more than a year later. There is also no clear explanation of the long delay between December 2016 and December 2017 when the next draft was sent out. There was clear fault by the Council who should have managed the process more effectively.
65. I am also concerned about the lack of review of C's SEN statement between September 2014 and February 2018. There should have been a formal review of the SEN statement on a yearly basis, until the EHC was in place, but I can find no evidence that this took place. There was an emergency review meeting in February 2015 but there is no indication of any formal review.

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66. I am particularly concerned that there was no review after the CAMHS report from December 2014. This would have had an impact on his ability to learn and should have been addressed in a review.
67. Oddly the Council submitted two documents which it called 'review of the EHCP' in December 2016 and November 2017 when there was no EHCP. The documents itself are mostly blank and do not show how the education provision had been reviewed, how the new information about the ADHD or ASD had been considered and how this would be addressed in his education provision. They are therefore not reviews in the real sense of the word.

Injustice

68. Ms B has appealed the educational provision in the EHCP and this is therefore outside of the Ombudsman's jurisdiction. I cannot say therefore whether the education C received between 2015 and 2018 met his needs or not as the SEND has not made its decision yet regarding the education provided in the EHCP.
69. However, the delay in issuing the EHCP has caused an injustice as Ms B would have had a right of appeal a lot sooner if the EHCP had been completed earlier. Because there was no EHCP, Ms B was left in limbo. There is a further injustice in the fact that Ms B and C have suffered distress because of the uncertainty whether C's education met his needs. The problem was compounded by the Council's failure to carry out a proper review of the SEN statement while there was an unacceptable delay in providing the EHCP.
70. The Ombudsman normally recommends a sum of between £100 to £300 for distress but can go above this figure if the distress is severe or prolonged. I am of the view that there was an exceptional delay and failure in this case and I therefore recommend £500.

Response to complaints

71. Ms B says the Council has failed to respond to her complaints. The Council says it has responded and offered Ms B a meeting to discuss the complaint. It says Ms B made things more complicated by continuing to add new complaints.

Chronology of response to complaint

72. Ms B complained to the Council on 5 October 2016. She complained about the Council's failure to inform her when C absconded on 2 October 2016 and the lack of support from the Council. She wanted the Council to pay for the doors C had broken in her house.
73. Ms B had an advocate who wrote to the Council on 11 October 2016.
74. The Council responded on 18 November 2016. It said C had an allocated social worker and was receiving support. It said it would help her in buying a door for C's room.
75. Ms B continued to be dissatisfied and said on 25 May 2017 that she would take her complaint 'as high as it could go.' She sent a further complaint on 30 May 2017. She said:
- She had been told C's case had been closed after the family group conference in April 2017.
 - She complained about the lack of support.
 - She wanted respite care for C and wanted the Council to contact the paternal grandmother to find out if she could take C for a while.

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- The Council had failed to hold regular meetings between the Council, the school and the parents which it said it would hold.
76. The Council replied on 1 June 2017 and said a meeting would be the best way forward to deal with her complaint. Ms B declined the offer of a meeting and said her advocate would contact the Council on her behalf to pursue her complaint.
77. Ms B's advocate wrote on 8 June 2017 and said Ms B did not want a meeting but wanted her complaint to be considered under the three stage statutory complaints procedure for complaints about children services. The complaint was:
- Lack of support and help.
 - Lack of communication when he absconded in care.
 - No six weekly meeting with education and the Council.
 - The EHCP had not been completed yet.
 - Lack of response and misleading information from the Council.
78. The Council wrote to the advocate on 21 June 2017. It acknowledged Ms B's refusal of a meeting and her request that the complaint be dealt with under the three stage statutory complaints process. It asked for further clarification on the complaint and continued to suggest a meeting. The advocate gave the information on 13 July 2017.
79. On 20 July 2017, the Council wrote to the advocate and said Ms B's complaint was now being dealt with under the statutory complaints procedure and the Council would respond within 20 days.
80. The Council then wrote to the advocate on 22 August 2017 and said it had not received a reply to its request for a meeting with Ms B. It sent an email to Ms B on 25 August 2015 and acknowledged the delay in replying to her complaint but said that was because it was waiting for her reply to the offer of a meeting.
81. Ms B sent an angry email on 26 August 2017 saying she wanted a reply to her complaint and the Council had had a year to properly reply and failed to do so.

Analysis

82. There was fault in the way the Council responded to Ms B's complaint. I appreciate Ms B made several complaints which sometimes confused matters. However, the advocate had summarised Ms B's complaints in his email dated 8 June 2017. The advocate clearly said in that letter that Ms B had declined the meeting and wanted the complaint to be considered under the three-stage statutory process instead. The Council acknowledged this in its letter dated 21 June 2017.
83. The Council wrote to Ms B on 20 July 2017 and said it would respond to her complaint from June 2017 under the statutory complaints procedure. It then never provided the response. Instead it continued to insist on a meeting even though Ms B had rejected this offer already several times.
84. The Council should have provided a response to the complaint from June 2017 and its failure to do so is fault. A lot of Ms B's complaint qualified for a response under the statutory procedure and the Council should have provided this. If it had done so, Ms B's complaint would have been considered by an independent investigator and an independent person at stage 2 and she would have had an independent panel review the complaint at stage 3. The Council's failure to do this

meant that Ms B suffered an injustice as she does not know what the outcome of that process would have been.

Agreed action

85. The Council has agreed to take the following actions within one month of the draft decision:
- Apologise to Ms B for the fault.
 - Pay Ms B £500 for the delay in the transfer of the SEN statement to the EHCP and its failure to properly review the SEN statement during that time.
 - Pay Ms B £150 for its failure to properly respond to her complaint.
 - Remind staff of the importance of adhering to the statutory guidance for education, health and care plans and the statutory procedure for complaints about children services.

Final decision

86. I have completed my investigation and found fault by the Council. The Council has agreed the remedy to address the injustice.

Parts of the complaint that I did not investigate

87. I have not investigated Ms B's complaint about the educational provision in the EHCP as Ms B has exercised her right of appeal at SEND.
88. Ms B complained that the Council did not have a child in need plan and did not hold child in need meetings or provide support. I have only investigated the first period when C was made the subject of a child in need plan (October 2016 until March 2017). I have not investigated the second child in need plan dated October 2017 as Ms B has started the process of judicial review in relation to this plan.
89. I have not investigated Ms B's complaints before October 2016 as they are over a year old.

Investigator's draft decision on behalf of the Ombudsman