

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

**Investigation into a complaint about  
Staffordshire County Council  
(reference number: 20 000 770)**

**1 October 2021**

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## The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

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

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

### Key to names used

|           |                              |
|-----------|------------------------------|
| Ms B      | The complainant              |
| C         | Her daughter                 |
| Officer 1 | The Council's SEND Keyworker |

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## **Report summary**

### **Education**

Ms B complained the Council:

- failed to review and update C's Education and Health Care (EHC) Plan; and
- refused their request for a personal budget.

Ms B says:

- the delays meant they could not appeal the Council's decision about who should provide speech and language therapy, or whether C should have occupational therapy (OT) input;
- C lost access to speech and language therapy and OT;
- the lack of therapies caused C distress. Her mental health declined. A move to a post-16 college was affected; and
- they had to pay for a private OT assessment.

### **Finding**

Fault found causing injustice and recommendations made.

### **Recommendations**

We recommend that, within three months of the date of this report, the Council should:

- apologise to C and Ms B;
- pay C and Ms B £750 each for the uncertainty, missed opportunities, stress and frustration the delays and missed decisions led to over an extended period;
- pay Ms B £300 for her time and trouble in repeatedly having to raise the issues; and
- refund Ms B £450 for the costs of the OT report she commissioned.

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## The complaint

1. Ms B complained the Council:
  - failed to review and update C's EHC Plan; and
  - refused their request for a personal budget.
2. Ms B says:
  - the delays meant they could not appeal the Council's decision about who should provide speech and language therapy, or whether C should have OT input;
  - C lost access to speech and language therapy (SaLT) and occupational therapy (OT);
  - the lack of therapies caused C distress. Her mental health declined. A move to a post-16 college was affected; and
  - they had to pay for a private OT assessment.

## 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 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 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*) SEND is a Tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
6. The courts have said that where someone has used their right of appeal, reference or review or remedy by way of proceedings in any court of law, the Ombudsman has no jurisdiction to investigate. The restriction applies from the date of the lodging of an appeal. (*R v The Commissioner for Local Administration ex parte PH (1999) EHCA Civ 916*)
7. 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.

### Education, Health and Care Plans

8. A child with special educational needs may have an EHC Plan. This sets out the child's needs and what arrangements should be made to meet them. The Children and Families Act 2014 (the Act), the Special Educational Needs Code of Practice 2015 (the Code) and the Special Educational Needs and Disabilities

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Regulations 2014 (the Regulations) contain detailed guidance to councils about how they should manage the EHC Plan process.

### **EHC Plan reviews**

9. The Act says councils are responsible for making sure arrangements specified in EHC Plans are put in place and reviewed each year. The courts have found that councils have a duty to ensure this happens and they cannot delegate the duty to anyone else.
10. Within four weeks of a review meeting, a council must notify the child's parent of its decision to maintain, amend or discontinue the EHC Plan. (*s20 (10) Special Educational Needs and Disability Regulations 2014*) Where a council decides not to amend a Plan, or decides to stop maintaining one, it must notify the parent of their right to appeal the decision to the SEND Tribunal.
11. The Regulations also require that when young people move from secondary school to a post-16 institution, the council must complete a review and any amendments to the EHC Plan – including naming a school – by 31 March in the calendar year of the transfer.

### **Personal budgets**

12. A personal budget is an amount of money that allows parents or young people to have some involvement in arranging provision. The Act says councils must offer a personal budget to most parents or young people who wish to receive them.
13. One way a personal budget can be delivered is as a direct payment to the child's parent. The Special Educational Needs (Personal Budgets) Regulations 2014 say:
  - a council must provide information, to a parent of a child with an EHC Plan, about the availability of personal budgets and the conditions for receiving a direct payment;
  - a council should consider the individual circumstances of each request for a direct payment; and
  - when deciding whether to make a direct payment the council can take account of any adverse impact on other services; including whether the direct payment would be “...*efficient use of the authority's resources*”.
14. The Council's Personal Budget Policy says:

*“The benefits and responsibilities of the personal budget will be explained by the SEND keyworker.”*

*“The EHC provision will be costed, with a view to value for money (e.g. not costing more than services provided directly.)”*

*“The council will actively seek to resolve disagreements about the budget... Should it not be possible to reach agreement at any stage of EHC pathway then the relevant Locality Manager will be available to seek to resolve the dispute. If this does not result in resolution of the dispute then the matter may be referred to the Head of Service.”*
15. Although personal budgets are not appealable to the SEND Tribunal, the Council's Policy does have provision for local appeals, including if the parent feels “[t]he monies listed are felt not to be sufficient to cover the needs of the young person”.

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## Complaints

16. The Council's complaints procedure, published on its website, says its first stage is informal resolution. It says following this:
- “Complaints will be registered under the corporate complaints procedure in instances whereby:*
- Matters that have not been resolved via informal resolution or whereby we have had the opportunity to resolve outside of the complaints process.*
- Where the issues raised are serious or complex and will require a detailed investigation (staff interview/file and records review).”*
17. We publish '[Guidance on Effective Complaint Handling for Local Authorities](#)'. This says being open and accountable is a key principle in complaint handling. It notes that one of the things a good complaint response includes is information for complainants about how they can challenge the response if they do not agree with it.

## How we considered this complaint

18. As part of the investigation, we have:
- considered the complaint and the documents provided by Ms B;
  - made enquiries of the Council and considered its responses;
  - spoken to Ms B and her partner;
  - considered Ms B and her partner's comments on some of the information the Council sent us; and
  - sent our draft report to Ms B and the Council and considered their comments.

## What we have investigated

19. The events covered in Ms B's complaint started when the Council advised her in October 2017 it was changing the way it funded SaLT. Ms B complained to us in July 2020. A complaint about historical issues would be caught by the restriction set out in [paragraph 4](#). However, as the matters were ongoing when Ms B brought the complaint to us, we have exercised our discretion to investigate these matters back to the December 2017 annual review. The decision to do this is informed by evidence that, periodically, Ms B was advising the Council she has not had a decision to appeal. And, as there are suitable records available for what happened in this period, we can come to a robust decision, despite the passage of time.
20. We have not investigated the Council's 2017 decision to change its SaLT provider, for the reasons outlined at [paragraph 76](#).
21. The law says that a parent or carer can appeal to the Tribunal after the Council has issued a decision on an EHC Plan. The Council issued a decision letter on an annual review of C's EHC Plan in October 2018. At this point Ms B could have appealed that decision. In this case we have decided to exercise our discretion and investigated the decision making before this date. This is because we accept, on the balance of probabilities, Ms B did not receive the October letter (for the reasons set out at [paragraph 78](#)), preventing her from using that appeal right.
22. Ms B has advised us that she has recently appealed the contents of the May 2021 final EHC Plan. That means we cannot consider the contents of that Plan, or subsequent matters, from the date Ms B appealed. We have however considered

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the events leading to this decision, including the time it took the Council to move from a draft to a final version of that Plan.

## **What we found**

### **Background**

23. C was born in 2003. She has had extra support in school since 2011. In July 2017 the Council issued a final EHC Plan. The Plan noted C's main special education needs were around autism spectrum disorder (ASD) and sensory processing disorder. It also noted secondary needs around C's physical disabilities and a moderate learning difficulty.
24. The Plan set out a range of educational provision, including:
  - an individual SaLT programme, reviewed by a therapist when necessary;
  - opportunities to work in small groups;
  - daily access to an enhanced pupil:staff ratio;
  - support from staff who had the necessary experience and understanding of teaching children with autism and specific learning difficulties; and
  - a programme of OT recommendations, reviewed by an OT when necessary.The Plan noted C also had health led needs and that she attended a community special school.
25. C had been receiving SaLT from an independent therapist. But in October 2017, the Council advised Ms B it would be stopping funding for the independent therapist and instead providing the therapy through local NHS services. This was because the Council entered a contract with the NHS's service. The independent SaLT cost £75 an hour. The cost to the Council of the NHS provision was £41 an hour.
26. Ms B advises her view was the NHS service did not provide the type of therapy C needed. Her discussions with the NHS therapy service confirmed that, although she did not get anything in writing. The NHS service did not assess C then, as Ms B refused an assessment. This was because of her concerns about C's ability to cope with change.

### **The December 2017 review**

27. C had been receiving face to face OT in a group setting at school. This was in relation to her sensory processing issues. This was provided by the school and was not support set out in the EHC Plan. When C returned to school in September 2017, for the start of the new school year, the OT support stopped. The school told Ms B the OT had gone on leave and it was not re-commissioning the support.
28. Ms B's view was an OT needed to review C's support. So the school reviewed the EHC Plan in December 2017. The Council was not invited to the review. The school told Ms B it sent the review report to the Council in December 2017, but the Council says it did not receive it until 26 February 2018. The school's report noted the following:
  - the independent SaLT needed to continue for the 'foreseeable future';
  - it recommended the reintroduction of OT; and

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- a member of the school’s staff would write to organisations providing C with psychological support to ask if they could also provide OT support. If they could not, Ms B could ask C’s General Practitioner (GP).
29. In March 2018, the Council gave notice to the independent Speech and Language Therapist that its funding was ending. Ms B says C has not had any SaLT since that therapy ended.
30. In March the Council’s Keyworker (Officer 1) contacted the school’s head teacher asking for an update on the OT contact mentioned in the school’s report. Officer 1 chased this in July, but did not receive a response.
31. In July Ms B emailed the Council advising the following:
- C had not had any OT input or SaLT that school year;
  - the cost of the independent therapist was considerably more than what the Council was willing to provide in a personal budget; and
  - they had not had a decision to appeal, which they would like before C started her final year at school, in September.
32. Officer 1 asked the Council’s Decision Making Group (DMG) to increase C’s personal budget (see [paragraph 58](#)). It refused that request, as it had offered Ms B what it would cost it to provide the support. Officer 1 did not advise Ms B of this until September. Ms B then asked to appeal, advising she was concerned the Council had not finalised the EHC Plan, reviewed in December 2017.
33. Later in September, Officer 1 advised Ms B she would be sending a letter so Ms B could appeal the decision.

#### **The decision on the EHC Plan review**

34. The Council’s records show a 12 October 2018 letter from Officer 1 to Ms B, advising the Council did not believe any changes in C’s EHC Plan were needed. It advised Ms B of her appeal rights.
35. Ms B says she and her partner do not recall receiving this letter and it is not in their records.
36. On 25 October Ms B emailed Officer 1 asking for a response to her 10 October email which had asked for an update regarding the OT funding. Officer 1 replied the same day. None of these emails from Ms B or Officer 1 mentions the decision letter.

#### **The December 2018 review**

37. In December 2018, the Council received from the school an annual review of C’s EHC Plan. The review contained information about the OT and the SaLT that appears out of date. The Council says, with the review, it received requests for it to manage C’s personal budget, and for a personal budget for an OT.
38. On 8 January 2019 the Council’s DMG considered two requests sent with the school’s annual review. One request was about direct payments (see [paragraph 65](#)). The other request was for clarification of how many hours of support C would have at college. The record says:
- it would provide 12.5 hours support; and
  - “*contact OT to prompt the need for a review*”.
39. On 30 January the Council wrote to Ms B about the annual review report from the school. It noted it would be amending the EHC Plan in due course to reflect C’s

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pending move to post-16 education. It advised Ms B of her right to appeal, once it had issued the amended final EHC Plan.

40. At the beginning of February Ms B contacted the Council to advise of problems C was experiencing at school. She advised they had not had a finalised Plan since 2017. The Council had not resolved their request for a personal budget. She asked to complain.

41. A Council manager responded the same day. The email was titled 'complaint response'. It advised:

- the Council would issue C's amended EHC Plan, for her post-16 education, before the end of March. They would have a right of appeal;
- the Council had agreed a personal budget for SaLT and wrote to Ms B on 5 December 2018 outlining the information it needed to set up the budget;
- the Council had responded to the request for a personal budget for OT. It had not agreed, as OT support was not specified in the EHC Plan; and
- there was no right of appeal against personal budgets.

The email did not advise Ms B of any option for escalating her complaint, or of the Council's own Policy about its local route for challenging personal budget decisions.

#### **The correspondence about the amended Plan for C's move to college**

42. In February 2019 Officer 1 emailed an NHS OT, to request a review. The Council says she did this as it was amending the EHC Plan and the OT issue was not resolved. It says Officer 1 did not receive a response.

43. The Council's proposed amended EHC Plan is dated 21 February. This said:

- the SaLT should continue;
- the staff at school should follow the OT's programme of recommendations. The amended Plan did not have any recommendation for review by an OT;
- C should receive 12.5 hours learning and mentor support a week;
- the request that staff should have experience and understanding of teaching children with ASD and specific learning difficulties was replaced with a requirement that "*all staff working with [C] will provide daily support to deliver the provision specified in the Plan*";
- Section I, naming the education placement, was blank; and
- Section J (personal budget) noted a personal budget for SaLT of £41 per hour had been agreed.

The Council sent this draft Plan to Ms B, asking for comments.

44. On 5 March, Ms B emailed Officer 1 to advise that C was off school with anxiety and sensory overload. Her view was the problem was that C was not receiving the therapies outlined in the EHC Plan. The email also said it had an attachment setting out Ms B and her partner's view on the proposed amended Plan.

45. At the beginning of June Ms B contacted Officer 1, as they had not received a response to their March email. They asked for an update. On 12 June Officer 1 advised Ms B she could see the college they wanted C to attend said it could meet C's special educational needs and had asked for it to be named in the EHC

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Plan. She noted she could not see the attachment in Ms B's March email and asked her to re-send. Ms B resent the email.

46. Ms B's June email is in the Council's file, including attachments giving Ms B's comments on the draft EHC Plan. She asked for the Council to include in the Plan:

- more details about the type of SaLT C needed;
- more details of the programme of OT recommendations; and
- provision for OT review.

### **Events after C started her post-16 studies**

47. In September 2019 C moved to a post-16 college. Ms B says this is a mainstream setting. C moved without a finalised EHC Plan for the college.

48. At the beginning of June 2020 Ms B and her partner commissioned an independent OT report. In relation to the issues considered in this complaint, it recommended:

- *"...Occupational Therapy review and update of all programmes at times of transition across education or other environments, and termly within any setting";*
- training of those providing one to one support, by an OT, to best understand C's needs and the delivery of the OT programme;
- an OT to attend annual review meetings; and
- sensory processing assessments by a medical professional.

Ms B sent this report to the Council.

49. In June 2020 the college had an EHC Plan review meeting. It sent this to the Council on 23 June.

50. In July Ms B referred C for SaLT from the NHS. She says she did this as C's mental health had declined and they felt they needed to do something, after seeking independent advice. Ms B also complained to Officer 1 about the matters which she, shortly afterwards, brought to our attention.

51. At the beginning of August, the Council amended the EHC Plan. It:

- recommended the individual programme of SaLT should continue;
- agreed an extra 1.5 hours unstructured support for one term;
- added the independent OT's recommendations to the Plan;
- did not name an educational setting in Section I; and
- said: *"A personal budget was requested but was not agreed"*.

Ms B confirms she received a draft EHC Plan around this time.

52. The Council asked the NHS's OT service if it could provide the OT support set out in the report Ms B commissioned. Its response advised it could not carry out the sensory processing assessments the OT report recommended.

53. In September Officer 1 advised Ms B the Council had agreed for an independent OT to provide the programme outlined in the report. This could begin before the final EHC Plan. Ms B confirms this OT support did begin.

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54. The NHS's SaLT service assessed C. Its October 2020 assessment report advised:
- "[C] has significant difficulties with her social interaction and communication skills, and this appears to be in association with Autistic Spectrum Disorder. However, [C]'s speech and language skills appear to be at a functional level."*
- The report concluded the NHS service could not provide the support C needed.
55. The Council finalised the EHC Plan in May 2021. Ms B advises us she has asked to appeal its contents, but has not yet heard from the SEND Tribunal.
- The personal budget and direct payment**
56. In March 2018 Ms B asked the Council if she could receive a personal budget, as an alternative to the NHS SaLT provision. Ms B says they requested this as they wanted to appeal the amount offered.
57. In April the NHS SaLT service advised it was ending its involvement, as the Council had told it Ms B had requested a personal budget.
58. The Council offered Ms B a personal budget equal to the cost to it of the NHS's SaLT provision. Ms B asked for an increase. The Council refused the request, as the Council was offering what it would cost it to commission the support and Ms B and her partner could top this payment up to fund their own support.
59. In August the Council asked Ms B for her bank account details, to allow it to set up a direct payment.
60. At the beginning of September Ms B and her partner asked to appeal the Council's decision on the personal budget. They said they were concerned they had not had a finalised EHC Plan after the December 2017 review.
61. At the end of September, Officer 1 advised Ms B she would be sending them a letter so they could appeal the decision.
62. In early October Ms B asked Officer 1 if it would be possible for the Council to manage the personal budget for them. Ms B also sent Officer 1 her bank account details, so the direct payments could start.
63. In early December, the Council wrote to Ms B agreeing a personal budget (but not at the cost of the private SaLT). It requested information from her. It advised she would need to set up a separate bank account to receive a direct payment.
64. Later in December 2018, the Council received an annual review of C's EHC Plan, from the school. The review included a request for the Council to manage C's personal budget, and for a personal budget for an OT.
65. In January 2019 the Council's DMG considered the new review request. Its decision was it:
- agreed to manage the personal budget; and
  - did not agree a personal budget for OT, as this was not in the EHC Plan.
66. On 30 January the Council advised Ms B of its decision about the refusal of a request for a personal budget for OT. It did not mention its agreement to manage the personal budget.
67. In early February (in response to a complaint), the Council advised Ms B it had agreed to give them a personal budget. But it had not received the information it had asked for in December 2018.

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68. We asked Ms B about the personal budget. She advised:
- “[w]e asked for an increase, but never really found out what we needed to do... We could never get anyone to understand our point that the offer of local services did not meet [C’s] needs and was therefore unsuitable.”*
- The 2020 complaint response and complaint to the Ombudsman**
69. At the beginning of December 2019, Ms B complained about the lack of OT and SaLT and the delay in providing a final EHC Plan, which they could appeal.
70. The Council says its response to Ms B’s complaint was delayed until 30 April 2020, because of the COVID-19 pandemic. The response advised the following.
- The OT support should not have ended (in 2017). But the EHC Plan did not state C needed direct OT provision. Rather it asked the school to follow a programme of OT recommendations – reviewed when necessary.
  - *“We appreciate your view that the SEND Service should have chased... [the OT provision] ... further, however evidence indicates that updates were not forthcoming from the NHS and we assure you that this will be chased again.”*
  - It was not clear from the Council’s records why it had not progressed Ms B’s request for it to manage C’s personal budget. But it noted Ms B was disputing the amount offered.
  - It had not carried out an annual review since November 2018. It noted it had not received an annual review report from the college. It apologised for the delay. And it would chase a response.
  - *“we can advise that the Local Authority are working hard to ensure that they can meet prescribed timescales. This is an internal issue which is being addressed and action taken.”*
71. In July 2020 Ms B complained to us. The Council’s November 2020 response to our enquiries stated the following.
- A decision on the December 2017 annual review was delayed because Ms B wanted an increase in the offered personal budget.
  - *“Parents did not give a name of an alternative [SaLT] who they wished to use ...nor did they wish to top up the remainder. Therefore, no agreement was reached with parents on the arrangements of the personal budget as we did not have a therapist to carry out the provision.”*
  - *“The NHS Speech and Language Therapy Service confirmed in October 2020 that they could not provide the support. In 2017 they said they could provide the support, but [C]’s parent would not engage with this.”*
  - The relevant office had experienced staff shortages, caused by an increased number of EHC needs assessment requests and staffing issues. It said at one point the local office had three staff managing around 700 cases. It noted extra recruitment since then and extra staff to help clear a backlog.
72. At the time of writing our report, we spoke to Ms B. She advised:
- her view was C’s mental and emotional health had got worse since 2017. Ms B’s view was this was partly a result of the lack of therapy. But she did note other personal challenges for C during this period;
  - C now had a social worker;

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- the Council had now commissioned an OT who was providing some training for support staff and was going to review the provision; and
  - although the Council by then agreed C needed a programme of SaLT (that the NHS provider could not deliver), it had not put anything in place.
73. In our draft report, one of our recommendations was for the Council to provide us with an update on what it had done to ensure it has met the provision set out in the May 2021 EHC Plan. It responded to advise C was not well enough to attend college. So the Council was arranging a review of her EHC Plan. It also advised it had arranged SaLT for C and informed Ms B. Our view is the Council has met that recommendation.

### **Wider issues**

74. In November 2018 Ofsted and the Care Quality Commission jointly inspected the Council's local area Special Educational Needs. In January 2019 the inspectors issued their conclusions. They said the inspection raised significant concerns about the effectiveness of the service. Within the inspectors' report they referred to:
- some plans that had not been reviewed for two years;
  - a particular weakness of the ongoing assessment at points of educational transition; and
  - a low take-up of personal budgets. With no evidence of officers discussing them during EHC Plan review.
75. The inspectors required the Council to produce and submit a Written Statement of Action to Ofsted that explained how it would tackle areas of significant weakness, including the quality of EHC Plans and their review. The Council produced its Statement in April 2019. This detailed document had actions around improving the quality of EHC Plans and reviews, especially at transition points.

## **Conclusions**

### **The change in SaLT provider**

76. We have not investigated the Council's decision to change the way it provided C's SaLT provision in 2017. This complaint is late. And, given the time that has passed, our view is we would not be able to now reach a view about whether the Council's provider could have met C's SaLT needs at that time.

### **Delays in the annual review process and the issuing of a final amended EHC Plan**

77. Following an annual review meeting, a council must decide, within four weeks of the meeting, whether it intends to keep, amend or cease a Plan. If amendments are required, the Code says councils must send the parent a copy of the proposed amendments "without delay".

### **The December 2017 review**

78. On the balance of probabilities, we accept Ms B did not receive the 12 October 2018 letter: she did not mention it in emails she had with Officer 1 shortly after 12 October, which she would likely have done if she had received it. She also did not mention it in later contacts (see for example [paragraph 40](#)). But that does not mean the Council did not send it – it has a copy of the letter on its file. So, more likely than not, it did make a decision on this review.

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79. But the letter was late. The Council says it received the report from the school on 26 February 2018. Taking this as the starting point, it should have made a decision by 26 March 2018. It did not make a decision until 12 October – over 32 weeks after the Council received notification of the review. So, the Council did not decide within four weeks of the annual review whether it would keep, amend or cease to maintain C’s Plan. We find that was fault.

#### **The December 2018 review**

80. The Council did not issue a final decision on the school’s December 2018 annual review. It advised Ms B it would be issuing a decision on a review for when C moved school. But C was not getting some provision that Ms B believed she needed at her secondary school. So the Council should have issued a decision on that year’s annual review. Without it, Ms B could not appeal the decision on the provision C was receiving at the secondary school. We find fault that the Council did not issue a separate appealable decision on the annual review.

#### **The review for the transition to post-16 education**

81. On 21 February 2019, the Council sent Ms B a proposed amended EHC Plan for C’s transition to post-16 education, in a new college. The law says councils must review and issue the final amended EHC Plan by 31 March of the calendar year the child moves school. The Council did not issue an amended EHC Plan for that year, which was fault.

#### **The June 2020 review**

82. The Council did issue a draft decision after the June 2020 review, but did not issue a final decision until May 2021. That delay was fault. This period fell after the onset of the COVID-19 pandemic. However we cannot see in the Council’s files any reference to this being a contributing factor to the delay.
83. The Council cites problems with sourcing a provider, both for the OT and the SaLT, as a reason for the delay in issuing a decision on the EHC Plan review. While we accept finding providers might have been an issue, that is not a reason to delay issuing the amended Plan. It is for the Council to then ensure the provision is in place.

#### **The OT reviews**

84. The Council says that, as no direct OT provision was specified in C’s EHC Plan, it did not need to provide funding for direct occupational therapy. But review by an OT, of an OT designed programme, was in the 2017 Plan.
85. The Council’s February 2019 proposed amended Plan for C’s transition to post-16 education removed the provision for OT review. And it removed the need for staff working with C to have autism awareness. In June 2020 Ms B and her partner commissioned their own OT report. This report included recommendations for regular OT review and for staff training by an OT. The Council accepted those recommendations. The Council could have sought advice itself from an OT, before removing the provisions in its proposed amended Plan. It was fault that it did not do so.

#### **The Council refused Ms B’s request for a personal budget**

86. The Council did agree a request for a personal budget (for SaLT), but not at the amount Ms B wanted. The Council’s view was its own provider could meet the therapy set out in the Plan. We cannot now resolve whether, in 2017, its own provider could have met C’s needs. And the Council was allowed to take into account its own arrangements for providing SaLT, when considering whether to

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agree to a direct payment (see [paragraph 13](#)). So we cannot uphold this part of the complaint.

87. Ms B was seeking an increase to the personal budget to meet the independent SaLT, that in her view C needed. She was also seeking a personal budget for OT support. When making these requests she also noted she had not had a decision to appeal. Ms B was not differentiating between the personal budget and the therapies outlined in the EHC Plan.
88. It can be difficult for parents to understand the EHC process and the payment options – we accept Ms B’s statement about this (see [paragraph 68](#)). The Council should have kept C in mind and sought to provide her with SaLT. We find fault that the Council:
- let the situation drift. It should have been more pro-active in attempting to reach a resolution; for example by advising Ms B of her options and explaining more clearly why challenging the personal budget amount was distinct from the EHC Plan provision (the Regulations, the Council’s Policy and our own guidance expect a Council to provide such explanations);
  - does not have a record explaining why it did not progress Ms B’s request for it to manage the personal budget;
  - stated, in the August 2020 amended EHC Plan, that a personal budget had not been agreed, without any commentary about the history of this; and
  - did not alert Ms B to its local Policy that has a disputes mechanism for personal budgets.

### **Ms B’s first complaint**

89. In February 2019 Ms B asked to complain. An officer responded shortly after (see [paragraph 41](#)). It is unclear whether this response was an informal resolution, or the first stage of the Council’s formal procedure. But in either case, the response should have provided Ms B with some information about how she could escalate her complaint, if she did not agree. To not do so was fault.

### **Injustice**

90. If Ms B had received the final EHC Plan, after the December 2018 review, she would likely have asked to appeal, as she would have considered it deficient. We say this because she challenged significant parts of the February 2019 draft amended EHC Plan in her March/June response. She had been asking to appeal since July 2018.
91. The same logic applies to the Council’s lack of an appealable decision after the February/March 2019 transition review. So Ms B lost the opportunity to appeal on two occasions.
92. There were also significant delays in providing annual review decisions (December 2017 until October 2018 and June 2020 until May 2021).
93. Ms B has now appealed the contents of the May 2021 Plan. But the Tribunal can only consider the contents of that Plan and C’s circumstances for the time it covers. There remains an uncertainty whether, if Ms B had had the opportunity to appeal an earlier review, a Tribunal might have made a decision that led to extra provision.
94. Our view is it would now be too speculative to take a view on what an earlier Tribunal’s view would have been about whether:

- 
- direct OT needed adding to C's EHC Plan; or
  - the type of SaLT the Council's provider offered could meet C's needs.

But the uncertainty about this is an injustice.

95. We can however conclude, on the balance of probabilities, that the delays likely meant C missed out on the chance of OT review of her Plan over several years. We have reached that view because it is in the last two finalised Plans (2017 and 2021).
96. C started her post-16 college without a finalised EHC Plan. This meant her new college did not have an up to date understanding of her needs and how to meet them. Ms B did not have any appeal rights.
97. Ms B says a large part of C's worsening health is due to the lack of therapies. But she also notes other issues during the period. It is not possible to untangle how the faults we have identified affected C. But there is an injustice to Ms B and C of stress and frustration.
98. The faults have also led to some unnecessary time and trouble for Ms B over a prolonged period.
99. The inadequate information, advice and clarity about the personal budget will have contributed to Ms B's stress and frustration.
100. Ms B and her partner were also put to the avoidable expense of commissioning their own OT report. Although in theory a Tribunal could consider these costs, the reality is the threshold for allowing costs at Tribunal is high. So, given the inordinate delay between the June 2020 review and the Council finalising the Plan, we have used our discretion to recommend a remedy for those costs. Ms B has sent us the £450 invoice for that assessment.
101. The lack of signposting through the complaint procedure, in February 2019, means the Council missed the opportunity to use its complaint procedure to resolve Ms B's concerns earlier.

### **Wider implications**

102. One of the reasons for issuing this public report is because of the systemic issues raised by this complaint. But, as Ofsted reviewed the Council's EHC provision during the same period this complaint relates to, we are not recommending any wider remedy. The issues have been highlighted by the inspectors who agreed a plan with the Council to remedy the systemic issues.

### **Recommendations**

103. 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*)

We also recommend that, within three months of the date of this report, the Council should:

- apologise to C and Ms B;
- pay C and Ms B £750 each for the uncertainty, missed opportunities, stress and frustration the delays and missed decisions led to over an extended period;

- 
- pay Ms B £300 for her time and trouble in repeatedly having to raise the issues; and
  - refund Ms B £450 for the costs of the OT report she commissioned.

104. The Council has agreed to our recommendations.

### **Final decision**

105. We uphold the complaint. The Council has agreed to our recommendations so we have completed our investigation.