

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

**Investigation into complaints against  
London Borough of Richmond upon Thames  
(reference numbers: 18 001 501, 18 003 307 and  
18 013 211)**

**18 October 2019**

---

## The Ombudsman's role

For 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

|                  |  |
|------------------|--|
| Mr and Mrs X     | The first complainants                         |
| Ms X             | Their daughter, now an adult                   |
| Providers 1 to 8 | Potential post-16 education providers for Ms X |
| Mrs Z            | The second complainant                         |
| Ms Z             | Her daughter, now an adult                     |
| Officer A        | A worker for Achieving for Children            |
| Officer O        | A Council SEN officer                          |
| Officer P        | A Council SEN officer                          |
| Schools A to C   | Schools attended by Ms Z                       |
| Mr Q             | The third complainant                          |
| Q                | His son  |

---

## Report summary

### Special educational needs

1. Mr and Mrs X complain the Council failed to make the provision specified in their daughter's (Ms X) Education Health and Care (EHC) Plan between July 2016 and February 2018. The Council repeatedly allowed matters to drift and failed to review her EHC Plan during long periods when it knew it was out of date. It also failed to keep proper records. Ms X lost out on the provision she needed and was left frustrated. Mr and Mrs X were also put to considerable time and trouble in having to repeatedly chase the Council. Its poor record keeping made it hard for us to establish the full facts.
2. Mrs Z complains of similar delays by the Council affecting her daughter, Ms Z. The Council failed to complete an EHC Plan for more than three years. It failed to implement recommendations, took too long to prepare reports and failed to communicate properly with Mrs Z. This caused Ms Z distress and to miss out on education in 2016 and 2017.
3. Mr Q complains of the same delays affecting his son, Q, when it transferred him from a Statement of Special Educational Needs (SEN) to an EHC Plan. The Council took a year to issue his EHC Plan. It also failed to consider reports or consult some professionals and, as in the other cases, failed to communicate properly with Mr Q. Again, Q missed out on provision he needed. Mr Q had to chase the Council repeatedly and pay privately for an educational psychology report for Q which the Council agreed, but which it failed to arrange in good time.

### Finding

4. Fault found causing injustice and recommendations made.

### Recommendations

#### Mr and Mrs X's complaint

5. Within one month of the date of this report, the Council should:
  - Apologise to Ms X and Mr and Mrs X for the failings identified here;
  - Pay Ms X £1,500 for the periods totalling about seven months when its drift and delay led directly to her losing SEN provision, plus £500 for the distress this and the Council's failure to plan caused her. This makes a total of £2,000; and
  - Pay Mr and Mrs X £250 for their time and trouble in having to repeatedly chase the Council when it failed to act.

#### Mrs Z's complaint

6. Within one month of the date of this report, the Council should:
  - Apologise to Mr and Mrs Z and to Ms Z for the failings identified here;
  - Pay £500 to Mr and Mrs Z for the time and trouble caused; and
  - Pay £8,600 to Ms Z, made up of £7,600 for the loss of educational provision in 2016 and 2017 and £1,000 for distress.

---

### **Mr Q's complaint**

7. The Council has already apologised for most of the failings identified in Mr Q's case and offered him £4,400 to reimburse the cost of the educational psychology report. We welcome this.
8. However, within one month of the date of this report, the Council should also:
  - Apologise to Mr Q for failing to include his parental feedback in the single assessment and for the anxiety its poor communications caused him; and
  - Pay Mr Q an additional £1,500 for the loss of the SEN provision Q needed for 32 weeks longer than necessary, and £250 for the frustration and anxiety it caused him in chasing matters, making a total of £1,750.

### **Service improvement**

9. To prevent a repeat of the faults found in these complaints, with three months of the date of this report, the Council should:
  - Complete an audit of all the children for whom the company appointed to run its SEN provision is responsible, to identify if others have been affected in the same way. If it finds similar issues with delay, or children out of education, or inadequate record-keeping, it should put in place action plans to address these.
  - report back to us within six months on its findings and any actions it needs to take.
10. The Council has agreed to these recommendations.

---

## The complaints

### Mr and Mrs X's complaint

11. Mr and Mrs X complain on behalf of their daughter, Ms X. They say the Council failed to make the provision specified in Ms X's Education Health and Care (EHC) Plan between July 2016 and February 2018.

### Mrs Z's complaint

12. Mrs Z complains the Council was at fault for failures in providing education for her daughter, Ms Z, who has special educational needs (SEN). She says this resulted in Ms Z, a promising pupil at primary school, who should have gone to university, leaving school aged 16 with three GCSEs. She says:
  - The Council did not do enough to ensure Ms Z went to school;
  - The Council delayed in accepting responsibility for Ms Z and there was unacceptable delay in compiling a Statement of SEN and an Education and Health Care (EHC) Plan for Ms Z;
  - The SEN team was at fault for poor communication with her family;
  - The Council did not fund creative classes or properly consider her requests;
  - The Council did not communicate a decision that Ms Z should be kept back a year to the family or the school; and
  - The Council did not involve Ms Z in a transition to adulthood scheme.

### Mr Q's complaint

13. Mr Q complains the Council took too long to issue an EHC Plan for his son, Q, causing him loss of suitable SEN provision.
14. He says it also:
  - Took too long to arrange an educational psychology report it agreed was necessary, causing him to have to pay for this privately;
  - Failed to provide him with a single point of contact or case officer, leaving him unsure who to communicate with and having to chase different officers;
  - Failed to respond to emails on 4, 6 and 7 July 2017, and between 10 July and 9 August 2017 (the Service Director), or to arrange for him to meet with the Service Director as recommended in the Council's own assessment;
  - Failed to include parental feedback in a single assessment issued on 24 August 2017; and
  - Delayed the single assessment to wait for a decision of a Special Education Needs and Disability (SEND) Tribunal.

## Legal and administrative background

15. 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*)

- 
16. 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*)
  17. 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 report with Ofsted.
  18. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
  19. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
  20. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)

### **Education Act 1996**

21. Under the Education Act 1996, councils had to prepare a Statement of SEN for children with special educational needs. The Statement was required to set out, in section 3, the details of the special educational provision required.

### **Exceptional provision of education**

22. Every local authority must arrange for the provision of suitable education for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, are not receiving education. (*Education Act 1996 s.19(1)*)

### **Children and Families Act 2014**

23. Since 2015, councils have had a duty under the Children and Families Act to prepare an EHC Plan for children and young people up to age 25 in their area with special educational needs.

### **Transfer from Statement to EHC Plan**

24. Councils had to complete the process of transferring children from Statements to EHC Plans by 1 April 2018. This was not a purely clerical process. To convert a Statement into an EHC Plan, councils had to carry out a Transfer Review and an EHC needs assessment.
25. A Transfer Review should have replaced the Annual Review in the academic year the council intended to transfer the child and should have happened within 12 months of the last annual review. This should have occurred in 2015.
26. A draft EHC Plan must be issued and parents have 15 days to comment on it. The Special Educational Needs Code 2015 (the Code) and the transition guidance says councils must finalise an EHC Plan within 18 weeks of the Transfer Review.

### **The Special Educational Needs Code 2015**

27. The Code governs SEN provision. Where a child or young person has an EHC Plan, councils with education responsibilities must make the provision set out in the Plan. Where a placement fails, the council must carry out an Emergency Review of the EHC Plan. Where there is no change of placement or other reason to do so, it must carry out an Annual Review of the EHC Plan.

- 
28. Where a provider named on an EHC Plan refuses to admit the young person, councils have the power to direct the provider to admit him or her. In the event of a further refusal, the council has the power to approach the Secretary of State for Education to request he or she directs the provider.

### **Preparing for adulthood and transition**

29. The Council is required to assist children with SEN to prepare for adulthood. It does this through a social enterprise company Achieving for Children (AfC), set up in 2014 to provide certain children's services on behalf of this and other councils. The Council retains legal responsibility for provision of these services. The AfC website says preparation for adulthood would normally begin in Year 9.
30. The AfC website sets out the following process:
- Professionals consult with families to see if a specialist report is needed;
  - Students with EHC Plans are to be supported by the Preparation for Adulthood team. Some young people will get support through the voluntary sector; and
  - If a young person has an EHC Plan or a Statement, they may need support in education which will be discussed and reviewed.
31. AfC and the Council are also signed up to the Multi Agency Transition Protocol. This sets out 'what a good transition (from school to adulthood) looks like'. Among its principles are the following:
- Pupils and parents should be central to the process;
  - Partner agencies will listen to them;
  - There will be a strong collaboration between AfC and Adult Services;
  - The SEN team will attend all planning meetings, and track progress through transition. It will manage data to inform the Transition Planning Team about young people aged 9 to 14;
  - All EHC Plans will be reviewed in Year 9 to ensure effective transition planning; and
  - There should be an integrated service for all young people with disabilities.

### **Way2Work**

32. Way2Work is a subsidiary of AfC. It says it is a '*professional UK based Apprenticeship training provider offering apprenticeship vacancies and full-time job opportunities for young people aged 16-24 with local employers who value and encourage them to achieve their full potential*'.

### **Parental responsibility**

33. Parents who are named on a child's birth certificate have 'parental responsibility'. This makes them responsible for ensuring their children are educated. Councils must help, but the primary responsibility lies with the parents.

### **Social care assessments of children**

34. Government statutory guidance, *Working Together to Safeguard Children 2015*, states that social care assessments must normally be completed in 45 working days from the point of referral. Where this is not possible, a social worker should record the reasons for exceeding the time limit.

---

## How we considered these complaints

35. We produced this report after examining relevant documents.
36. As many of the faults found are common to two or all three of these complaints, we have decided to include all three cases in our report.
37. Mrs Z complains of issues stretching back as far as 2014. The Ombudsman should not investigate when complaints are brought late unless there is good reason. Mrs Z says that, at first, she hoped things would get better so did not complain. We do not consider this a good reason.
38. We have decided, however, to use our discretion to investigate Mrs Z's complaint back to September 2015, when the Council said it would convert Ms Z's Statement to an EHC Plan. It did not do so for nearly three years during which time Mrs Z complained frequently to the Council. So we do not find undue delay by Mrs Z here.

## What we found in Mr and Mrs X's complaint

39. Ms X was a child at the start of the period covered by this complaint, but an adult at its end. We have her consent to investigate. We have referred to the Post-16 education providers involved in the events of 2016 to 2018 as Providers 1 to 8.

### July 2016 to January 2017

40. BTEC courses are usually offered by providers over a period running from September to May. They involve several units of work that must be completed and signed off for the candidate to get a grade. There are usually no examinations in BTEC courses.
41. In July 2016, the Council issued a new EHC Plan for Ms X. It named Provider 1 for her to attend from September 2016, studying a BTEC level 2 qualification. BTEC level 2 is the equivalent of GCSE. Ms X had previously attended Provider 1, although her mental health had not always been good.
42. However, also in July 2016, Provider 2 offered Ms X a place to study a BTEC level 2 course. She wanted to attend Provider 2 instead of Provider 1.
43. Provider 2 carried out a risk assessment of Ms X as a potential student. This risk assessment stated there were risks of self-harm, violence to others, inappropriate behaviour and suicide attempts. On 6 September 2016, Provider 2 refused to admit Ms X.
44. The Council asked Provider 2 for its reasons the following day. On 13 September 2016, the Council chased Provider 2's response and asked Provider 1 if it was still prepared for Ms X to study there.
45. A note on the Council's records dated 20 September 2016 stated Provider 2's refusal of a place was discriminatory. The evidence we have seen shows the Council questioned this with Provider 2 on 26 September 2016. We have not seen evidence the Council considered directing Provider 2 to accept Ms X at any time after this.
46. The following day, Mr X called the Council. The note of his call stated he had told the Council he was unhappy. The Council told us Mr X was rude. The note of the call did not state Mr X had shouted or sworn during the call. It stated he had said he had called the SEN team "a shambles" and said, "staff are incompetent". Mrs X had called Provider 1 and Ms X had self-harmed.



- 
47. On 26 September 2016, a note in the records stated the Council asked Provider 3 if it could meet Ms X's needs as Mr and Mrs X had asked for this.
  48. An email from a charity providing SEN advice, of 20 October 2016, stated there had been a discussion with the family the previous day. The correspondence shows Ms X was now anxious, reluctant to engage and due an appointment with Child and Adolescent Mental Health Service (CAMHS). She did not want to start a new course mid-term. In the email, the charity questioned if Ms X's EHC Plan was now out-of-date. We have not seen evidence the Council set up any review of the EHC Plan. The Council told us there was no need to review the EHC Plan as it had only been issued four months earlier.
  49. The following day, a note recorded an agency was keen to meet Ms X. It is not clear from the records if this agency offered advice or tuition. An email of 27 October 2016 shows the meeting happened on 25 October 2016, arranged by the Council. The Council says there were further actions after this meeting. Although the notes of the meeting refer to actions needed, we have seen no evidence that they were carried out.
  50. On 6 December 2016, the records show Provider 1 offered a place for Ms X at a cost of £65,000 per year.
  51. The Council asked Provider 1 on 23 January 2017 if Ms X was attending. It replied that she was attending, but not a full week.
  52. The records state there was a panel meeting about Ms X in February 2017. We have not seen any precise date for this meeting or confirmation it happened.

### **February to May 2017**

53. Ms X entered a psychiatric unit as an in-patient in February 2017. She remained there until May 2017.
54. While Ms X was in the psychiatric unit, another panel meeting took place, on 5 March 2017, according to the Council. The Council referred to a record of this panel in responding to a draft of this report, but it did not provide the record.
55. A record we found that refers to a panel meeting in March 2017 also states examination arrangements for Ms X were being held up by an online tuition service. However, this online tuition service was not involved with Ms X's education until the autumn of 2017. The Council told us the date recorded was a typographical error and the meeting took place in March 2018.
56. The Council told us its view on 5 March 2017 was that Ms X should continue with Provider 1 when she left the psychiatric unit.
57. The Council's records state it took a decision outside of its panel process that it would have to update Ms X's EHC Plan to take account of her placement. The decision date is stated in different places as being 4 or 21 April 2017.
58. There is a record of a discussion on 27 April 2017. Its status is unclear from the records, but the Council told us it was a review of Ms X's EHC Plan, though not in its formal process. The record stated Ms X was to leave the psychiatric unit on 22 May 2017. The Council considered if it could place Ms X at Provider 1 with online tuition support. She wanted Provider 4, which was a residential college some distance away from London. The record stated the Council thought no new placement was now possible until September 2017. It also confirmed the Council would have to update Ms X's EHC Plan. We have not seen evidence the Council reviewed the EHC Plan formally or updated it.

- 
59. Notes of a CAMHS review on 3 May 2017 stated Ms X was keen on Provider 4. The notes stated adult mental health services had refused to accept Ms X when she turned 18. It noted the Council would need to look for options when Ms X left the psychiatric unit.
  60. The psychiatric unit provided advice on 10 May 2017 that is on the Council's records. This advice stated "*As there is not currently a plan regarding [Ms X's] education when discharge [sic], so she is currently feeling frustrated and helpless. The absence of an effective education programme has been shown in the past to increase [Ms X's] risk in the community.*"
  61. The Council told us there was a plan, which was that Ms X should continue with Provider 1, having online tuition help at home.
  62. There was another CAMHS review on 16 May 2017. The notes of this stated funding and Ms X's EHC Plan were not yet in place. CAMHS was concerned the adults' mental health team had not accepted her yet and she would be at home alone after discharge, now due on 19 May 2017.
  63. Three days later, a panel briefing note recorded the Council needed to discuss Ms X's placement. Two days after that, Mrs X emailed the Council. She was worried about the long wait to September without anything for Ms X to do.
  64. The Council provided the notes of a SEN panel meeting of 24 May 2017. These stated the Council was still waiting for reports about Ms X. The Council told us there was no evidence to support a residential placement at Provider 4.
  65. The Council also told us it reviewed Ms X's EHC Plan at this time, but that it was informal and not written up.

### **June to August 2017**

66. On 1 June 2017, the Council consulted Provider 5 and Provider 6, about placements for Ms X to start in September 2017. Provider 5 declined to offer a place on 14 June 2017. We have not seen evidence it consulted Provider 4.
67. On 15 June 2017, the Council consulted with Provider 2 and Provider 7. It recorded that Provider 7 was the parents' preferred option.
68. On 26 June 2017, Provider 1 confirmed Ms X's placement would finish at the end of the term in July. It said she was not attending its site and it could not meet her needs. The Council says Ms X still had online access at this time.
69. On 8 July 2017, Mr and Mrs X asked the Council for an update. The Council told them it was uncertain about Providers 2, 3, 7 and 8. It consulted with Provider 8 four days later.
70. Provider 6 offered a place for Ms X on 19 July 2017 at a cost of £68,250 per year. The Council says this happened on 17 July, but the letter on the Council's records is dated 19 July 2017. The records show the Council told Mr and Mrs X of this and held another panel meeting in July after the confirmation, though the date is unclear.
71. The records show the Council told Mr and Mrs X on 28 July 2017 it had agreed the placement at Provider 6. It issued a revised draft EHC Plan for Ms X that day and told her parents it would hold a review once it had assessed her, if they were happy with Provider 6.
72. On 7 August 2017, the Council emailed Mrs X saying it was aware she had asked for extra time to consider the draft EHC Plan. Three days later, she emailed back, saying the inclusion manager from Provider 6 had visited the previous day. She

---

also said Ms X would have an interview with Provider 7 on 16 September 2017. She emailed again the following day, asking the Council to keep open the option of Provider 7. The records we saw show both Mrs X and the Council chased Provider 7 in the next week for information. We have not seen evidence Provider 7 responded or that the intended interview happened.

73. The plan for Provider 6 was for Ms X to work from home at first, with tuition provided. The records show Mr and Mrs X returned the revised draft EHC Plan on 24 August 2017. The position at the start of the academic year 2017-18 was that Provider 6 would provide home tuition at first.

### **September 2017 to February 2018**

74. The records show that tutors from Provider 6 turned up at the family home without warning at 10am on 12 September 2017. Mrs X complained this caused Ms X stress as she had not known who was coming or when. Her condition meant it was important she knew in advance who was coming. The Council told us it accepted Provider 6 was *“slow in engaging with the family, changed arrangements and did not set up an appropriate induction”*. The records show that three days later, Mrs X complained to the Council that Provider 6 insisted on sending two staff for the first session. Ms X’s condition meant she found it difficult to cope with staff who she felt had already let her down. One of the two staff was a person in whom Ms X lacked confidence, connected to difficulties Provider 6 had had in setting up the tuition. A later internal email, dated 9 October 2017, referred to mismanagement by Provider 6.
75. However, the Council also provided an email from Provider 6, dated 20 November 2017, that stated Provider 6 felt the family might have had some difficulty with racial diversity. We have not seen evidence Provider 6 raised any such issue with the family or the Council when it was involved with Ms X.
76. On 26 September 2017, the Council responded to an email from Mrs X by suggesting a meeting might help before the next panel meeting.
77. On 29 September 2017, Mrs X emailed asking for a copy of the updated EHC Plan. The Council’s response did not mention the EHC Plan but stated it had arranged the meeting for 2 October 2017. This was the next working day.
78. We have not seen notes or minutes of the meeting of 2 October 2017 and do not know if it took place, though the Council told us it did. Provider 6 cancelled a tutor session on 2 October 2017.
79. What happened next is not wholly clear from the records. The Council told us there are no notes of a panel meeting in October 2017. However, an email of 9 October 2017 referred to a meeting having happened and said the Council had named Provider 6 on Ms X’s EHC Plan.
80. Naming a provider would have made Ms X’s EHC Plan a final EHC Plan. We have not seen evidence the Council sent a copy to Mr and Mrs X and offered them a right of appeal to the SEND Tribunal.
81. Mrs X asked in an email of 17 October 2017 if Ms X’s EHC Plan was discussed at a panel meeting of 5 October 2017.
82. An email of 9 October 2017 stated an urgent professionals meeting was needed. The records also state a panel meeting happened on 16 October 2017 and that this meeting decided to call a further meeting for professionals only. Such a meeting would not have been an emergency review of the EHC Plan as Mr and Mrs X would not have had the right to attend. We have not seen evidence this

- 
- further professionals' meeting happened. We have not seen evidence the Council arranged an emergency review of Ms X's EHC Plan.
83. The Council told us there was no review of the EHC Plan in October 2017 because there had been a review of the Plan in May 2017, but this review had been informal and not written up.
  84. The records include an email from an online tuition service to the Council dated 18 October 2017. This followed a phone call from Mrs X. The Council told us there was another panel meeting on 19 October 2017. An email of 18 October 2017 refers to a meeting being due the next day.
  85. On 20 October 2017, the records show the Council had decided online tuition with one of two possible providers might be an option. Ms X would study GCSE English and Maths. These courses are usually taught between September and May, with examinations in June each year.
  86. On 31 October 2017, the records show Mrs X told the Council it would help if the online tuition service could see Ms X's EHC Plan. We have not seen evidence the Council gave the online tuition service a copy.
  87. By 15 November 2017, the records show Mrs X and the online tuition service had both chased the Council for a copy of the Plan. The Council replied two days later, saying it was chasing up the relevant colleagues.
  88. The online tuition service chased the Council again on 22 November 2017, as did Mrs X on 28 November 2017. The Council confirmed on 4 December 2017 it had chased the relevant colleagues again. It said on 8 December 2017 it would send paperwork to the online tuition service that day.
  89. On 2 January 2018, records show the Council asked when Ms X would be available for an induction session. Mrs X replied the next day, saying she could alter her plans if necessary. The Council replied on 8 January 2018, saying it would pass the information on.
  90. An email exchange of 15 January 2018 shows Mrs X was unhappy that nothing had happened and wanted to complain. The Council told her it would contact the online tuition service immediately.
  91. The Council told us Mr X was rude at this time, having a raised voice and an aggressive tone on the phone. The records show he apologised for this, pointing out that Ms X had had no SEN provision since leaving the psychiatric unit in May 2017.
  92. The records show the Council sent Ms X's enrolment form to the online tuition service on 22 January 2018. The online tuition service sent the form back as incomplete. By this time, Mrs X had complained to the Council.
  93. The correspondence shows Mrs X asked the Council on 29 January 2018 why online tuition had not started that day, stating the Council had told her it would. We have not seen evidence of what commitment the Council gave her.
  94. The following day, the Council responded to Mrs X's complaint, apologising for its delay.
  95. On 31 January 2018, the Council asked Mrs X if the online tuition service had contacted her. Mrs X said it had not. The records show the Council officer dealing with the matter asked a colleague for help to complete the enrolment form.

- 
96. On 8 February 2018, the online tuition service acknowledged receipt of the completed enrolment form.
  97. Mrs X emailed the Council on 22 February 2018, confirming that GCSE tuition had started that week.
  98. The Council told us it had not prevented tuition from starting earlier and that it could have done so before it completed the enrolment form. The evidence we have seen from emails between the online tuition service and the Council show tuition could not start until the enrolment form was completed.
  99. We have not seen evidence the Council issued an updated final EHC Plan for Ms X to her parents at any time in the academic year 2017-18.

### **Conclusions in Mr and Mrs X's complaint**

100. The evidence shows the Council had a plan in July 2016 for Ms X's placement with Provider 1 in September. It also shows it responded to the possibility of another placement with Provider 2. It was not at fault between July and September 2016.
101. The Council took some action at first when Provider 2 refused in September 2016 to accept Ms X. But there is little evidence of action between then and December 2016, despite it being clear that Ms X was not receiving SEN provision. This was fault.
102. There is also no evidence the Council considered directing Provider 2, despite recording that the refusal might be discriminatory. While we cannot say it was discriminatory, or whether the Council should have directed Provider 2, the failure to consider if it should direct the provider was fault.
103. Between December 2016 and February 2017, Ms X could have attended Provider 1 and did so part of the time, according to an email from Provider 1 to the Council. So, she had provision available to her.
104. From February to May 2017, Ms X was being treated in the psychiatric unit. She had not been attending Provider 1 full-time and had had a mental health crisis. The Council says its plan for her discharge was to continue with Provider 1 until the summer, with some online help. It formed its view that she should continue with Provider 1 as early as 5 March 2017. We therefore take the view the psychiatric unit would have known of this, and of the Council's decisions in April 2017 about her placement, when the psychiatric unit gave its opinion on 10 May 2017. Its opinion said there was no effective plan in place and any lack of effective provision would increase Ms X's risk of harm. It is possible the Council would have been unable to source useful provision for Ms X for May to July 2017, particularly as this is the period when courses wind down. But the evidence suggests the Council decided early on that it would continue, when Ms X left the unit, with provision that had not worked properly before she entered it. And there is no evidence the Council considered what provision Ms X might need in September 2017 until she left the psychiatric unit in May 2017. When she left, there was no prospective provision other than Provider 1. We therefore find the Council did not make sufficient effort to improve Ms X's prospect of education provision which she could attend.
105. The Council also failed to formally review Ms X's EHC Plan in May 2017. Given the changes that had happened since the previous summer, it should have done

- 
- so, allowing Mr and Mrs X to appeal against the Council's refusal to pursue a residential placement at Provider 4 if they wished. Failing to do so was fault.
106. Between late May and August 2017, the Council sought a placement for September. It found a provider and could not have known that matters would not work properly in September 2017. It also issued a new draft EHC Plan and agreed to give Mr and Mrs X extra time to respond to the draft. It was not at fault during this period.
  107. In September and October 2017, Provider 6 failed to set up the home tuition properly, leading to Ms X not receiving provision. The Council therefore failed to ensure the provision required by the EHC Plan happened, so we find it at fault. Again, it also failed to review Ms X's EHC Plan formally, as it had failed to do in May 2017. We are not persuaded by the claim the family had issues with racial diversity. This claim was only made well after the placement failed.
  108. Four months of delay followed, from November 2017 to February 2018, in setting up online tuition. This was further fault. We do not accept Ms X could have received provision before she was enrolled by the Council because the emails from the online tuition service show otherwise.
  109. We also note the Council's record-keeping was inadequate. As this also affected the complaints by Mrs Z and Mr Q, we deal with this in more detail in the final conclusions section.
  110. In summary, we find the Council at fault for repeatedly allowing matters to drift when Ms X was not receiving the provision laid out in her EHC Plan. We also find it at fault for failing to review her EHC Plan during long periods when it knew the document was out-of-date. We also find it failed to keep records properly.
  111. The effect of these failings has caused injustice to Ms X. She has not received the provision she should have had. In 2018, for example, she started GSCE tuition with the online tuition service in late February. This was so late in the academic year that little could have been taught before the examinations in May. It would have been unrealistic for her to sit them. This meant she had to drop back to lessons designed for a person not in their final GCSE year. This must have also caused her to feel frustrated and helpless, as explained by the psychiatric unit in May 2017 when the Council failed to plan for her discharge. The failure of the Council to keep proper records, as demonstrated by our difficulties in establishing what happened, can only have made it harder for anyone managing Ms X's file to make decisions.
  112. The Council's failings also caused Mr and Mrs X unnecessary time and trouble in having to repeatedly chase the Council. They also lost the opportunity to appeal to the SEND Tribunal, which they would have had if the Council had issued a final EHC Plan in May or October 2017 or subsequently. This caused injustice to Mr and Mrs X.

## **What we found in Mrs Z's complaint**

### **Background**

113. Ms Z is now an adult. At her primary school in a neighbouring borough she was a gifted student. She left in 2012 with good SATs results. She then went to a secondary school in the same borough, School A, in September 2012. She was identified as a 'gifted and talented' pupil with a positive attitude to learning.

- 
114. Halfway through the first term at School A, Ms Z suffered a seizure and was diagnosed with an epileptic condition. Mrs Z says Ms Z's epilepsy medication changed her personality, gave her depression and affected her studies.
115. School A referred her to CAMHS. A few months later, she was diagnosed with an autism spectrum disorder (ASD).
116. Mrs Z says she grew increasingly concerned that Ms Z was putting herself under strain at school so arranged, in summer 2013, for her to be home-schooled in the mornings and attend school in the afternoons.
117. However, Mrs Z says, Ms Z felt unable to return to school in year 8 in September 2013. She says CAMHS recommended she should attend a pupil referral unit (PRU), usually used for 'difficult children'. Ms Z did so but did not enjoy it.
118. In December 2013, Mrs Z asked the Council to prepare a Statement of SEN for Ms Z. She says the Council initially refused because the PRU was in the neighbouring borough.
119. Mrs Z says she supplied information from various professionals but the Council refused her application because there was insufficient information to reach a decision. It reversed course and issued a Statement in June 2014.
120. This Statement said that Ms Z had difficulties with:
- Her approach to learning;
  - Her social communication skills;
  - Coping with change and emotional wellbeing; and
  - Epilepsy.
121. The Statement said Ms Z's needs were 'significant and complex' and Ms Z required 32.5 hours per week of peripatetic learning support assistance. It said tasks should be broken down to allow Ms Z to process them and she should receive assistance with social interaction. It also said there should be regular meetings at the school to consider Ms Z's progress and to consider how better to improve the education provision.
122. Mr and Mrs Z say Ms Z did not like the PRU and wanted to attend a mainstream school. Against the Council's advice, they applied for a place at School B which is currently rated as 'outstanding' by OFSTED
123. In July 2014, Ms Z gained a place at School B. Ms Z began attending and, Mrs Z says, initially gave the impression of being a *'very able, well behaved child who outwardly appeared gregarious'*. She says this appearance was misleading. School B was named as Ms Z's school in her final Statement.
124. In February 2015, School B wrote to Mrs Z saying that Ms Z would need to be transferred from a Statement to an EHC Plan.
125. Ms Z refused to return to school after the Easter holiday in 2015. Mrs Z says she raised the matter with the Council but it referred her back to the school. Ms Z continued to miss school, while remaining on the school's roll into year 9 (September 2015). Mrs Z says the Council initially refused to help.
126. The Council says the AfC educational psychology service arranged for home visits for Ms Z on 30 April, 7 May and 11 May 2015. It arranged for a re-integration planning meeting at School B on 22 May 2015. There is no record of any other action until September 2015.

- 
127. Mrs Z says the Council's social services became involved with the family in summer 2015, which she says has caused considerable strain for the family.

### **The EHC Plan**

128. The Council says the SEN coordinator and educational psychologist from School B visited Mrs Z to commence Ms Z's transfer from the Statement to an EHC Plan in September 2015.

### **Home tuition**

129. Ms Z's anxiety became worse. Around September 2015, Mrs Z learned of the possibility of having Ms Z tutored at home. She approached the Council and asked it to fund this. She says the Council was reluctant to do so at first.
130. The Council has provided a letter which shows that on 28 September 2015, AfC and CAMHS were supportive of a plan for Ms Z to receive tuition at home as the only way to provide education.
131. However, there was delay in organising it. Records show that Mr and Mrs Z became frustrated with this and, at a meeting on 7 October 2015, demanded that this should be provided as soon as possible. An email to Mr Z on 13 October said it would be provided shortly. In fact, home tuition did not begin until 3 November 2015. The initial provision was for two hours a day, three days a week. To begin with it was a success.

### **Private school**

132. Around this time, a psychologist from the local CAMHS recommended Ms Z attend School C: a private school catering for academically gifted autistic children. Ms Z did not want to go there as the placement with the home tutor was going well but, shortly thereafter, Ms Z's tutor left.
133. Mr Z carried out research with Ms Z about the available options. Ms Z was keen to attend a mainstream school. In October 2015, an AfC officer wrote to Mr Z suggesting Ms Z should go back to School B rather than start again elsewhere.
134. A new tutor took over but this was not a success. Shortly after, Ms Z agreed to go to School C, although she felt the other children there were more severely affected by ASDs than she was. The Council issued an amended Statement in March 2016 naming School C as her place of education.

### **Preparing for adulthood/decision to hold Ms Z back**

135. In December 2016, Mrs Z received an email from the Council saying that all children with Statements in Year 9 should have been contacted by the Preparing for Adulthood team. At this point, Ms Z was in year 11 and was due to take her GCSEs that summer. She had not received any contact.
136. Mrs Z phoned the Council which said there was no need to worry as Ms Z was still in year 10. This was not the case. She was in year 11.
137. An AfC employee emailed Mrs Z on 5 December 2016 and told her the Council's SEN panel had decided, at a meeting in February 2016, that it would need to do the following: *'seek medical advice to establish [Ms Z's] readiness to return to school and to update her EHC Plan, to consider a small mainstream independent school and to repeat year 9 (the Council has pointed out that this should read 'year 10')*.
138. No one told the school, Mr and Mrs Z, or Ms Z that this was the case. The EHC Plan was not updated. Ms Z had continued in year 10 and was now in year 11. She was due to take her GCSEs in six months.



- 
139. Mrs Z felt she could not tell Ms Z about this because it would upset her. She decided Ms Z should stay at School C. She asked an AfC employee, Officer A, to coordinate a meeting at School C. Mrs Z says no AfC staff contacted the school. The Council says an AfC staff member offered to attend but Mrs Z refused the offer.
140. Officer A said this would not be appropriate. She said that Ms Z was in year 10 so this was too early for their involvement. Mrs Z replied that Ms Z was not in Year 10 but in year 11. Therefore, she would like AfC involvement in a meeting.

### **Apprenticeship**

141. Mrs Z says that she asked AfC and Way2Work to help Ms Z get an apprenticeship. Mrs Z found an opportunity for Ms Z herself. The Council has provided evidence that Way2Work enrolled her on two courses to help her gain work-related qualifications. We accept this.

### **First draft EHC Plan**

142. The Council delivered the first draft of Ms Z's EHC Plan in May 2017. Mrs Z says it was '*vague at best*' and didn't reflect Ms Z's current needs or aspirations. It did not rely on any up-to-date reports, such as those prepared by School C, or deal with preparation for adulthood.
143. Mrs Z contacted the Council and told her case worker, who I have called Officer O, that she rejected the draft. They arranged a meeting which took place in late June 2017. Mrs Z says she met Officer O and Officer P, his manager, who were sympathetic and promised to prioritise Ms Z's case.
144. However, Mrs Z, says she never saw them again. '*Appointments were made and not kept*', she says. As a result, she says, she began to suffer depression and Ms Z experienced suicidal thoughts. Mrs Z approached the Council for assistance with finding suitable educational pastimes for Ms Z such as dancing and horse riding which the Council said it would consider but never provided.

### **Review**

145. Ms Z took her GCSEs in summer 2017. She got three GCSEs. She has since left education. Mrs Z complained to the Council and AfC in April 2018. She blamed them for
- A lack of understanding and support from the SEN department;
  - Ms Z's difficulties in staying in a placement;
  - An SEN Panel decision that Ms Z should be kept back in year 9 in 2016 not being communicated to the family;
  - Still not having received a final EHC Plan;
  - It's failure to fund creative or other classes; and
  - Uncertainty as to what courses Ms Z could attend in the next academic year.
146. AfC responded in June 2018. It said:
- There had been failures in the level of support provided to Ms Z;
  - There was a gap in provision between Ms Z leaving School C and engaging in a further education pathway;
  - It failed to tell Mrs Z of the decision that Ms Z should be held back a year;
  - The Council had recently sent a further revised draft EHC Plan;

- Communication had been ‘inconsistent’;
- Requests for funding for classes had been ‘*taken forward*’. (Mrs Z says, ‘*nothing ever came of it*’); and
- It acknowledged that continuing uncertainty would be unsettling.

147. Mrs Z complained to the Ombudsman.

## **Conclusions in Mrs Z’s complaint**

### **EHC Plans**

148. The Council said it would transfer Ms Z from her Statement to an EHC Plan in September 2015. This should have been done in 18 weeks. The EHC Plan was not completed until May 2018, which is 32 months (138 weeks) later. This was fault.

149. However, it is difficult to see that this caused significant injustice. The Statement remained in force while the EHC Plan was being prepared. For example, in spring 2016, when Ms Z went to School C, the Council amended the Statement to reflect this.

150. The Statement, written in 2014, put in place 32.5 hours peripatetic learning support assistance for Ms Z. The Council says she did not receive this provision at School B because she was receiving tuition, nor at School C as it was a specialist school. We accept this.

### **Lack of educational attainment**

151. Mrs Z says the Council is responsible for her daughter’s lack of educational attainment. Mrs Z says Ms Z was a pupil with great promise at her primary school and asks us to find that the Council is responsible for Ms Z’s failure to fulfil that promise. It is impossible for us to find that this is the case.

152. Many children who show early promise fail to fulfil it. Many children who show academic promise choose to follow non-academic paths. It is by no means certain that Ms Z would have done well academically had the Council done better.

153. During her first term at School A, Ms Z developed epilepsy. Later that term, she was diagnosed with an ASD. Mrs Z says that some of the epilepsy medication Ms Z took had devastating side effects, changing her personality and affecting her work. She became increasingly anxious and had difficulties making friends. The family also came to the attention of social services in 2015. All of these factors could have affected her level of attainment.

### **Failure to provide Ms Z with an education**

154. Mrs Z had parental responsibility for Ms Z and it was her primary responsibility to ensure she went to school. Mrs Z says the Council should have done more to help. She says Ms Z was strong-willed and would not go voluntarily.

155. The Council was at fault for two reasons. Firstly, it did not take steps to discover why Ms Z was not at school. It should have investigated to discover whether she was unable to attend because of her health or was playing truant. If she had been playing truant, it should have taken enforcement action. Either way, it had a duty to provide her with an education under s.19 of the Education Act 1996.

156. I have not seen evidence the local authority made such a decision. This being the case, by default, it accepted that she had good reason not to attend. It still had a duty to educate her, which, overall, it failed to do in a timely fashion.

---

### **Failure to provide suitable education**

157. In 2014, Ms Z went to School B. The Council agreed to fund 32.5 hours per week peripatetic learning support assistance for her.
158. In late 2015, Mrs Z asked for home tuition for Ms Z. Although the Council initially refused, it was in place by Christmas 2015.
159. After Ms Z's first tutor left, she did not get on with the second one. She therefore decided to go to School C. The Council agreed and funded this promptly. We do not uphold this part of Mrs Z's complaint.

### **Failure to implement its own recommendations from December 2016**

160. In December 2016, the Council held a meeting at which it discussed Ms Z. The meeting recommended she should be kept back a year and sent to a small, mainstream, private school. This did not happen.
161. The Council should have informed Mr and Mrs Z of this decision and, with their consent, it should have acted on the panel's recommendations. However, it never told Mr and Mrs Z about this decision. This was fault.
162. The Council says it accepts this was fault but says that the injustice was minimal because two weeks later, Mr and Mrs Z asked the Council to send Ms Z to School C to which the Council agreed.
163. However, we find the injustice was considerable. Mr and Mrs Z did not choose School C. They accepted a recommendation from a CAMHS worker who had no personal experience of it. It was not a success. Ms Z never liked it because she felt the school was for those with much greater disability than hers.
164. Mrs Z says that, had she known of the offer of the private school, she and Ms Z would have accepted it and she would never have suggested School C. I have accepted this claim as likely, on the balance of probabilities, to be correct.
165. Emails from December 2016 clearly show Mrs Z was extremely annoyed that she had not learned of the panel's recommendation in February, when she could have acted on it. She said, *'if [Ms Z] sees the correspondence that you have just sent me, she will give up on life, not just school'*.
166. In response to my enquiries, Mrs Z said: *'A private school would have been all the things [Ms Z] responded well to: formality, expectations of behaviour, and rules to follow. We just never knew it was an option, and without input from the people who knew the alternatives, we requested the only thing we thought was left'*.
167. She adds, *'When I found out [about the failure to offer the private school place], neither my husband nor I told [Ms Z]. We knew she would have been devastated at the knowledge of what might have been.... We didn't tell her until after she had left [School C]. She felt everything I have just described .... I often feel it would have been better if we'd never found out'*.
168. This error had catastrophic consequences for Ms Z who was denied the chance of the education she deserved.

### **Preparing for adulthood**

169. The Council says it would normally begin preparation for adulthood in year 9. This did not happen in this case. This may have been because Ms Z did not have an EHC Plan. Whatever the reason, this was fault.
170. The Council has provided evidence that Way2work did help Ms Z gain two vocational qualifications which we accept. Mrs Z also accepts this.

- 
171. However, there is no evidence the Council carried out any of the actions specified in the Multi Agency Transition Protocol (set out at paragraph 31). This was fault.

### **Communication**

172. The Council communicated with Mr and Mrs Z extremely poorly. Mrs Z has provided emails and letters, which we also asked the Council for but which it did not supply, which show a litany of missed communications in the course of which Mrs Z became understandably frustrated. This was fault.

### **Complaint handling**

173. The Council's complaint handling was unsatisfactory. It did not immediately accept the complaint, once it was made. It took nearly two months to reply. This was fault.

### **Summary**

174. The Council was at fault for its failure to transfer Ms Z to the EHC Plan during the required timeframe. It should have done so in 18 weeks. In fact, it took three years. This was fault.
175. The Council was at fault for extremely poor communication with Mr and Mrs Z. This caused them injustice in that it was frustrating and time-consuming.
176. The Council was at fault in that it made a recommendation in December 2016 that Ms Z should be kept back a year and transferred to a small, mainstream, private school. None of this happened. This was fault and it caused injustice to Ms Z who lost the chance of regaining her enthusiasm for education and of doing better in her exams after being kept back a year. Ms Z left school in summer 2017 with three GCSEs (two Cs and an E). For a bright child, this was disappointing.
177. The Council was at fault for a failure to provide any meaningful planning for Ms Z's transition to adulthood. This caused Mr Z, Mrs Z and Ms Z distress.

### **Remedy**

178. We recommend payments, usually between £100 and £500 to reflect the distress caused to people and the time and trouble they were put to by Council fault.
179. We find that Mrs Z was put to a great deal of trouble by the Council and spent a great deal of time attempting, unsuccessfully, to put it right. We also find Ms Z was caused a great deal of distress by the failure of the Council to put her in the school that it found she should attend in 2016, and by its failure to communicate the Council had decided she should be kept back a year.
180. We also recommend payments for lost educational provision. Where there is lost SEN provision, we usually recommend payments of between £100 and £200 a month. Where educational provision is lost entirely, we generally recommend between £200 and £600 a month.
181. In this case, in February 2016, the Council's SEN panel found Ms Z should retake year 9 and attend a small, mainstream private school. However, because of a failure to communicate this advice, Ms Z did not retake year 9. She continued to attend School C, a special school for those with autism, where she was unhappy and which the Council had found unsuitable.
182. After Ms Z had taken GCSEs, she left education altogether. Therefore, we find that, in 2016, Ms Z had eight months of inadequate provision; she was in the wrong school and the wrong year gaining the wrong sort of education. We have also found that, in 2017, Ms Z lost an entire year of educational provision.

- 
183. We consider this case to be extremely serious. We have calculated our recommendation as follows:
- £500 to Mrs Z for time and trouble caused;
  - £1,000 to Ms Z for distress caused;
  - £2,200 to Ms Z for inadequate education provision in 2016; and
  - £5,400 to Ms Z for lost education provision in 2017.
184. We have also found the Council's systems appear to be inadequate. We have therefore recommended the Council review its provision to find ways to improve.

## **What we found in Mr Q's complaint**

### **Brief synopsis of events**

185. Q has disabilities and special educational needs that were recognised by a Statement. This needed to be converted to an EHC Plan. The Council notified Mr Q at the end of December 2015 it would be carrying out the transfer. The Council issued the final EHC Plan in December 2016. Mr Q appealed to the SEND Tribunal in January 2017, which decided the case in two hearings in July 2017 and January 2018. The latter ruled he should attend a residential special school. The Council completed a single assessment of Q's social care needs in August 2017.
186. We have not laid out a detailed chronological account in Mr Q's case, as the Council accepted fault in most of the matters complained of after its own investigation of the complaint.

### **Delay in issuing Q's EHC Plan**

187. The Council accepted it took almost 12 months from January to December 2016 to complete the transfer process and issue the final EHC Plan for Q. Mr Q says it only did so when he threatened to take legal action against it. It also accepted it had failed to work collaboratively by not consulting the NHS paediatrician or an educational psychologist (EP). And it accepted it had not considered independent assessments and reports, commissioned by Mr Q, before it issued the final EHC Plan. It apologised for these failures.

### **Delay in arranging an educational psychology report**

188. The Council accepted this was needed and that it took too long to arrange. Mr Q commissioned and paid for an EP report himself in late summer 2016. The Council apologised for this and offered to reimburse Mr Q's costs.
189. Although Mr Q says these were unavoidable, the Council did not accept Mr Q needed to commission four other independent reports by an occupational therapist, a physiotherapist, speech and language therapist and an autism specialist.

### **Failure to provide a single point of contact or case officer, to respond to emails, and to arrange a meeting**

190. The Council took the view that Mr Q sent too many emails, often five or six per day. It also said he sent them to many different officers and that he often threatened to go to the press. The Council's second stage investigator noted she had seen many examples of this in the case files and had herself received a large number of emails from Mr Q.

- 
191. The documents we have seen contain references to officers finding Mr Q's communications difficult to deal with. They also contained references to officers finding Mr Q intimidating. We asked the Council if it considered Mr Q's communications had been vexatious. It told us it did not take that view.
192. The Council accepted it had not managed Mr Q's communications by giving him a single point of contact and that the flow might have been mitigated if it had done so. It also accepted that a senior officer had failed to reply to some specific correspondence from Mr Q, though it quoted another officer's response to emails in July 2017.
193. The Council issued a social care single assessment for Q in late August 2017. We have seen a copy of this single assessment. It ended with a recommendation that senior staff met Mr Q. This did not happen.
194. Mr Q says the Council's failure to meet was a tactical attempt to prevent any discussion of a residential placement.

#### **Failure to include parental feedback in a single assessment**

195. The Council accepted it failed to include feedback from Mr Q in the single assessment of Q's needs. It completed this assessment on 15 August 2017 and signed it off on 22 August 2017. This was to prevent the assessment taking longer than the statutory 45 working days. It accepted it could have delayed the assessment to include Mr Q's views if it had chosen to.

#### **Delay in sharing the single assessment**

196. The Council did not accept fault here. Mr Q said the single assessment stated, "the [SEND] Tribunal decision was yet to be made". He pointed out the SEND Tribunal decided his appeal on 24 July 2017 and said the Council must therefore have held back the document, as he did not receive it until late August 2017.
197. As stated earlier, we have seen a copy of this single assessment. It recorded "The outcome of Tribunal is now known and it is suggested that [Q] should attend a day provision for children with severe learning disabilities."

### **Conclusions in Mr Q's complaint**

#### **Delay in issuing Q's EHC Plan**

198. The Council took about 50 weeks to complete the transfer process and issue the final EHC Plan for Q. This was 32 weeks (or at least two school terms) longer than the time allowed for the transfer. This was fault. The Council has apologised for this. The delay put back all subsequent events by 32 weeks. It is therefore logical to assume that Q would have got the provision finally agreed by the second SEND Tribunal 32 weeks earlier than he did. Not doing so was injustice to him.

#### **Delay in arranging an educational psychology report**

199. The Council was at fault for failing to arrange the EP report in good time. It accepted this meant Mr Q had paid £4,400 for his own EP report and agreed to reimburse him for this.
200. The Council did not accept Mr Q needed to commission other reports. We cannot say his decision to do so was the direct result of any failure by the Council.

---

### **Failure to provide a single point of contact or case officer, to respond to emails, and to arrange a meeting**

201. The Council accepted it did not deal with Mr Q's correspondence well and should have given him a single point of contact. It apologised for this and for the failure of the senior officer to reply to Mr Q. We note the Council did not consider his communications vexatious. Therefore, we are drawn to the view that Mr Q's frequent communications were the result of the Council's delay in issuing the EHC Plan and its failure to provide him with a clear route for his concerns.
202. Having seen the officer's email in July 2017, responding to emails from Mr Q, we do not find she failed to respond.
203. However, we find the Council, in response to the single assessment's recommendation of a meeting, failed either to hold this meeting or to explain to Mr Q why it would not do so. This was fault.
204. In summary, while Council officers said they found it difficult to deal with Mr Q, the Council did not consider his approach to be vexatious. It seems most likely the reason for Mr Q's frequent communications was his increasing anxiety that events were drifting and the Council was not acting to resolve matters, not that he was being difficult. We find that anxiety was injustice to him.

### **Failure to include parental feedback in a single assessment**

205. The Council accepted it failed to include Mr Q's feedback in the single assessment of August 2017 when it could have done so. Going over the time limit to include his feedback would not have been fault. It says it has reminded officers this should be done in future and has arranged to carry out a new assessment.
206. We have no evidence the failure caused Q to lose out on provision. However, the failure to include his views can only have increased Mr Q's frustration and anxiety in his dealings with the Council.

### **Delay in the single assessment**

207. It is clear the single assessment was only completed after the SEND Tribunal because the text refers to the result of the Tribunal. The Council did not therefore delay sending it to Mr Q earlier. We do not find the Council at fault.

## **General conclusions**

### **Record-keeping and response to our enquiries**

208. The Council's poor responses to our enquiries caused significant delays in these cases. Some of the events in these cases remain unclear despite investigators having spent significant time examining records.
209. The documents the Council sent us in response to our enquiries in Mr and Mrs X's complaint did not enable us to reach a view about all the events, or even to set out a full chronology of what happened. We therefore visited the offices of AfC, the company the Council has commissioned to run its SEN provision. Two investigators viewed Ms X's full records. We are concerned these records did not resolve our queries. There are several examples earlier in this report where these records were incomplete or vague. In some cases, they were contradictory, even to the extent of dates. We also found the content of some records did not correspond to what their file names indicated.

- 
210. In Mrs Z's complaint, the Council failed to supply evidence to support its contentions. We therefore produced our first draft of this report based on documents supplied by Mrs Z.
211. After receiving an earlier draft of this report, dealing only with Mr and Mrs X and Mrs Z's complaints, the Council sent us further documents, some of which we had not previously seen, despite our visit to the Council's offices. Even among these documents, there were double copies and omissions that meant we had to return to the Council again.
212. The Council apologised that it had not shown us everything we had wished to see when we visited the offices of AfC. It told us "*The SEND service accepts that the coordination, preparation and presentation of documents for the Ombudsman was poor, and that not all of the information was made available if it was not directly requested.*"
213. The Council told us there was a redundant system our investigators were not shown. It also confirmed there are three separate places where information is recorded. It said the first of these (the redundant system) was introduced in 2014 to reduce paper use. But the Council told us it never communicated well with its case-handling system and became defunct and unusable when everything moved to a new office after AfC took over. It told us only one person has access to the redundant system. It said it is now also using a separate drive on its computer system to record information.
214. This poor record-keeping is fault on the Council's part.

## **Recommendations**

### **Mr and Mrs X's complaint**

215. Within one month of the date of this report, the Council should:
- Apologise to Ms X and Mr and Mrs X for the failings identified here;
  - Pay Ms X £1,500 for the periods totalling about seven months when its drift and delay led directly to her losing SEN provision, plus £500 for the distress this and the Council's failure to plan caused her. This makes a total of £2,000; and
  - Pay Mr and Mrs X £250 for their time and trouble in having to repeatedly chase when it failed to act.

### **Mrs Z's complaint**

216. Within one month of the date of this report, the Council should:
- Apologise to Mr and Mrs Z and to Ms Z for the failings identified here;
  - Pay £500 to Mr and Mrs Z for the time and trouble caused; and
  - Pay £8,600 to Ms Z, made up of £7,600 for the loss of educational provision in 2016 and 2017 and £1,000 for distress.

### **Mr Q's complaint**

217. The Council has already apologised for most of the failings identified in Mr Q's case and offered him £4,400 to reimburse the cost of the educational psychology report. We welcome this.
218. However, within one month of the date of this report, the Council should also:



- 
- Apologise to Mr Q for failing to include his parental feedback in the single assessment and for the anxiety its poor communications caused him; and
  - Pay Mr Q an additional £1,500 for the loss of the SEN provision Q needed for 32 weeks longer than necessary, and £250 for the frustration and anxiety it caused him in chasing matters, making a total of £1,750.

### **Service improvement**

219. To prevent a repeat of the faults found in these complaints within three months of the date of this report, the Council should:
- Complete an audit of all the children for whom the company appointed to run its SEN provision is responsible to identify if others have been affected in the same way. If it finds similar issues with delay, or children out of education, or inadequate record-keeping, it should put in place action plans to address these; and
  - report back to us within six months on its findings and any actions it needs to take.
220. The Council has agreed to these recommendations.