

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

**Investigation into a complaint against  
London Borough of Hackney  
(reference number: 17 009 505)**

**17 April 2019**

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## 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

|       |                 |
|-------|-----------------|
| Mrs B | The complainant |
| C     | Mrs B's son     |

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## Report summary

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

Mrs B complains about multiple failings by the Council in connection with the provision of an Education, Health and Care (EHC) plan for her child.

### Finding

Fault found, causing injustice, and recommendations made.

### Recommendations

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

- apologise in writing to Mrs B;
- pay Mrs B £3,000 to be used for C's educational benefit in the way she considers most appropriate, to recognise the delay he sustained in receiving the provision he was entitled to;
- pay Mrs B £1,000 to acknowledge the significant distress caused to the family by the faults identified;
- pay Mrs B £150 in recognition of the time and trouble caused to her in pursuing this complaint;
- review its procedures to ensure that when it receives a notification under Section 24 of the Children and Families Act 2014 that a child in its area may have special educational needs, it consults parents and other professionals so as to reach a decision within 6 weeks;
- review and streamline its processes to meet the 20-week timescale required by law to finalise EHC plans; review the arrangements for the new early years inclusion fund to ensure it will not allow for the faults identified by this investigation to be replicated; and
- write to the parents of all children who were placed on a waiting list for funding for special educational provision to explain the faults identified by this investigation and provide a remedy for those families on the same basis as that provided in this case;

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)

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## **The complaint**

1. Mrs B complained about multiple failings by the Council in connection with an Education, Health and Care (EHC) plan for her child. In particular she complained the Council:
  - failed to provide appropriate interim support to meet her child's needs while awaiting EHC plan;
  - failed to initiate an EHC plan promptly despite clear evidence it was necessary;
  - failed to communicate clearly and adequately about the EHC plan process, in particular about when the EHC plan process started;
  - failed to provide an education report which met the professional standard required, failing to clearly specify needs and provision;
  - has an EHC plan assessment criteria which is higher than the legal standard;
  - failed to complete the EHC plan promptly, within the statutory timescale;
  - failed to obtain professional advice in relation to social care;
  - failed to be as specific as it should have been when drafting the provision section of the EHC plan; and
  - failed to provide adequate early years provision prior to her child starting nursery.

## **What we have investigated**

2. We have investigated the Council's actions in respect of provision for the child where these do not relate to those parts of the EHC plan which carried a right of appeal.

## **Legal and administrative background**

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 may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
5. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal such as the First Tier Tribunal (Special Educational Needs and Disability) ('the Tribunal'). However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)

## **The Children Act 1989**

6. This legislation sets out the Council's duties in respect of the provision of services for children in need and their families. A child is deemed to be in need if they are disabled. (*The Children Act 1989, section 17*)

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## The Children and Families Act 2014

7. 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 Regulations 2014 (the Regulations) contain detailed guidance to councils about how they should manage the EHC Plan process.
8. Section 20 of the Act provides that a child has special educational needs if they have a learning difficulty or a disability which calls for special educational provision to be made for them. Special educational provision means educational or training provision that is additional to, or different from, that made generally for others of the same age in mainstream schools or maintained nursery school. A child under compulsory school age has a learning difficulty or disability if they are likely, when reaching compulsory school age, to have a significantly greater difficulty in learning than the majority of others of the same age, or a disability which prevents or hinders them from making use of facilities of a kind generally provided to others of the same age in mainstream schools.
9. Section 24(1) of the Act provides that a local authority (council) is responsible for a child or young person if he or she is in the authority's area and has been—
  - (a) identified by the authority as someone who has or may have special educational needs, or
  - (b) brought to the authority's attention by any person as someone who has or may have special educational needs.
10. Section 36 of the Act refers to the assessment of education, health and care needs. It states:
  - (1) *A request for a local authority in England to secure an EHC needs assessment for a child or young person may be made to the authority by the child's parent, the young person or a person acting on behalf of a school or post-16 institution.*
  - (2) *An "EHC needs assessment" is an assessment of the educational, health care and social care needs of a child or young person.*
  - (3) *When a request is made to a local authority under subsection (1), or a local authority otherwise becomes responsible for a child or young person, the authority must determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.*
  - (4) *In making a determination under subsection (3), the local authority must consult the child's parent or the young person.*
  - (5) *Where the local authority determines that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan it must notify the child's parent or the young person—*
    - (a) *of the reasons for that determination, and*
    - (b) *that accordingly it has decided not to secure an EHC needs assessment for the child or young person.*
  - (6) *Subsection (7) applies where—*
    - (a) *no EHC plan is maintained for the child or young person,*
    - (b) *the child or young person has not been assessed under this section or section 71 during the previous six months, and*
    - (c) *the local authority determines that it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.*
  - (7) *The authority must notify the child's parent or the young person—*
    - (a) *that it is considering securing an EHC needs assessment for the child or young person, and*

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- (b) that the parent or young person has the right to—  
(i) express views to the authority (orally or in writing), and  
(ii) submit evidence to the authority.
- (8) The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that—  
(a) the child or young person has or may have special educational needs, and  
(b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.
- (9) After an EHC needs assessment has been carried out, the local authority must notify the child's parent or the young person of—  
(a) the outcome of the assessment,  
(b) whether it proposes to secure that an EHC plan is prepared for the child or young person, and  
(c) the reasons for that decision.
- (10) .....

### **Statutory guidance**

11. Supporting the legislation, statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities is set out in the Special educational needs and disability code of practice: 0 to 25 years published in 2014 ('the Code'). This includes information about early years funding, EHC plans and the assessment process.
12. In respect of funding for SEN support in the early years, the Code notes that councils must ensure that all providers delivering funded early education places meet the needs of children with SEN and disabled children, and in order to do so should make sure funding arrangements for early education reflect the need to provide suitable support for these children.
13. Paragraph 9.3 of the Code states "the factors a local authority should take into account in deciding whether it needs to undertake an EHC needs assessment are set out in paragraphs 9.14 to 9.15 and the factors a local authority should take into account in deciding whether an EHC Plan is necessary are set out in paragraphs 9.53 to 9.56.
14. Paragraphs 9.14 and 9.15 of the Code say the council should pay particular attention to:
  - evidence of a child's academic attainment and rate of progress;
  - information about the nature, extent and context of the child's SEN;
  - evidence of the action already being taken by a school to meet a child's SEN;
  - evidence that, where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided; and
  - evidence of the child or young person's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet those needs by other agencies.
15. In *Cambridgeshire County Council v FL-J* [2016] UKUT 0225 the Upper Tribunal held:

*"The authority or tribunal does not have to decide at this initial stage whether*

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*special educational provision 'is necessary'... that question only arises when an assessment has been made... the issue at the initial state is a provisional and predictive one; it is only when an assessment has been made that a definitive decision has to be made".*

16. Councils have responsibility for completing EHC plans for children where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made in accordance with an EHC plan. This would include where special educational provision required to meet a child's needs cannot be provided from within the resources available to mainstream early years provision. The EHC plan is a legal document which sets out a description of a child's needs. It says what education, health and social care support will meet those needs.
17. Councils may develop criteria as guidelines to help them decide when it is necessary to carry out an EHC needs assessment but must be prepared to depart from those criteria where there is good reason to do so. To inform its decision, a council should pay particular attention to factors such as a young child's developmental milestones; information about the nature and extent of their SEN; and their physical, emotional and social development and health needs.

### **Timescales**

18. Paragraph 9.39 of the Code provides that "local authorities should ensure that they have planned sufficient time for each step of the process, so that wherever possible, any issues or disagreements can be resolved within the statutory timescales".
19. Paragraph 9.40 states that: "The whole process of EHC Plan needs assessment and EHC Plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority's attention) until the final EHC Plan is issued, must take no more than 20 weeks (subject to exemptions set out below)". None of the exemptions specified in the Code applied in this case. The 20-week time limit is set out in Regulation 13(2) of the Special Educational Needs and Disability Regulations 2014.
20. Paragraph 9.41 of the Code states:
  - "Local authorities **must** give their decision in response to any request for an EHC Plan assessment within a maximum of 6 weeks from when the request was received or the point at which a child or young person was brought to the local authority's attention;
  - When local authorities request information as part of the EHC needs assessment process, those supplying the information **must** respond in a timely manner and within a maximum of 6 weeks from the date of the request;
  - If a local authority decides, following an EHC needs assessment, not to issue an EHC Plan, it **must** inform the child's parent or the young person within a maximum of 16 weeks from the request for an EHC needs assessment, and
  - The child's parent or young person **must** be given 15 calendar days to consider and provide views on a draft EHC Plan and ask for a particular school or other institution to be named in it".
21. There are rights of appeal to the Special Educational and Disability (SEND) First Tier Tribunals for parents where a local authority refuses, at week six, to carry out

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a statutory assessment, or where a council decides, at week sixteen, not to issue an EHC Plan, or when parents disagree with the contents of the final Plan.

## **How we considered this complaint**

22. This report has been produced following the examination of relevant documents from the complainant and the Council. We also made written enquiries of the nursery the child attended and took account of the responses received.
23. The complainant and the Council had the opportunity to comment on a draft of this report and all comments received have been taken into account.
24. 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 the decision on this complaint with Ofsted.

## **What We found**

### **Background**

25. Mrs B and her husband were living abroad with their three children. The youngest child, C, has Down's Syndrome. It affects many aspects of his life including his mobility, respiration, and speech and language: he has extensive needs. In July 2015, when C was almost three years of age, Mrs B contacted the Council in anticipation of the family's move to the area, and requested referral to its Portage service.

### **The Local Offer and Portage services**

26. The Local Offer is the Council's publication of all the provision it expects to be available across education, health and social care for children and young people in their area who have special education needs (SEN) or are disabled, including those who do not have an EHC plan. The Council's Local Offer includes a Portage service. Portage is a specialist educational home visiting service for pre-school children who have special needs. The service helps young children whose development is delayed, and it works closely with other professionals including speech and language therapists. Parents can refer themselves to the service. The Council says it confirmed it was happy to accept a referral once the family were residing in their Hackney address.
27. The referral was subsequently made via a multi-agency meeting on 15 September 2015. Invitations to Portage drop-in sessions were issued and Mrs B and her son attended sessions on 28 September and 12 October 2015. At the session on 12 October, a senior officer from the Portage team gave Mrs B information about a group (Group Z) run by the Early Support Team for children with Down's Syndrome. C began attending nursery in November 2015 after the October half-term break, and he began attending Group Z sessions when these became available in January 2016.
28. Mrs B and her son did therefore have some support from Portage prior to the start of C's attendance at nursery. Although C did not have one to one support from Portage, there was only a short period between when the referral was made and when he began attending nursery, so we consider that any resultant injustice to C from that is limited.



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## Nursery

29. Once C began attending nursery, in November 2015, the nursery made an application to the Council for funding for a one-to-one support worker for him, for two days a week.
30. The Council acknowledges that some nursery settings may experience difficulties supporting children with highly complex disabilities where there is no funding provided through an EHC plan and it therefore offered supported childcare funding on a discretionary basis. Responding to our enquiries the Council said that as its resources are limited, once these were committed for the year it operated a waiting list until more resources were released: it then allocated resources on a 'first come, first served' basis.
31. The Council has since said that the term 'waiting list' is misleading and that it had incorrectly stated that the 'waiting list' was operated on a first come, first served basis. It asserts the 'waiting list' was a list of names ordered according to the timing of the applications for funding; that allocations were based on need; and that needs were met within the setting until such a time as allocations were made. But the evidence in this case does not support the assertion that C's needs were being fully met within the setting, while he awaited funding.
32. The Council refers applications for supported funding to a panel which sits every six weeks. The nursery's application for supported funding was considered at a panel meeting on 10 December 2015, and on 14 December the nursery was notified in writing that the panel had decided to offer a place on a 'waiting list' for the funding it had requested. So, C was put on the 'waiting list', but the funding was never awarded.
33. The Council says there is no statutory requirement for interim resourcing for children prior to an EHC assessment being requested or while the assessment is being completed. But there is no option for a council to only meet some of a child's SEN even if they are aged under five years. Special educational provision is what is considered necessary to give children with SEN the same opportunities as children with no SEN, and the duty to meet a child's SEN and consider an EHC plan applies from birth. The Council has said the needs of all children on its 'waiting list' for funding from the supported childcare budget were complex. By implication acceptance onto the 'waiting list' must have been because of unmet needs: there would be no grounds to award discretionary funding if needs were already being met or could be met from the setting's existing resources. The Council accepted C qualified for supported childcare funding for one-to-one staffing.
34. When a child in an early-years setting has SEN there are three possibilities:
  - that their needs can be met from the setting's own resources; or
  - that their needs cannot be met from the setting's own resources but can be met through non-statutory funding from the Council's supported childcare budget; or
  - that their needs cannot be met from the setting's own resources or additional funding from the supported childcare budget.
35. In this final scenario, the child must meet the test for an EHC plan. Therefore, any child on the waiting list who has unmet needs must by definition meet the threshold for an EHC plan and funding from the Council's high needs budget.

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36. By putting C and other children on a 'waiting list', the Council was acknowledging those children had needs which could not be met within their settings without additional funding for extra resources. Acknowledgment of unmet needs should have highlighted the need for assessment for an EHC plan. The use of a waiting list in the circumstances described was fault.

#### **Failure to carry out assessment of need**

37. As set out above, C was brought to the Council's attention as a disabled child with Down's Syndrome and associated needs while the family was still living abroad. Then, once the family had moved to the Council's area, on 11 September 2015 the Council received a letter from C's GP addressed to the community paediatrician asking them to see C as a child with Down's Syndrome needing access to different services. C's case was considered at multi-agency meeting four days later.
38. A local authority is not obliged to start the statutory assessment process every time it receives a referral from a GP. But the referral from C's GP fell within Section 24(1)(b) of the Act as set out at paragraph 9 above. C was identified in the referral as a child with Down's Syndrome, and that should have put the Council on notice that he might have special educational needs. Being so alerted, the Council should then have decided if it was necessary to carry out an EHC needs assessment, bringing with it an obligation to formally consult with Mrs B and to seek her views on it. If the Council had considered the matter and had decided it would not carry out a needs assessment at that time, it should within six weeks have notified Mrs B of this decision and of her right to appeal against that decision to the SEND Tribunal. It failed to do this, and we are satisfied that this amounted to fault by the Council.
39. The Council had a further opportunity to take the action set out above in November 2015 when C started at nursery. If the Council had considered the matter and decided C's needs could be met at nursery with an early support plan, it should have notified that decision to Mrs B within six weeks and advised her of her right of appeal. During the period C was in nursery and being observed by the Special Educational Needs Co-ordinator (SENCO) prior to the nursery making a formal request for assessment, responding to an enquiry from C's keyworker the EHC plan coordinator said:
- "As far as I am aware there is not a set period of time for observation, however when making a decision as to whether or not to agree to an assessment Hackney Learning Trust like to see at least two terms of relevant and purposeful action. This should include Individual Education Plans/support plans, interventions from external agencies, evidence of how the setting have applied the recommendations from professionals and a provision map including costings".*
- For the reasons set out above this approach is flawed: it disregards the relevant six-week timescale for decision-making in the Regulations.
40. Further, at the multi-agency meeting the Council's social care department was put on notice that C was a child in need in its area, having disabilities and special educational needs, and that assessment for services under S17 of the Children Act 1989 could be appropriate.

#### **What happened next**

41. Once C was attending nursery, the SENCO drew up an early years support plan for him. The first plan, dated 23 November 2015, noted that C needed assistance with feeding and physical support to enable access to the toddler room, and with communication including a need for staff to use Makaton sign language. The plan

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- noted the nursery was applying for an SEN worker to support him in the toddler room and especially with eating and outside play.
42. The support plan was updated on 21 March 2016, noting C was to have one to one support to access the outside space, and was to be supervised at mealtimes as he often did not finish a mouthful of food before putting more in. The plan was updated again on 9 May 2016, and again included reference to mealtime supervision and the need for staff to remind C to clear his mouth before taking more food.
43. Mrs B reports that the lack of supervision when her son's keyworker was not present meant C was put at risk of choking, and that the lack of training for staff in Makaton sign language disadvantaged her son since he relied on this method of communication. Mrs B felt the nursery did not have sufficient resources to offer the appropriate level of supervision and support. Mrs B's concerns about her son's safety at mealtimes were particularly significant. Although the nursery has stated it was aware of only one occasion when C's parents had raised concern about him being unsupported at mealtimes, Mrs B reports that she and her husband found him unsupervised on three occasions, leaving him at risk of choking and inhaling food into his lungs. Although initially the plan had been for him to remain at the nursery until July 2017, she made the decision to withdraw him a year early and move him to an alternative nursery from September 2016.
44. At nursery, C was supported by the nursery SENCO and a key worker. There were occasional visits from the area SENCO and a physiotherapist, and advice was received from a dietician on how to support his feeding. We are satisfied that staff working with C were trained in Makaton communication and used relevant resources when working with him. Assessment by a speech and language therapist (SALT) noted C was at risk as a child with Down's Syndrome and significant respiratory issues and required monitoring: no incidents of choking were noted by the nursery. It is though the case that the SENCO and key worker in addition to supporting C had several other children to support, and this professional advice and support did not amount to the full-time one-to-one support the nursery considered C needed, and for which it had requested the funding. As set out in paragraph 32, the nursery was advised C had been placed on the 'waiting list' for funding for this support.

#### **Formal request for EHC Plan**

45. On 26 May 2016, the nursery made a formal written request to the Council for an EHC assessment. The Council received this on 6 June 2016, and on 15 June wrote to Mrs B to confirm the request for assessment had been agreed and the process had formally begun.
46. Mrs B had believed the assessment process had been started by the SENCO much earlier, soon after C had started at nursery. She felt that given her son's clear disabilities it would have been obvious that assessment would be needed. The Council says the SENCO had explained the EHC plan process to Mrs B during the second support plan meeting in February and had subsequently found out from another SENCO that Mrs B had expressed the view at a Group Z session that she believed the assessment process had begun. This was a further opportunity for the Council to notify Mrs B in writing that it was not doing an assessment and to give her notice of her appeal rights, but it did not do so and that was fault.

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### **The EHC plan process – lack of advice from social care**

47. An EHC plan must specify any social care provision reasonably required by the young person's learning difficulties and disabilities which result in them having special educational needs. The EHC assessment must therefore include a consideration of care needs. Where the child is not previously known to social care services, the Council has to identify whether they have social care needs and in some cases it may be necessary to proceed to a formal assessment carried out by a social worker.
48. In this case the Council's EHC plan coordinator contacted children's social care on 15 June and it responded the following day saying C was not known to the service. However, C is a child with disabilities and is therefore a child in need, less likely to achieve without extra help. The Council has said that in C's case there was no immediate evidence to suggest that he was living in anything other than a caring and stable home environment. But a child may be living in a caring and stable environment and still have support needs for which they are entitled to receive services. The Council's failure to properly consider whether assessment under S17 of the Children Act 1989 was appropriate was fault.
49. When a S17 assessment was completed later, after Mrs B requested it in September 2016, it resulted in three hours support a week for social activities for C. The Council accepts this support may have been offered sooner if the assessment had been completed at an earlier stage.

### **The EHC plan - time taken from request to completion**

50. Unless specific exemptions apply, the 20-week maximum timescale permitted for the process of EHC needs assessment runs from the point assessment is requested, or a child is brought to the Council's attention if sooner, until the final EHC plan is issued.
51. In this case, the formal request for assessment was made by the nursery at the end of May 2016 and received by the Council on 6 June. The final EHC plan was issued on 13 February 2017.
52. If, having received the GP's letter and held the multi-agency meeting in September 2015, the Council had acted without fault and had made a decision on whether or not it would assess C for an EHC plan within six weeks, it would have either begun the assessment at that point (by the end of October 2015), or notified Mrs B that it was not going to do so, giving rise to her right of appeal. If the Council had decided it would not assess, we are satisfied on the evidence that Mrs B would have exercised her right of appeal. However, on balance it is more likely than not in the circumstances of this case that the Council would have decided to assess C. He was a child with Down's Syndrome and numerous associated difficulties, and the SEN Code of Practice sets out the importance of avoiding delay in the early years, stating:  
*"It is particularly important in the early years that there is no delay in making any necessary special educational provision. Delay at this stage can give rise to learning difficulty and subsequently to loss of self-esteem, frustration in learning and to behaviour difficulties. Early action to address identified needs is critical to the future progress and improved outcomes that are essential in helping the child to prepare for adult life".*
53. If the Council had decided, at the six-week date, that it would assess C, the timescale of 20 weeks for assessment and completion of the EHC plan would have been triggered. The EHC plan should therefore have been completed by 15

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March 2016. But it was not completed until 13 February 2017, a delay of some 48 weeks. The delay was fault. Exceptional circumstances did not apply.

54. Mrs C then exercised her right of appeal against the provision specified in her son's EHC plan. Her appeal was successful and led to increased and improved provision, including one-to-one support from a teaching assistant for 32.5 hours a week, 16 hours specialist teacher support, increased speech and language therapy, and Makaton and Down's Syndrome training for staff.
55. If the fault identified by this investigation had not occurred, we are therefore satisfied that the final EHC plan would have been completed much sooner; Mrs B would have therefore exercised her right of appeal and secured the necessary increased provision for C sooner.

### **The Council's current arrangements**

56. In April 2017, the Council introduced new arrangements for early years funding, replacing the discretionary supported childcare fund and its associated waiting list with an 'early years inclusion fund'. The Council says that at the end of March 2017 there were no children on the waiting list for supported childcare funding and that all applications for funding meeting the criteria since April 2017 have been approved and settings have received appropriate funding. However, the Council's budget for the fund is still capped.

## **Conclusions**

57. The Council was at fault when it:
- placed C and other children with SEN requiring special educational provision on a 'waiting list' for resources, rationing services based on available resources instead of identified need;
  - failed to make a decision within six weeks of 11 September 2015 (the date the Council received the letter from the GP referring to C's disability), or at the latest 15 September 2015 (the date of the multi-agency meeting), whether it would carry out an EHC assessment of need for C, and then to notify Mrs B of that decision and her right of appeal;
  - failed to consider whether it was appropriate to carry out an assessment under S17 of the Children Act 1989 when C was brought to its attention as a disabled child; and
  - delayed in issuing C's EHC plan by 48 weeks.
58. These faults led to the injustice of:
- delay in C receiving the provision he was entitled to;
  - distress for Mrs B and her family; and
  - frustration and time and trouble for Mrs B in pursuing her complaint.

## **Recommendations**

59. To remedy the injustice caused to Mrs B and to C, within three months of the date of this report the Council should:
- apologise in writing to Mrs B;

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- pay Mrs B £3,000 to be used for C's educational benefit in the way she considers most appropriate, to recognise the delay he sustained in receiving the provision he was entitled to;
  - pay Mrs B £1,000 to acknowledge the significant distress caused to the family by the faults identified; and
  - pay Mrs B £150 in recognition of the time and trouble caused to her in pursuing this complaint.
60. Within three months the Council should also:
- review its procedures to ensure that when it receives a notification under Section 24 of the Act that a child in its area may have special educational needs, it consults parents and other professionals so as to reach a decision within 6 weeks;
  - review and streamline its processes to meet the 20-week timescale required to finalise EHC plans; and
  - review the arrangements for the new early years inclusion fund to ensure it will not allow for the faults identified by this investigation to be replicated.
61. There may also be injustice caused to other families where children were placed on the waiting list for funding; where the Council failed to give a decision on whether to begin an EHC plan assessment; or where the EHC plan process took more than 20 weeks. Using our powers under S26(D) Local Government Act 1974 we therefore recommend that within three months the Council should also write to the parents of all children who were placed on the waiting list for funding to explain the faults identified by this investigation and provide a remedy for those families on the same basis as that provided in this case.
62. If other parents, because of this report, complain to the Council about delays in their child's EHC Plan process, the Council should be willing to consider these complaints in the light of the findings on this case. In the event parents make a complaint to us, we will consider whether we should exercise discretion in respect of the time limits for making complaints to our office.
63. 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*)

## **Decision**

64. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mrs B and to C. The Council should take the action identified above to remedy that injustice.