

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

**Investigation into a complaint about
Devon County Council
(reference number: 20 008 832)**

4 February 2022

The Ombudsman's role

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

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

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

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

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

Key to names used

Ms B	The complainant
Ms M	Her daughter

Report summary

Education and children's services

Ms B complained that Devon County Council failed to make arrangements for her daughter's transfer to post-16 education. This is despite her daughter having special needs detailed in an Education, Health and Care Plan and the Council therefore being responsible for making these arrangements.

Ms B said that as a result of the Council's failings her daughter missed out on education and specialist support. Ms B also said it resulted in her losing her tax credits which were withdrawn because her daughter was not in school.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To recognise the injustice caused, within one month of this report, the Council will:

- apologise to Ms B and Ms M for all the identified faults and the impact these have had on them;
- pay Ms M £3,000 for the impact of having no educational or special educational support between September 2019 and February 2020;
- pay Ms M £1,000 for the avoidable distress, lost opportunity, uncertainty and anxiety caused by the Council's poor handling of her educational and special needs during the period of this complaint;
- pay Ms B £500 for the avoidable frustration and time and trouble she was caused having to repeatedly chase the council to arrange education for Ms M;
- pay Ms B £100 for the avoidable frustration caused by its refusal to complete its consideration of her complaint after offering to do so and before its complaints procedure changed;
- pay Ms B the equivalent of the tax credits she lost upon Ms B providing the Council with evidence of the amount she lost;
- pay Ms B £200 to recognise the avoidable anxiety and distress the additional financial worries resulting from the withdrawn tax credits caused her; and
- make a payment of £200 to recognise the lost opportunity to appeal against the failure to name post-16 provision in the Summer term of 2019.

To ensure similar faults do not occur in future the Council will, within three months of this report, provide us with evidence it has:

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- reviewed its procedures on post-16 education arrangements for young people with EHC Plans to ensure the transfer process is started in time to name a placement by the end of March in the year of transfer;
 - ensured its staff are adequately trained and understand the current processes around the transfer to post-16 education for children with EHC Plans;
 - ensured staff are aware that children do not have to apply for a place and that the Council must name a placement by 31 March of the year of transfer;
 - taken steps to improve its record keeping to address the administrative failures identified in this case. Specifically, it should keep adequate records of emails and phone calls, of all letters and EHC Plans issued, and of parental responses. It should provide us with details of how it will achieve this; and
 - undertaken an audit of its handling of all post-16 transition arrangements for children with an EHC Plan for the last two years and tell us how many of these were completed and a final amended EHC Plan issued naming a post 16 placement by 31 March of the relevant year. If it is failing to achieve this it should give us details of how it will remedy this.

The Council should also provide us with updated information about the educational and special needs support and provision it is making for Ms M and demonstrate this meets the requirements in her current EHC Plan.

The Council has accepted our recommendations.

The complaint

1. The complainant, whom we refer to as Ms B, complained that Devon County Council failed to provide her daughter, Ms M, with adequate education from the point at which she was due to transfer to post-16 education in September 2019. Specifically, she says it:
 - a) failed to provide Ms M with post-16 education from the beginning of term in September 2019;
 - b) failed to ensure the provision detailed in Ms M's Education, Health and Care Plan was in place when it did put education in place;
 - c) failed to make sure Ms M was given sufficient help and services to enable her to catch up for the period of education she missed, after she began receiving education;
 - d) continued to fail to provide the support detailed in Ms M's Education, Health and Care Plan up to the point Ms B complained to the Ombudsman; and
 - e) failed to consider Ms B's complaint at stage 2 of the Council's complaints procedure, telling her that the second stage of that procedure was scrapped in March 2020.
2. Ms B claims that, as a result, Ms M missed educational provision and specialist support for her special educational needs. In addition, Ms B says that she stopped receiving tax credits because her daughter was not in education, and this caused her unnecessary financial hardship. Ms B says that both she and her daughter have been caused unnecessary stress as a result of the Council's actions.

Legal and administrative background

Our jurisdiction

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. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
5. The First-tier Tribunal (Special Educational Needs and Disability) considers appeals against council decisions regarding special educational needs. We refer to it as the SEND Tribunal in this report.
6. A child with special educational needs may have an Education, Health and Care (EHC) plan. This sets out the child's needs and what arrangements should be made to meet them. The EHC plan is set out in sections A to K. We cannot direct changes to Sections B and F about education, or name a different school in Section I. Only the SEND Tribunal can do this.

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7. We can consider the other sections of an EHC plan. We do this by checking the Council followed the correct process, and took account of all relevant information, in deciding what to include. If we find fault affected the outcome, we may ask the Council to reconsider. We will not usually substitute our judgement for the judgement of professionals, if their decisions have been made without fault.
 8. The Council is responsible for making sure that arrangements specified in the EHC plan are put in place. We can look at complaints about this, such as where support set out in the EHC plan has not been provided, or where there have been delays in the process.

The relevant law and guidance on education and special educational needs

9. The Children and Families Act 2014 includes legal requirements in relation to children and young people with special educational needs and disabilities. The SEN and Disability Regulations 2014 (the Regulations) provide more detail on what councils are required to do when assessing and planning the education, health and care needs of children with special educational needs under the Act.
10. The SEN Code of Practice 2014 (the Code) is statutory guidance that provides councils with further guidance on how to implement the legal requirements.
11. Councils are required to regularly review a young person's EHC Plan with the first review being held within 12 months of the Plan being issued and thereafter within 12 months of the previous review. The Council is required to issue its decision on whether to cease, maintain or amend the Plan within 4 weeks of the meeting. Each of these decisions may be appealed.
12. The Code confirms that discussions about post-16 options must be included in annual reviews from year 9 (when the child is 13 or 14 years old) and that councils must ensure these reviews take place. It says that where a young person wants to attend a different school or college to the one they are already attending, that college must co-operate to help shape the EHC Plan and start developing a post-16 study programme tailored to the young person's needs.
13. The Regulations require that an EHC Plan **must** be reviewed and amended before 31 March when a young person is transferring from secondary school to a post-16 educational placement. This is confirmed in paragraph 9.180 of the Code. The Council should review the Plan, send the proposed amendments without naming the proposed placement and provide the parent or young person with at least 15 days to make any representations about the proposed amendments and to allow them to express a preference for the school/college they want named in section I of the Plan. Where a parent does not make a request for a particular college the council must specify mainstream provision unless it would be against the wishes of the parent or young person or incompatible with the efficient education of others. The Council should then issue the final amended plan naming the educational provision/placement or type of education provision/placement and provide information about appeal rights by 31 March.
14. Paragraph 9.79 of the Code states that if a parent or young person requests a particular post-16 institution the council must comply with that preference and name that college in the plan unless it would be unsuitable for the age, ability, aptitude or SEN of the young person or it would be an inefficient use of resources.

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15. There is a right of appeal to the SEND Tribunal for a parent if they do not agree with the school or college named on their child's EHC Plan.
 16. Under the law there is no requirement for parents of a child with an EHC Plan or a young person with an EHC Plan to go through the usual admissions process as EHC Plans are dealt with separately to this process. Section 43 of the Children and Families Act 2014 confirms that further education providers have a duty to admit a young person to their provision if it is named in an EHC Plan and the governing body or principal of that institution must admit them.
 17. Paragraph 9.182 of the Code says that in cases where a young person does not meet the entry requirements for their chosen course or if they change their mind after 31 March, the council should review the Plan with the young person to ensure new alternative options are agreed and new arrangements are made as far ahead as possible.
 18. The council must secure the special educational provision detailed in the plan. The council is only relieved of this duty if the child or young person has made suitable alternative arrangements themselves. If a parent does make alternative arrangements the council must satisfy itself those arrangements are suitable.
 19. Education Otherwise Than At School (EOTAS) is educational provision for a child or young person who is unable to attend mainstream or special needs schooling. It can include online schooling and home tuition. It is only provided where a council decides it is inappropriate for provision to be made in school.
 20. A special educational needs personal budget is a payment made by a council to a parent or young person to enable them to buy provision detailed in an EHC Plan. It is optional for the parent or young person but councils are required to prepare one if it is requested by the parent or young person.

The Council's arrangements

21. The Council refers to an organisation (we will refer to this as Service Q) which it says provides a service to all young people with an EHC Plan and provides support with the transition to post-16 education. Service Q has a contract with the Council to deliver support to vulnerable young people to ensure they successfully transition to post-16 education, employment or training. Young people with an EHCP are included in this vulnerable group.
22. The Council uses an online school for children and young people who are unable to access a school setting. It provides online teaching at primary, secondary and sixth form level. It appears to be a mainstream provision though teaches in small classes and is entirely online. We refer to this online school as Provider Z.
23. The Council uses an independent provider for mentoring support to young people. We will refer to this as Service A.

How we considered this complaint

24. We produced this report after examining relevant documents, discussing the complaint with Ms B and making targeted enquiries of the Council.
25. We gave the complainant and the Council a confidential draft of this report and invited their comments. We considered the comments before making our final decision.

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26. 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.

What we found

Relevant background

27. Ms M is now 18 years old. She has had an EHC Plan since November 2018. She is diagnosed with autism and has mental health problems. She was due to transfer to post-16 education starting in Year 12 in September 2019 when she was 16 years old.
28. The 2018 EHC Plan named Ms M's educational provision as a specified mainstream school for 11 to 16 year olds. We will refer to this as School P. However, Ms M attended a specialist provision for children not attending school (Provider Z) between October 2017 and July 2019.
29. The 2018 EHC Plan includes:
- the use of Autistic Spectrum Disorder (ASD) specific strategies throughout Ms M's education;
 - Ms M being included in small social skills groups;
 - support for Ms M to develop her own understanding and awareness of ASD; and
 - regular reviews of progress so Ms M did not become too far behind in her work.

Events between March and August 2019

30. The Council says that it issued an amended final plan as part of Ms M's post-16 transition in May 2019. The Council is unable to locate a copy of this plan or of its covering letter to Ms B advising her of her right to appeal to the SEN Tribunal if she disagreed with it. Ms M was in year 11 at that time and due to move to further education in September 2019.
31. The draft amended EHC Plan dated 15 March 2019 (which I assume was the draft the Council says was issued in final form in May) named only School P in Section I as Ms M's educational placement. The body of the plan notes that Ms B said that Ms M had been out of school for several months and needed to be reintegrated slowly. It states she was participating in mostly online learning supplemented by a tutor visiting her at home once a week. She was reported to find the online tuition difficult but engaged well with the tutor when they visited in person. It also states that Ms M said she was "...open to the idea of attending college..." post-16 and said she had some friends that attend College Y (a post-16 further education placement) and that she would like to be able to attend college. Section E of the plan states that by the end of post-16 education Ms M would have, for example, developed strategies to help her manage difficulties in social communication and interaction, that she would be engaging in full time education and making good progress and demonstrating resilience in learning.
32. The Council says that Ms B did not provide any response to the draft EHC Plan issued in March. We have not seen a copy of the covering letter to Ms B which should have been sent with this plan and should have invited a response. On the balance of probabilities, having seen no evidence of such a letter, we consider none was sent. The Council also says that neither Ms B nor Ms M responded to

offers of support to make an application to college Y or for help with the transition. We have seen no evidence of these offers of support.

33. The Council has provided evidence which demonstrates that it wrote to College Y in April 2019. In its letter to the College the Council said that Ms M had expressed a preference for College Y to be named in her EHC Plan from September 2019, it provided information about Ms M and asked the college to provide a response.
34. In late May College Y confirmed that Ms B had visited and said that, in theory, it could offer some provision to Ms M. It did, however, express concerns about how well Ms M might be able to engage given her non-attendance at school for a long period of time. More specifically the College stated it could not make the necessary arrangements to meet Ms M's special educational needs (as specified in the EHC Plan) but did suggest that if the provision was revised it could offer a bespoke course including English and Maths with a gradual increase in her attendance.
35. The Council has not provided any evidence that it considered this or that it contacted either Ms B or Ms M about this offer. The Council says it issued a final amended plan in May 2019 and that this named a type of provision in section I, namely "mainstream college". As already stated, it is unable to provide evidence of this plan or of it having been issued. Ms B says she does not recall receiving a plan in May. So, there is no evidence that any post-16 provision was detailed in section I of an EHC Plan by the end of the school summer term in July 2019.
36. The Council says that Ms M was required to apply for the course at College Y and says that the EHC Plan cannot override the eligibility criteria set by the college. The Council says that Ms M did not apply to College Y for a place or ask the Council to consider another provider. So, no educational placement was set up for Ms M from September 2019.

Events after September 2019

37. The Council says when Service Q made contact with Ms M in the latter part of September she said that she wanted to undertake an online learning course with Provider Z. An email from Service Q to the Council in September states that Ms B and Ms M had been "MIA (missing in action) all summer and resurfaced last week". In late September an officer at Service Q contacted an SEN officer at the Council to say that Ms B had been in touch the previous week and that Ms M wanted to study a combination of A' Levels and GCSEs with Provider Z and asked if this could be funded through Ms M's EHC Plan. The Council's SEN officer agreed on 1 October that the Council could facilitate this. Service Q sent the Council the forms it had completed with Ms B for the application for this course with Provider Z.
38. In October and November 2019 Ms B contacted the Council four times to chase up a place for Ms M with Provider Z. She initially expressed concerns that Ms M was missing out on learning and in late November told the Council that Ms M was stressed and depressed about not being in college and that she was losing £200 a week in tax credits because Ms M was not in education.
39. Over the same two months the emails between Ms B, the Council and Provider Z demonstrate that when chased up by Ms B the Council said it had not received the original information sent by Service Q or the first set of information sent by Provider Z about courses and costs. Both organisations sent the information again.

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40. In December Provider Z contacted the Council to ask if it still wanted a place for Ms M. The Council arranged to speak to Ms B by telephone in January but the officer was not then available at the agreed time and the discussion did not go ahead.
 41. In early January 2020 Ms B told the Council that Ms M was anxious about starting at Provider Z again as she'd missed so much time and asked whether she could now start with one subject and also if a review of the EHC Plan was needed. She also said that Ms M had self-harmed over the Christmas break and that Ms M would need extra help with starting back in education and asked what could be put in place. Having received no reply Ms B chased up the SEN officer in mid-January. The SEN officer replied the same day asking Ms B which subject Ms M wanted to study. Ms B replied the following day to say that at that point Ms M just wanted to study one GCSE and Ms B would monitor her to see how she was coping with a view to her picking up more subjects, if she was able, later on.
 42. In early February 2020 Provider Z contacted the Council to say that Ms B had contacted its staff expressing concerns that Ms M had still not started on her courses. Provider Z told the Council it had not heard from the Council since December but said it was including a new quote for Ms M to study one subject as Ms B had spoken to school about this when she called that day. Provider Z asked the Council to sign the quote document and said it would proceed to set up schooling for Ms M.
 43. Shortly after the Council resent an application for Ms M to start attending Provider Z immediately. The Council also told Ms B it was waiting for confirmation of the days she would attend so that mentoring could be put in place to provide Ms M with support on those days. Ms M started at the virtual school very shortly after. At the end of February the Council's SEN officer emailed Ms B to say she had provisionally arranged mentoring support for Ms M from Service A. Service A duly contacted Ms B in April 2020 to arrange a meeting with them.
 44. In mid-May Ms B contacted the Council to say that she had met with the mentor and they had talked about plans for Ms M's education and as a result she was asking for Ms M to start in Year 12 again from September 2020 as she had missed so much education since September 2019. In response the Council said it would arrange a review of the EHC Plan to discuss options for the future.
 45. An annual review meeting took place in May 2020. This named Ms M's education provision as Education Other Than At School (EOTAS) which was delivered in the form of the online provision from Provider Z. It confirms a personal budget had been provided to Ms B to pay the online provider. The review recommendations were that the EHC Plan was to be maintained and amended. The notes confirm that Ms M had recently begun to engage with the mentoring service and that a further course that Ms M had expressed an interest in would be explored. There is no mention of Ms B's request that Ms M be allowed to start her other course again given the amount of time lost in the 2019/20 academic year. We do note however that correspondence in August 2020 seems to suggest that this was agreed with three new course subjects (one of these was the same course as previously discussed) due to start in September with a view to exams taking place in Summer 2022.
 46. The Council has provided evidence that it wrote to Ms B in August 2020 stating it intended amending Ms M's EHC Plan and provided details of these proposed amendments. Ms B was invited to let the Council know if she disagreed with any

of the proposed amendments within 15 days. The amendments included naming the provision as Education Other Than At School (EOTAS).

47. I have seen no evidence of the final amended plan having been issued in final form following the 15 day consultation period. It follows therefore that I have not also seen evidence of Ms B being advised of her right of appeal to the SEN Tribunal about the description of needs on the Plan, the provision or the named provider in 2020.
48. In late September the Council contacted Provider Z to ask for a refund on the cost of two of the courses that Ms M had started. The Council said that Ms M had asked to withdraw from them and that she wanted to continue with a single GCSE course.
49. In October and November 2020 Service A told the Council that Ms M was no longer engaging with their service despite its efforts to work with her.

Conclusions

Was the Council at fault?

50. The Council should have identified a post-16 placement for Ms M by the end of March 2019. It did not do so and this is fault. The arrangements and planning for Ms M's post-16 education were confused and incomplete in the summer term in 2019. It failed to plan and take responsibility for ensuring a placement was in place that met Ms M's identified needs in her EHC plan. Ms M's background of poor attendance meant that planning for the transition into year 12 needed particularly careful and sensitive handling and there is no evidence that this happened. Our concerns are specifically:
 - the Council has not produced evidence it issued a final plan. Because of this, and combined with the other evidence of poor communication, it seems unlikely the final plan was issued. This is fault;
 - we recognise the Council consulted College Y in May 2019 but, though it said it could offer a place and offered a bespoke course for Ms M, the Council then failed to name the College in a final amended EHC Plan. This is fault. We do not accept the Council's assertion that it could not name the College because Ms M did not submit an application for the college herself. The Code specifically states this is not the correct process. Nor do we accept that the application and interview process was necessary to ensure the college was the right place for Ms M because the college had already agreed it would put together a bespoke course for her. The SEN Code says that in cases where a young person does not meet the entry requirements for their chosen course, or if they change their mind after 31 March, the Council should review the Plan with the young person to ensure new alternative options are agreed and new arrangements are made as far ahead as possible. This is what should have happened if it turned out later that Ms M did not meet the entry requirements for the courses identified as suitable by the college in May;
 - the Council argues it could not make arrangements for post-16 education for Ms M as she did not engage with its officers. But it is unable to provide any evidence of its contact with either Ms B or Ms M between March and September 2019 despite our specific request that it provide this. So, while it says it tried to agree a placement with Ms B and Ms M during this period, there is no evidence of this at all. The Council relies on a comment in an email from Service Q in September which states that Ms B and Ms M had been "MIA all

summer and resurfaced last week”. The Council appears to fundamentally misunderstand its responsibilities in taking this approach: the Council was required to name a post-16 placement (or a type of placement) for Ms M in a final EHC Plan by 31 March 2019 so any problems it may have had contacting the family over the summer should have been irrelevant to finding a placement for September. If Ms B was then unhappy with the placement it named she could have appealed. Instead no provision was named and this is fault;

- there does not seem to have been any proper consideration of the probable difficulty that Ms M would experience in relation to the transition to post-16 provision given she had been receiving online tuition for around two years before. While College Y did make reference to this there is no evidence the Council recognised it; and
 - as the Council cannot provide evidence that it issued a final EHC Plan in May nor any letter with it informing Ms M of her rights of appeal to the SEN Tribunal, we conclude that it did not issue a final amended Plan at that time. This denied her a right of appeal to the SEN Tribunal. This is fault. The same also appears to have happened in Summer 2020.
51. The arrangements to sort out provision for Ms M in the Autumn term were delayed repeatedly by the Council’s failure to take action in response to emails from Ms B, Service Q or Provider Z. The Council failed to take any effective control of making these arrangements. It was left to Ms B and Provider Z to chase the Council repeatedly to get any provision in place for Ms M. In failing to put in place provision from September the Council failed to meet its legal responsibilities to provide education for Ms M or make the SEN provision detailed in her EHC Plan. Specifically:
- no education or special needs provision was in place between September 2019 and February 2020. This means that Ms M was left without education or support for nearly five months. This undoubtedly affected her ability to start the course after such a long time and Ms B says it affected her mental wellbeing and we have no reason to doubt this was the case;
 - despite a placement being agreed with Provider Z in February 2020 the Council did not update the EHC Plan to reflect this until August 2020;
 - Provider Z was not in place from November contrary to what the Council stated in its response to Ms B’s complaint and in its response to our enquiries. It was not in place until February 2020;
 - the Council repeatedly failed to respond to Ms B’s requests to sort out a placement at Provider Z from September, which amounts to fault; and
 - there is no evidence the Council provided Provider Z with a copy of Ms M’s EHC Plan or that arrangements were made to meet the other provisions detailed in the EHC Plan including, for example, inclusion in social skills groups.
52. The Council’s record keeping was extremely poor, particularly in the period from March to September 2019, when there is no record of any communication from the Council to Ms B or Ms M. This was despite the Council claiming it attempted to engage with them during this period. This amounts to fault.
53. It seems clear that mentoring support was put in place for Ms M after she began to receive education in Spring 2020. But because this did not seem to be requested until the placement was agreed, it took another three months to begin.

The Council says it put mentoring in place in November 2019 and the mentor was part of the negotiation and support to help Ms M reach a decision. It seems clear however that it was going to be difficult for Ms M to catch up academically after she had missed around half the year of teaching. The delay in arranging the provision must have contributed to the consequent loss of education for Ms M for almost the entirety of that academic year.

54. It is clear that the Council initially told Ms B that she could ask for consideration of her complaint at stage 2 of the complaints procedure and that she did so. It altered its complaints procedure after her complaint was already in its system. We consider it not reasonable to refuse to consider her complaint under the process that was in place when she started. We accept that a response may have been delayed by the COVID-19 restrictions from late March 2020 but the refusal to consider ongoing complaints after a stage 2 had been requested amounts to fault.

Did the fault cause injustice?

55. Ms M missed out on any education and specialist SEN provision from September 2019 to February 2020. This seems likely to have also affected her ability to catch up during that academic year having missed so much. It effectively resulted in her missing out on a year of her education. This caused both Ms B and Ms M significant avoidable distress as well as denying Ms M the opportunity to progress educationally and socially. Ms B stated that Ms M had self-harmed and this was attributable to the anxiety caused by the ongoing failure to sort out her education. We have no reason to doubt the ongoing uncertainty and distress around her education contributed to her anxiety at that time.
56. The Council's repeated failure to respond to Ms B's requests to sort out a placement at Provider Z from September caused her injustice in the form of avoidable frustration and time and trouble.
57. The Council's refusal to consider Ms B's complaint at stage 2 meant she lost the opportunity to have her complaint considered under the procedure in place when she started her complaint and after she was invited to proceed to stage 2 if she was dissatisfied. This also caused avoidable frustration.
58. Were it not for the failure of the Council to properly complete the EHC Plan in Spring 2019, and its consequent failure to put provision in place for Ms M from September, Ms B would not have lost the tax credits to which she was entitled from September as Ms M would have still been in education. This caused Ms B injustice in the form of an actual loss of benefit and avoidable anxiety and distress.

Recommendations

59. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

In order to recognise the injustice caused to Ms B and Ms M the Council has agreed that it will, within one month of the date of the final report:

- apologise to both Ms B and Ms M for all the identified faults and the impact these have had on them both;
- make a payment to Ms M of £3000 to recognise the impact of having no educational or special educational support between September 2019 and

February 2020. The £3000 is calculated at a rate of £600 a month but does not include payment to cover around four weeks of school holiday periods at Christmas and half-terms breaks in October 2019 and February 2020. £600 is highest monthly payment we usually recommend to acknowledge the impact of loss of education and reflects the complete absence of any educational or special educational support for X over that period;

- make a further payment of £1000 to Ms M to recognise the avoidable distress, lost opportunity, uncertainty and anxiety the Council's poor handling of her educational and special needs during the period covered by this complaint;
 - pay Ms B £500 to recognise the avoidable frustration and time and trouble she was caused in having to repeatedly chase the council to arrange education for Ms M;
 - pay Ms B a further £100 to recognise the avoidable frustration caused by its refusal to complete its consideration of her complaint after offering to do so and before its complaints procedure changed;
 - pay Ms B the equivalent of the tax credits she lost upon Ms B providing the Council with evidence of the amount she lost;
 - pay Ms B a further £200 to recognise the avoidable anxiety and distress the additional financial worries resulting from the withdrawn tax credits caused her; and
 - make a payment of £200 to recognise the lost opportunity to appeal against the failure to name post-16 provision in the Summer term of 2019.
60. In order to ensure that similar faults do not occur in future the Council will, within three months of the date of the final report, provide us with evidence it has:
- reviewed its procedures regarding post-16 education arrangements for young people with EHC Plans to ensure that the transfer process is started in time to name a placement by the end of March in the year of transfer;
 - ensured its staff are adequately trained and understand the current processes around the transfer to post-16 education for children with EHC Plans;
 - ensured staff are aware that children do not have to apply for a place and that the Council must name a placement by 31 March of the year of transfer;
 - taken steps to improve its record keeping to address the administrative failures identified in this case. Specifically, it should keep adequate records of emails and phone calls and of all letters and EHC Plans issued and of parental responses. It should provide us with details of how it will achieve this; and
 - undertake an audit of its handling of all post-16 transition arrangements for children with an EHC Plan for the last two years and explain how many of these were completed and a final amended EHC Plan issued naming a post-16 placement by 31 March of the relevant year. If it is failing to achieve this it should let us have details of how it will remedy this.
61. The Council should also provide us with updated information about the educational and special needs support and provision it is making for Ms M and demonstrate this accords with her current EHC Plan.

Decision

62. We have completed our investigation into this complaint. There was fault by the Council which caused Ms B and Ms M injustice. The Council should take the action identified in paragraphs 59 to 61 to remedy that injustice.