

# Report

on an investigation into  
complaint no 11 002 689 against  
the London Borough of Haringey

**20 August 2012**

# Investigation into complaint no 11 002 689 against the London Borough of Haringey

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person.

## Key to names used

The complainant	the mother of a child with special educational needs
Child Y	the complainant's son
Mr Q	an educational psychologist
Ms H	the complainant's Member of Parliament

## **Report summary**

### **Education: Special Educational Needs**

The complainant requested that Child Y be assessed for a statement of special educational needs in April 2008. The Council did not issue the statement of special educational needs until May 2009. The complainant raised concerns about the delay and the provision being made for Child Y.

The investigation revealed that the Council had delayed unreasonably in issuing Child Y's statement of special educational needs. The Council had delayed in seeking information from professionals to help it assess Child Y. The Council also delayed in providing a laptop for Child Y's use as set out in his statement of special educational needs.

### **Finding**

Maladministration causing injustice.

### **Agreed remedy**

The Council has agreed to pay the complainant £994.60 to reimburse her for fees incurred in sending Child Y to the school named on his statement of special educational needs. In addition, the Council will pay the complainant £200 for the delay in making a laptop available for Child Y and apologise to Child Y for the faults identified. The Council will also review its procedures for carrying out assessments for children with special educational needs.



## Introduction

1. The complainant was concerned that the Council had not met its duties for her son, Child Y's special educational needs. In summary:
  - a. The complainant said the Council delayed unreasonably in issuing Child Y's first statement and unfairly attributed these delays to her. She did not believe the Council adhered to the timeframes set out in the Special Educational Needs Code of Practice 2001 (the Code);
  - b. The complainant did not believe the Council made suitable provision for Child Y as set out in his statement of special educational needs;
  - c. The complainant said the Council consistently ignored advice from professionals about Child Y's needs and failed to communicate effectively with her;
  - d. The complainant said the Council blamed her for Child Y's educational failures and pressured her to withdraw her appeal to the Special Educational Needs and Disability Tribunal (SEND);
  - e. During the hearing, the complainant said that an informal discussion took place and a start date at School E was agreed. However, she said the Council emailed her the Friday before the start date advising the placement would not start until after the Easter holidays; and
  - f. The SEND decision said that the use of a laptop should be provided for Child Y. However, the complainant said that this was not arranged by the Council for about nine months.
2. As part of the investigation, an officer of the Commission has:
  - considered evidence from both parties including written responses from the Council and complainant, detailed correspondence from the complainant and the SEND decision about Child Y's statement of special educational needs';
  - met with representatives from the Council and from one of the schools that Child Y attended.
  - considered relevant legislation, policies, procedures and guidance.

## Legal and administrative background

3. Actions taken by the Ombudsman and her officers are governed by the Local Government Act 1974 (the Act). The Act allows the Ombudsman to investigate complaints of administrative fault ('maladministration') and/or service failure

brought by or on behalf of individuals who claim to have suffered injustice. The Ombudsman considers whether the Council has acted reasonably, in accordance with the law, its own policies and accepted standards of local administration. Where there is evidence of maladministration, the Ombudsman considers whether any injustice has arisen and any appropriate remedy for that injustice.

4. The Education Act 1996 (the Education Act) says, at section 321, that local education authorities must identify children, where they are responsible, who have special educational needs. Section 323 sets out the obligations of the local authority when making an assessment of special educational needs. Section 313 says that the Secretary of State for Education shall issue and maintain a code of practice to give local authorities practical guidance about how to discharge their duties in respect of children with special educational needs.
5. Section 324 of the Education Act says that, where an assessment has been made and needs determined, the local authority must make and maintain a statement of special educational needs. This means that the local authority is responsible for making the provision set out in the statement.

### **The Special Educational Needs Code of Practice 2001**

6. The timeframes for issuing a statement of special educational needs are set out in chapters seven and eight of the Code. Paragraph 7.73 says that the period of time between the request for assessment and issuing a statement should normally be no longer than 26 weeks.
7. Paragraph 7.16 says that, where a local authority is deciding whether to make a statutory assessment, it must issue a notice under section 323(1) of the Education Act. Paragraph 7.29 says that the local authority must then decide whether or not to make an assessment under section 323 of the Education Act. Paragraph 7.68 of the Code allows six weeks for the local authority to make the decision whether to proceed with the assessment.
8. Paragraph 7.74 says that, where the local education authority decides to carry out an assessment, it should seek the relevant advice immediately, including consulting any persons the parents have named where this is reasonable. The local education authority should ask all concerned to respond within six weeks. Paragraph 7.75 says that, at this point, the local education authority must also inform parents that their child may be examined or assessed.
9. Paragraph 7.86 says that the local authority must decide whether it needs to make a statement within 10 weeks of serving the notice of the decision to assess.
10. The critical point, according to paragraph 7.90, is that parents must normally receive written notification of the outcome of the assessment within 12 weeks of the start of the statutory assessment. This incorporates two weeks from the decision date to draft the proposed statement. Paragraph 8.54 says that the

proposed statement, and any advice obtained in the course of the assessment, must be sent to the child's parents.

11. Paragraph 8.57 says that the local educational authority must normally issue the final statement within eight weeks from the date the proposed statement is issued.

### **The Education (Special Educational Needs) (England) (Consolidation) Regulations 2001**

12. There are exceptions to the above timeframes which are set out in The Education (Special Educational Needs) (England) (Consolidation) Regulations 2001.
13. Clause 12 of the Regulations sets out the six week timeframe and exceptions that apply where a local authority gives notice that it is considering whether to make an assessment.

### **Investigation**

14. Child Y has learning difficulties which the complainant describes as dyslexia. He also has auditory processing and behavioural difficulties and problems with his short-term memory.
15. Child Y attended Infant School B, where he was placed on School Action, mainly because of his behaviour. As his behaviour did not improve, he was placed on School Action Plus but did not respond positively. The complainant removed Child Y from School B in June 2004 following an incident where he physically attacked a teacher. Child Y was then enrolled at School R where he stayed until February 2008. However, he was still experiencing learning difficulties despite an improvement in his behaviour and his literacy levels were below that reasonably expected for a child of his age.
16. On 7 April 2008, the complainant wrote to the Council outlining Child Y's background and seeking a statutory assessment of Child Y's special educational needs. She also completed the Council's standard form for requesting an assessment on 24 April 2008. She explained that she was schooling Child Y at home as they had recently moved. I understand the Council then sought comments from School R which it received on 2 May 2008.
17. The Council wrote to the complainant on 2 June 2008 explaining that it considered it difficult to assess Child Y's needs while he was out of school. It asked which school she was considering. The letter concluded the request for an assessment should be reconsidered when Child Y was back in school and informed the complainant of her right to appeal to SEND if she disagreed with the decision. I understand the complainant had a telephone conversation with a Council officer the same day in which he offered her a meeting to discuss the situation. I also understand that Child Y began attending School N, a mainstream

school in Haringey, on 1 July 2008. The complainant met with the Council in response to its offer and advised that Child Y was now in mainstream schooling. The Council therefore decided to proceed with an assessment on 24 July 2008.

18. On 18 August 2008, the Council wrote to the complainant advising that it would carry out the assessment. The same day, the Council sent letters to the relevant professionals and bodies, including the complainant, seeking information to support the assessment.
19. The Council wrote to an independent agency (Agency W) on 20 November 2008 asking that it draft Child Y's statement. Agency W did so and sent the draft statement to the Council on 21 November 2008. The complainant received a copy of the draft on 1 December 2008 and provided comments on 9 December 2008. In the interim, the Council had arranged for an educational psychologist, Mr Q, to visit Child Y on 8 December 2008. However, the complainant refused to allow the visit to take place.
20. In her December letter, the complainant asked that an independent residential special school, School E, be named on Child Y's statement. She also expressed concern at the proposed level of support.
21. On 15 January 2009, Mr Q wrote to the complainant about an interview that had been scheduled with the complainant on 22 January 2009 to discuss Child Y's needs. The letter confirmed that a new assessment appointment would be arranged after the January meeting.
22. The Council confirmed this in a letter the following day. However, it said that this would delay the statement being issued within the 26 weeks as the final statement was due to be issued on the same day as the meeting.
23. The complainant wrote to the Council on 20 January 2009 explaining that she had refused Mr Q access to Child Y as she had expected the assessment would be carried out within 10 weeks from the date of the decision to assess. She also expressed concern the statement would be issued on the basis of the report by Mr Q and wanted to be given the opportunity to review the report. I understand that Mr Q assessed Child Y in early February 2009.
24. On 12 February 2009 the Council wrote to the complainant saying that it would not name School E on the statement as it believed that Child Y's needs could be met in a mainstream environment. It wrote again on 3 March 2009 saying that a second proposed statement would be issued for her comment, because of concerns she had about Mr Q's report. This was forwarded to the complainant for comment. I understand the complainant spoke to a Council Officer on 11 March 2009 and asked that a final statement be issued rather than a second proposed statement.



25. The Council wrote to the complainant on 14 May 2009 with the final statement. I understand the delay was because the Council decided that Mr Q needed to redraft his report before the statement could be issued. The report was sent to the complainant with the statement under cover of the May letter. However, it would appear that a different educational psychologist completed another report on 20 May 2009. It is unclear how this report was incorporated into the final statement that had already been issued.
26. The May 2009 statement included the following provision:
- One hour per week support from a specialist teacher to assist in developing individual programmes.
  - 20 hours per week teaching assistant support.
  - An individual education plan and access to structured numeracy and literacy programmes.
  - Various factors that needed to be considered for Child Y's practical, day to day support.
  - Monitoring for Child Y's numeracy, literacy, attention and social interaction skills.
27. On 3 June 2009 the complainant told the Council she would appeal the decision because she disagreed with the school named on the statement. It is unclear when exactly the complainant made her application to SEND. The complainant wrote to the Council to follow up on this letter on 17 June 2009 (although records suggest the Council did not receive this letter until 26 June 2009). She was also concerned the provision in the statement was not being made.
28. In July 2009, Child Y left School N to begin at the named school, School A, in September.
29. The complainant wrote to her member of parliament, Ms H, on 7 August 2009 seeking support in naming School E on Child Y's statement. The Council wrote to Ms H on 26 August 2009 explaining why it considered that Child Y's needs could be met in a mainstream setting. It said that it considered School A could make the provision necessary to meet Child Y's needs. The Council also pointed out several differences between the complainant's view and the information it had received from professionals who had assessed Child Y in terms of behavioural diagnoses.
30. The complainant contacted Ms H again on 11 September 2009 as she was not satisfied with the Council's response. She explained that Child Y had now been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) by an independent professional. She also explained that a hearing had been scheduled before

SEND and that she did not consider that Child Y's needs were being met at School A.

31. The Council responded to Ms H on 29 September 2009 saying that it considered the provision by School A was suitable. It asked that the complainant share the report containing the diagnosis of ADHD with it as soon as possible. The complainant said that she shared a copy of this diagnosis with both the Council and School A.
32. On 13 October 2009, the complainant attended a meeting at School A as Child Y had refused to follow instructions from staff and climbed a tree, refusing to come down. The purpose of the meeting was to discuss strategies for managing Child Y's behaviour. However, further problems arose in the week following the meeting and he was not allowed to attend a school trip as a result.
33. The complainant emailed School A on 12 November 2009 listing several alternatives for managing Child Y's behaviour. The School held another meeting on 16 November 2009. The November meeting was also attended by relevant professionals. The parties agreed at this meeting that Child Y would follow a part-time timetable.
34. On 20 November 2009, the complainant sought a meeting with the Council to discuss Child Y's placement and reports. Due to the conflicting availability of the attendees, the meeting was eventually scheduled for 22 January 2010. I also understand the complainant attended another meeting with School A on 21 January 2010 to discuss Child Y's progress.
35. The complainant emailed the Council following the meeting to express concerns at the inferences made that she had contributed to Child Y's problems. She commented about the provision that was being made. The Council responded to this email on 26 January 2010 saying that it perceived the meeting as being productive and would work towards putting an appropriate timetable in place at School A.
36. On 23 February 2010 the complainant's solicitors wrote to the Council asking it to reconsider its position that Child Y's needs could be met in a mainstream setting.
37. Child Y was excluded from School A on 11 February 2010 for a fixed period of 12 days. School A wrote to the complainant the same day explaining the alternative provision that would be in place. School A also said that it expected Child Y to attend school again from 9 March 2010. The complainant wrote to School A in response saying that she was concerned that the exclusion had occurred because the advice she had provided about managing Child Y's behaviour had been ignored.
38. The SEND hearing took place on 8 March 2010 and the Council agreed to name School E on Child Y's statement. The complainant said that she, the Council and

School E agreed that Child Y would attend from 16 March 2010. However, she said that she received an email on 12 March 2010 from the Council advising a start date at School E of 13 April 2010. The Council said that Child Y was to attend School A in the interim.

39. The complainant wrote to the Council on 15 March 2010 asking for an urgent response in relation to the start date. She explained her understanding that the date of 16 March 2010 had been agreed at the hearing. The Council disputed that the start date of 16 March 2010 had been agreed.
40. SEND issued its decision on 21 April 2010 explaining that it could not, save in very specific circumstances, specify a start date for a school named on a statement. Although it noted the Council must make the named provision within certain timeframes. I understand the complainant therefore took the decision to fund the beginning of the placement at School E privately at the cost of £1241.95. The SEND decision also said the statement should include providing a laptop for Child Y's use.
41. The statement as amended by the SEND hearing was issued on 5 May 2010. There was no specific provision for specialist teaching or teaching assistant support. However, the statement included many of the provisions set out in the May 2009 statement. The key difference was that it provided for a review every six months by an occupational therapist.
42. The complainant's solicitor wrote to the Council on 20 September 2010 expressing concern the laptop provision was not in place. I understand that the laptop was provided in January or February 2011.
43. The complainant approached the Ombudsman in October 2010 expressing concerns about her dealings with the Council over Child Y's special educational needs. However, as the complaint had not been formally addressed through the Council's complaints procedure, it was referred for consideration in November 2010. The Council sent the complainant its final response on 18 February 2011 following an independent review of the circumstances of the complaint. Unfortunately the placement at School E broke down on 29 March 2011 and Child Y was permanently excluded. He was transferred to a Pupil Support Centre.
45. Subsequently, an annual review of Child Y's statement took place. However, I understand the complainant is experiencing continuing issues with the Council in securing suitable provision for Child Y. She therefore approached this office again in May 2011.

## Conclusions

### ***Complaint a) The Council delayed unreasonably in issuing Child Y's first statement and unfairly attributed these delays to her. The complainant did not believe the Council adhered to the timeframes set out in the Code***

46. There are two distinct 'assessment' phases set out in the Code. The first stage is where the local authority decides whether it will assess the child for a statement of special educational needs (the decision stage). There is a six week timeframe for this. The second stage is where the local authority has made the decision to assess whether the child needs a statement and gathers the relevant information needed to make this decision. 10 weeks are allowed by the Code for this stage (the statutory assessment stage). If the local authority decides the child needs a statement, it should issue the proposed statement two weeks later and the final statement eight weeks after that.
47. The complainant made the request for assessment on 7 April 2008 and the Council received this letter on 11 April 2008. Following the receipt of the completed standard form, the matter was considered by a panel and it decided not to assess Child Y for a statement while he was out of school.
48. On 2 June 2008, the Council wrote to the complainant saying that it would not assess Child Y until he was in school again. The letter advised the complainant that she could appeal to SEND. This was a delay of one week over what was required by the code if the starting point was the date the request was received by the Council. Paragraph 7.69 of the Code says that, where a local authority decides not to assess a child, it must write to the parents and explain the reasons. If the parent disagrees with these reasons they may appeal to SEND. The complainant chose not to exercise this right of appeal.
49. When Child Y began attending school again, on 1 July 2008, the Council revisited the decision not to assess. On 24 July 2008, the Council decided to continue with an assessment of whether it would issue Child Y with a statement, finishing the decision stage. The decision stage was therefore completed within six weeks of when Child Y returned to school.
50. On 18 August 2008, the Council wrote to the relevant professionals seeking input and wrote to the complainant advising that it had done so. The Council said the delay between the decision stage and proceeding with the statutory assessment stage was due to the school holidays. It believed that the Code allows for this. However, the Code says that the local authority should seek advice immediately after the decision has been made. The Code says that at this point notice must be given to the parents that the child may be asked to attend an examination or assessment. The provision for delays in the Code and Regulations relates to the timeframes after the initial notice has been given that the local authority is deciding whether or not to assess. Presumably this exception is to allow for professionals who might be on holiday to provide advice. The Code and

Regulations do not allow for delays in communicating the decision and seeking advice once the decision has been made to proceed with the statutory assessment stage. I therefore consider the delay between 24 July and 18 August 2008 is evidence of fault. According to the Code, the Council should have sought advice and given the complainant notice immediately after making its decision on 24 July 2008. The fact that the Council did not proceed to seek advice until almost a month after it made the decision to assess, in my view, does not mean that the 10 week timeframe began on 18 August 2008.

51. In response to my officer's provisional view, the Council said that 24 July 2008 was the date it began its deliberations about whether to assess. It said that the decision to assess was not made until 18 August 2008. However, the Council's initial response to my officer's enquiries said that the decision to assess was made on 24 July 2008. This fact was also discussed between a council officer and my officer in a meeting following an initial provisional view and confirmed in another response from the Council dated 16 March 2012. In addition, the Council's own records of 24 July 2008 say '*Agree SA.*' I therefore do not accept the position that the Council now takes that the decision was made almost a month later.
52. Paragraph 7.86 of the Code says that the Council needed to make the decision whether Child Y needed a statement 10 weeks from 24 July 2008, the date at which it made the decision to proceed with the statutory assessment stage. The deadline for this, the statutory assessment stage, was 2 October 2008. However, the letter the Council sent to the complainant advising her that Child Y would be assessed says the proposed statement would be issued on 27 November 2008. This date appears to have been calculated on the basis that the request for the assessment was made on 24 July 2008 as 27 November 2008 is 18 weeks from that date.
53. Paragraph 7.90 of the Code says that parents must normally receive written notice of the outcome of the assessment within 12 weeks of the start of the statutory assessment. That is, 12 weeks from the date the decision is made to assess, in this case, 24 July 2008. This is a critical point according to the Code. Therefore, and in accordance with the table set out at paragraph 8.134 of the Code, the proposed assessment should have been issued by 16 October 2008.
54. It is unclear when the Council decided that it would issue a statement (ending the statutory assessment stage). However, the evidence suggests that it wrote to Company W on 20 November 2008, asking that Company W draft the proposed statement.
55. The proposed statement was issued by Company W on 21 November 2008, sent to the complainant on 27 November 2008 and received by her on 1 December 2008. The complainant provided her comments on the proposed statement on 9 December 2008.

56. The Council was under an obligation to issue the final statement eight weeks from when the proposed statement *should* have been issued on 16 October 2008, that is, 11 December 2008.
57. The Council says that it issued the proposed statement on 27 November 2008 without the input of an educational psychologist. It said that this was to meet the 18 week deadline (the period from the date of the request to the date the proposed statement was issued). However, the authority appears to have misunderstood the 10 week timeframe. In any event, 18 weeks from the date of the request (1 July 2008, when Child Y was placed in a school) is 4 November 2008. It therefore remains unclear how the Council calculated its timeframes.
58. It is also unclear why the input from an educational psychologist was delayed until 8 December 2008 as it appears the Council wrote seeking this advice on 18 August 2008. In my meeting with the Council, it explained the delay was due to the availability of the educational psychologist. It said the complainant would have been aware of this because the two would have communicated. However, I have seen no evidence, either from the complainant or the Council that might shed light on the circumstances surrounding the delay.
59. Child Y was assessed by Mr Q in early February 2009. However, the Council did not write to the complainant until 3 March 2009 offering her the option of reviewing a second proposed statement that would incorporate Mr Q's advice.
60. The statement was signed on the 14 May 2009.
61. I consider that there have been delays of over 20 weeks in issuing Child Y's statement and that this is evidence of fault. The delays consist of the following;
- 30 May to 2 June 2008 (one week) – the initial delay in communicating the first decision about the assessment – not to assess until Child Y was in school;
  - 24 July to 18 August 2008 (three and a half weeks) – the failure to immediately communicate the decision to proceed with the statutory assessment stage;
  - 16 October to 27 November (six weeks) – the delay in issuing the proposed statement; and
  - 11 December 2008 to 14 May 2009 (22 weeks) – the delay between when the final statement was supposed to be issued and when it was issued.
62. I consider there has been a cumulative delay of 23.5 weeks in issuing Child Y's statement and that this amounts to a breach of the Code. I accept that the issue of the educational psychologist's appointment has delayed the statement. However, I have not seen any evidence to justify why the appointment was

delayed until 8 December 2008 (two days before the final statement was supposed to be issued). There are exceptions to the timeframes set out in the Regulations that allow for school holidays and other circumstances, but the Council has not relied on any of these exceptions. Rather, it has said the educational psychologist did not have an available appointment earlier. Having reviewed the exceptions allowed by the Regulations, I do not consider the Council's explanation is reasonable without further evidence to explain why it was not possible to gather the information needed by 2 October 2008.

63. The Council believes the complainant should take some responsibility for the delay as she refused Mr Q access to Child Y. The Council accepts responsibility for the delay between 2 March and 14 May 2009.
64. I accept that the complainant is responsible for part of the delay because she refused the appointment. However, I consider that she is responsible for a period within which it could have been reasonably expected that the Council obtain the advice it needed. The Code suggests six weeks for obtaining advice from professionals for statements and I therefore consider the delay causing injustice is 23.5 minus six, 17.5 weeks.
65. For the Spring term of 2009, I understand that Child Y was receiving, at the very least, mainstream education. Further, the Council said that it put in place one hour of teaching and 13 hours of teaching assistant support from 2 February 2009 and that this support increased in April 2009. This was approximately seven hours less in teaching assistant support than was set out in the statement. Taking into account holidays, this amounted to about one term.
66. In addition, the complainant was prevented from appealing to SEND for this time. Ultimately, SEND did decide that School E should be named on the statement and it is entirely likely, in my view, that this decision could have been made earlier but for the delays caused. It is extremely difficult to quantify the injustice that Child Y suffered from the reduced hours of teaching support during the Spring term. However, I consider that, had the complainant appealed to SEND earlier, the decision to name School E would have likely been made earlier.

***Complaint b) The Council did not make suitable provision for Child Y as set out in his statement of special educational needs***

67. Child Y's statement as issued in May 2009 provided for daily access to a literacy programme and a structured numeracy programme. Specifically, the statement set out provision for one hour per week in support from a specialist teacher and 20 hours from a teaching assistant until the end of the summer term 2009.
68. At the time the statement was issued, the complainant appealed to SEND because of the decision not to name School E and other content of the statement. However, the Ombudsman is unable to investigate matters that have been

reviewed by SEND and this aspect of my investigation is therefore limited to whether the provision in the statement was being made.

69. I have seen correspondence between School N and the Council indicating that a teaching assistant was put in place for 20 hours each week. I have also seen evidence that Child Y would have had two other people working with him. However, the complainant wrote to the Council on 17 June 2009 to advise that Child Y no longer had access to a literacy programme. The Council has provided a copy of a letter sent to the complainant on 2 July 2009 advising that it was aware the relevant teacher had been on sick leave. However, that letter explained the teaching assistant had been working closely with the teacher previously. Therefore, the teaching assistant had continued to work with Child Y throughout this period. I am unable to conclude that Child Y did not have access to the relevant provision for this period.
70. The complainant has provided a record of the support that School A was providing. According to her records, there were days where Child Y received no support and others where he received support all day. However, there is no sign that Child Y was not receiving the number of hours' support to which he was entitled in terms of the statement. I am therefore unable to accept the provision was not being arranged appropriately. However, it appears that Child Y's behaviour began once again to decline and he began to refuse to attend school. The minutes from the meeting the complainant attended on 16 November 2009 show the provision was discussed, but the concerns raised were mainly around Child Y's behaviour. Following this meeting I understand that Child Y began attending School A on a part-time basis only, this was intended to be a temporary arrangement.
71. The complainant attended another meeting with School A on 21 January 2010 to discuss Child Y's reintegration into school. A reintegration plan was agreed to start on 25 January 2010. However, I understand that Child Y's behaviour again declined and he was given a fixed-term exclusion of 12 days on 11 February 2010.
72. The complainant wrote to School A on 18 February 2010 expressing concerns about how it had dealt with Child Y's challenging behaviour. The statement, in relation to Child Y's behaviour, said that a behaviour support plan should be in place and that his behaviour should be closely monitored. I have seen a copy of the behaviour plan that was in place and a report showing that School A monitored and acted on Child Y's behaviour.
73. The Council said that Child Y had access to a well known literacy programme (which I understand had been put in place in primary school) through his weekly sessions with the specialist teacher. This arrangement appears to have been confirmed in the minutes of the professionals' meeting that was held on 16 November 2009. Those minutes suggest that School A intended to set up extra sessions over and above what he was receiving. Further, the Council has



provided at least one report of literacy intervention for Child Y which indicated the literacy intervention had improved Child Y's literacy levels. I therefore consider that there is evidence to demonstrate that Child Y had access to a literacy programme.

74. In relation to the numeracy programme, I have seen evidence that Child Y received '3 x 20 min numeracy sessions' (which the Council says was each week) from July 2009. I have also seen evidence that Child Y was receiving one to one sessions at School A in maths. I am therefore unable to conclude that Child Y was not receiving access to a numeracy programme.
75. It is therefore my view that the provision was being made once the statement was in place.

***Complaint c) The Council consistently ignored advice from professionals about Child Y's needs and failed to communicate effectively with the complainant***

76. The complainant obtained independent reports from professionals and provided these to the Council in an attempt to have the statement altered to reflect what she considered to be appropriate provision for Child Y.
77. In my view, the evidence to which this aspect of the complaint relates was relevant largely in terms of the type of provision that should be included in the statement. This is an issue for consideration by SEND and, based on the decision I have reviewed, was considered by SEND. I do not consider this aspect of the complaint a matter for the Ombudsman.

***Complaint d) The Council blamed the complainant for Child Y's educational failures and pressured her to withdraw her appeal to SEND***

78. The complainant said that Council officers blamed her for Child Y's educational failures and pressured her to withdraw her appeal to SEND.
79. Following the meeting on 21 January 2010, the complainant wrote to School A expressing her concern at what she said were 'explicit statements' that her appeal to SEND was '*...causing [Child Y] to suffer educational and emotional hardship.*' I have reviewed the minutes of this meeting which are brief. The only reference to this issue in the minutes is the statement is where the group discussed Child Y's '*...feelings regarding the tribunal and the possible move to residential placement.*'
80. The Council, in its response to my enquiry letter, refuted the suggestion that it had pressured the complainant to withdraw her appeal to SEND.
81. In the circumstances, it does not appear possible to establish what was said about the SEND appeal and in relation to Child Y's educational difficulties. Further investigation, in my view, is unlikely to resolve this issue.

***Complaint e) During the hearing, the complainant said that an informal discussion took place and a start date at School E was agreed. However, she said the Council emailed her the Friday before the start date advising the placement would not start until after the Easter holidays.***

82. I consider it unlikely that further investigation is likely to establish whether a start date was agreed informally at the hearing. The Council clearly disputes this while the complainant is adamant that it agreed a date. From the correspondence I have seen between the Council and the complainant, this issue has been a point of disagreement since the hearing.

***Complaint f) The SEND decision said that the use of a laptop should be provided for Child Y. However, the complainant said that this was not arranged by the Council for about nine months.***

83. The complainant said that the Council did not provide a laptop until nine months after the SEND decision.

84. The Council said that it was not aware that School A had not put in place the provision until the complainant alerted it to this fact in September 2010.

85. The Council has an obligation to maintain statements under section 324 of the Education Act. This confirms that it was the Council's responsibility to put this provision in place.

86. It is my view that the Council cannot be held entirely responsible for the delay in providing the laptop. However, I also consider that the Council should have arranged the provision once it was made aware that School A had failed to provide the laptop and software. I consider that the five month delay in making the provision available, once it was put on notice, is evidence of fault.

## **Injustice**

87. The faults identified in paragraphs 61, 62, 66 and 86 above, are maladministration causing injustice. The complainant was denied an opportunity to appeal to SEND sooner and Child Y's provision was delayed.

## **Recommendation**

88. The Ombudsman recommended that the Council should;

- pay the complainant £994.60 to reimburse her for fees she paid for sending Child Y to the school named on his statement of special educational needs. The complainant funded the placement herself from 16 March 2010 until the end of that term, a total of seven days;

- pay the complainant £200 for the delay in making a laptop available for Child Y to compensate Child Y for the support that was unavailable during this period;
- apologise to Child Y for the faults identified; and
- review its policy on assessing children for special educational needs so it will comply with the timeframes set out in the Code in future.

89. The Council has agreed the recommended remedy.

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**20 August 2012**