

# SET UP TO FAIL?

**SEND Complaints and the Local  
Government and Social Care Ombudsman**



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**PUBLISHED:** MARCH 2026

**Design:** [whitecreativecompany.co.uk](http://whitecreativecompany.co.uk)

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# Executive summary

This study examined the impact of the Local Government and Social Care Ombudsman (LGSCO) on English local authorities that deliver SEND (special educational needs and disability) services. More specifically, the research considered how councils respond to the service improvement recommendations issued by the LGSCO and their usefulness and effectiveness.

The LGSCO investigates SEND complaints, including, for instance, delays by councils in undertaking Education, Health Care assessments and the failure to ensure provision of required educational support. The LGSCO can recommend financial payments, for example for time out of education and the lack of educational provision. It also recommends service improvements to local authorities.

The role of the LGSCO needs to be distinguished from that of the SEND Tribunal. The Tribunal decides appeals against, for instance, the refusal of a local authority to undertake an Education, Health and Care assessment, a refusal to issue an Education, Health and Care Plan, and decisions concerning the appropriate educational setting or placement for a child or young person. By contrast, the LGSCO does not decide appeals, but investigates complaints concerning the administration of SEND, such as delays and the failure to secure provision.

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When the LGSCO investigates complaints and finds a service fault by a council that has caused injustice, it often issues service improvement recommendations as to how councils could improve their services to prevent the same faults from recurring. These recommendations are intended to benefit a wider range of people who use the service concerned.

However, there is a lack of knowledge and understanding as to how councils respond to these recommendations and their impact. Therefore, the objective of this project was to provide an evidence-based understanding of how councils respond to the LGSCO's service improvement recommendations. The research aimed to develop the evidence around the nature of the faults identified, their underlying causes, and how councils could use this learning to improve their SEND provision. This is the first study to investigate these issues, and it presents new empirical data on these matters.

## RESEARCH METHODS

Data was collected from 27 interviews with SEND officers from 21 English local authorities, representing 14 per cent of local authorities with SEND responsibilities and two Integrated Care Boards (ICBs). Interviewees included Directors of Children's Services, senior SEND officers and team leaders, complaints staff and ICB staff. All the officials interviewed had experience of working in SEND services. Data was also collected from a sample of LGSCO investigations and other quantitative data supplied by the LGSCO. The research was supported by an expert advisory group comprising SEND experts, academics and the LGSCO.

## KEY FINDINGS

The SEND system is experiencing acute challenges. It is often described as being in crisis due to demand exceeding available resources. This pervasive feature conditions how councils deliver their SEND services, the faults that arise and how they respond to the LGSCO's service improvement recommendations.

Common faults in SEND delivery include delays in Education, Health and Care Plan (EHCP) assessments and not securing the provision of educational support. SEND now accounts for a quarter of all complaints to the LGSCO, the vast majority of which are upheld. The LGSCO has also increased the number of service improvement recommendations it issues to councils. These recommendations emanate from the LGSCO's investigations. Although the LGSCO issues a range of different recommendations, the principal matters concern councils complying with the timescales for completing EHCP assessments and annual reviews, and the provision of SEND support by schools.

recommendations, the priority given to them and the resources available to councils. Senior council officers emphasised the ability of the LGSCO to highlight gaps and problems they were unaware of and for prompting councils to take quicker action to address problems. Officers also explained that criticism from the LGSCO can strengthen their hand within their council by providing political lever to argue for more resources for their SEND service.

All of this takes place against the background of the well-documented crisis in the SEND system. Many of these problems are beyond the capacity and capability of councils to address and resolve by themselves. Council officers noted that other service improvement recommendations from the LGSCO do have a positive effect. They also recognised that personal interactions with the LGSCO are important in enabling council officials to better understand the LGSCO's perspective and requirements.

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Council officers recognised the importance of the LGSCO's role. They valued its independence and the need for its scrutiny of councils. They emphasised that the ability of councils to respond constructively to many service improvement recommendations often depends on national issues, in particular limited resources and the national shortage of educational psychologists. The general view amongst councils was that they had been 'set up to fail' by central government owing to the national challenges in SEND.

The impact of the LGSCO's service improvement recommendations varies depending on a range of factors, including the character and nature of those

Councils also highlighted some negative aspects of LGSCO investigations, including the amount of officer time taken up dealing with LGSCO investigations, the time lag between the complaint and the final outcome of LGSCO investigations, and the repetitive nature of some service improvement recommendations – such as the timeliness of EHCP assessments – thereby highlighting problems that councils are aware of but often unable to address.

Councils raised other concerns, such as the LGSCO not appreciating the difficulties councils operate under due to wider national pressures in the SEND system, a perceived inconsistency of approach by LGSCO investigators when considering complaints and recommending

financial remedies, and concerns relating to financial remedies – principally the level of such payments and not knowing whether these are used to benefit the children concerned.

The research identified a significant gap in the LGSCO's jurisdiction owing to its outdated statutory framework. It can only investigate complaints against councils, not schools. But schools are responsible for delivering SEND provision. Families must then complain to the LGSCO against councils, which are legally responsible. However, councils have few levers to ensure schools deliver provision. This was highlighted by council officers as a major gap in the LGSCO's role. The LGSCO has similarly argued that its role should be extended to enable it to investigate complaints against schools, thereby allowing it to issue SEND service improvement recommendations directly to schools.

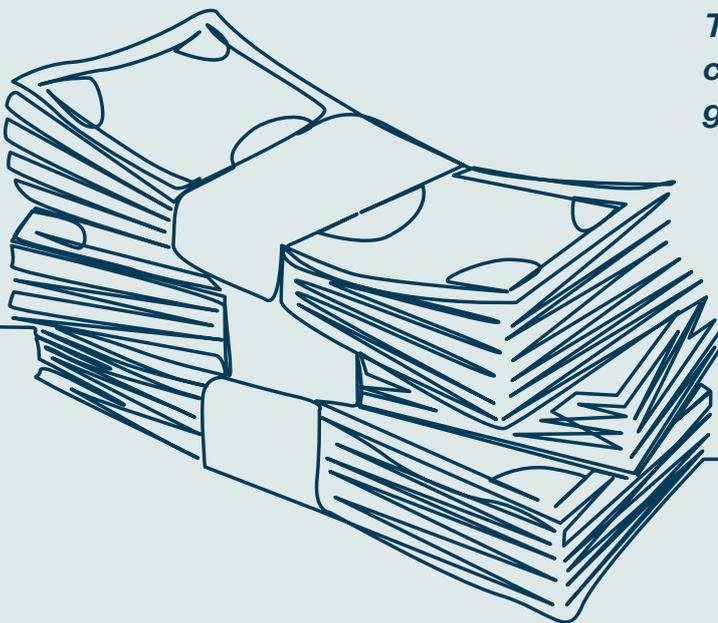
The LGSCO undertakes joint investigations with the Parliamentary and Health Service Ombudsman (PHSO) into complaints against health bodies (such as Integrated Care Boards and hospital trusts) not delivering effective SEND services. Such investigations are impactful, although there has only been a small number to date – most likely due to a lack of public awareness about this complaint route.

In addition to routine 'statements', the LGSCO also issues public reports for consideration by a council committee. Public reports typically concern more systemic faults and include accompanying wider-ranging service improvement recommendations. They receive more publicity and scrutiny than ordinary LGSCO statements. Some councils prefer to avoid a public report owing to the potential reputational damage and adverse publicity.

It is difficult to say whether or not service improvements contained in a public report are necessarily implemented more quickly or effectively than would otherwise be the case. There is evidence pointing both ways. At the same time, public reports clearly bring more systemic problems to the attention of councillors, thereby raising their profile within the council and potentially exerting greater impact. Councils take account of the LGSCO's public reports.

Councils also raised concerns about the LGSCO's financial payments. Such concerns included the levels of financial payments (paid for from SEND budgets), how the financial payments are used and councils not knowing whether they are used to benefit the children and young people concerned.

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## IMPLICATIONS AND RECOMMENDATIONS

These findings have important implications for the LGSCO, the Department for Education, local government, the Department of Health and Social Care and NHS bodies. They confirm that good administration really matters and that an effective SEND system needs to be better funded so that it can be administered more effectively.

Many problems identified by the LGSCO arise as a result of inadequate funding and staffing of the SEND system, as well as national issues such as the shortage of educational psychologists. The same pressures condition how councils respond to the LGSCO's service improvement recommendations. Despite these challenges, the findings demonstrate that the LGSCO does exert impact and that its service improvement recommendations have real value. The findings also highlight the potential for various reforms, listed below, to have positive effects.

**“ Despite these challenges, the findings demonstrate that the LGSCO does exert impact and that its service improvement recommendations have real value. The findings also highlight the potential for various reforms, listed below, to have positive effects.**

1. The LGSCO's remit could be extended, enabling it could investigate complaints against schools. This would strengthen accountability, provide families with a clearer route to redress, and help ensure that statutory responsibilities are met consistently across the system. It would also enable the LGSCO to issue service improvement recommendations to schools. Without this change, serious shortcomings in support will continue to go unaddressed.
2. Better publicity of the joint investigations undertaken by the LGSCO and the PHSO concerning the performance of health bodies in SEND delivery. The small number of such investigations to date suggest that there is a low public awareness of this complaint route. Greater awareness could both enhance redress for families and provide the vehicle by which the LGSCO could issue service improvement recommendations.
3. More personal interactions between the LGSCO and councils, allowing for a better understanding.
4. The LGSCO is currently reviewing its overall approach to financial remedies and the research findings have been fed into that review.
5. The research highlights the importance of government taking account of redress when redesigning the system. For instance, the SEND system is likely to place greater emphasis on children being in mainstream educational settings. This reinforces the need to consider extending the LGSCO's jurisdiction to include complaints against schools.
6. The LGSCO could consider producing an updated Focus Report to provide guidance on SEND. This report could collect together its principal findings and service improvement recommendations on SEND over recent years, highlighting learning for councils and the principal qualities of an effective SEND system. The LGSCO could also reissue its suggested scrutiny questions for councillors. Overall, these reforms could enhance current arrangements.

# 1 Project objectives and research methods

The principal objective of the project was to examine how local authorities that deliver SEND services respond to the service improvement recommendations issued by the LGSCO and the usefulness of these recommendations in terms of improving councils' SEND services.

The number of SEND complaints and service improvement recommendations issued have increased over recent years. There is a high rate of formal compliance by councils in accepting the LGSCO's service improvement recommendations and the LGSCO checks compliance with them. However, there is little knowledge and understanding concerning how councils respond to the LGSCO's service improvement recommendations, their usefulness and effectiveness, their wider and longer-term impact and influence on councils and how this could be enhanced and improved. These issues are both important and acute in SEND owing to the number of complaints and the significant levels of fault and public dissatisfaction.

This project examined the following questions:

1. **What are the challenges for councils in delivering SEND services? What faults occur? How are they addressed?**
2. **What is the impact of the LGSCO in prompting councils to improve their SEND services?**
3. **How do councils react to LGSCO reports and in particular its service improvement recommendations? And how might the Ombudsman's impact be enhanced?**
4. **To what extent could current arrangements be enhanced?**

The research is important for various reasons. It provides the LGSCO with valuable insights about how councils respond to its service improvement recommendations, and the pressures and forces councils are subject to. It sheds light on the perspectives and experiences of council officers who administer SEND and the challenges they experience.

The research identifies areas where the role and impact of the LGSCO could be enhanced, especially with regard to extending its remit to investigate complaints against schools around the implementation of provision to children and young people. The research has also fed into the LGSCO's review of its financial remedies. The research also provides important insights concerning the impact of the LGSCO upon councils in terms of councils' initial complaint-handling, the LGSCO's service improvement recommendations and recommended financial remedies.

To investigate the above questions, data was collected as follows:

1. **Conducting 27 interviews with council officers from 21 English local authorities, which represents 14 per cent of all English local authorities with SEND responsibilities.**
  2. **A case-file analysis of 70 LGSCO SEND investigation reports, which included**
  3. **Analysis of other data supplied by the LGSCO. More detail is provided in [appendix 1](#).**
- both statements and public reports; the latter's consideration by a council scrutiny committee and the councils' accompanying responses.**

# 2 The SEND system and the LGSCO

The role of the LGSCO and how councils respond to it can only be understood within the wider context of the SEND system and its challenges. The current system was introduced by the Children and Families Act 2014. Its purpose is to identify the needs of children and young people and to provide them with the educational, health and care support they require. The 2014 Act and the accompanying Code of Practice detail the duties, policies and procedures relating to SEND, including the system of needs assessments and annual reviews undertaken and managed by councils. Councils are under a statutory duty to secure delivery of the provision required. The system also involves collaboration with other public bodies, such as schools and health bodies.

The Children and Families Act 2014 was welcomed at the time, although its implementation has been badly hampered by “poor administration and a challenging funding environment in which local authorities and schools have lacked the ability to make transformative change”.<sup>1</sup> The SEND system is now often described as “broken” and in crisis.<sup>2</sup> The pressure arises from the imbalance between the resources available and the increased demand for SEND services. Between 2015 and 2024, there was a 140 per cent increase in the number of children with an Education, Health and Care Plan (EHCP), from 240,000 to 576,000. According to Ofsted, there is “a fundamental mismatch between the scale

of demand and the level of resource”.<sup>3</sup>

SEND is a resource-dependent service. Total spending on SEND was £12bn in 2024-25 – an increase of 66 per cent over the last decade. It is envisaged that the costs are likely to increase by an extra £3bn a year by 2029 if the system is not reformed.<sup>4</sup> As demand has increased, the situation has become more acute. Some councils are at risk of insolvency owing to SEND costs alongside other uncontrollable pressures such as adult social care.<sup>5</sup> The Department for Education published its white paper on SEND reform in February 2026.<sup>6</sup> It has also placed greater emphasis on increasing specialist provision in mainstream educational settings.<sup>7</sup>

Another important aspect of SEND is that it is based upon collaboration and partnership between different public bodies, including councils, schools, social care and health services (eg hospital trusts and Integrated Care Boards). The Department for Education has policy responsibility for SEND, while Ofsted and the Care Quality Commission inspect SEND delivery.

Families experiencing problems are able to seek redress by complaining to their council and, if dissatisfied, escalate their complaint to the LGSCO, which can investigate maladministration and service failure. A high proportion of SEND complaints are upheld by the LGSCO. Complaints cover a wide range

- 1 House of Commons Education Committee, *Special Educational Needs and Disabilities* (HC 20, 2019) 3.
- 2 House of Commons Education Committee, *Solving the SEND Crisis* (HC 492 2024–25); Ofsted, *Annual Report 2024/25* (2025) 5.
- 3 Ofsted, *Annual Report 2023/24* (2024) 27. See also Institute for Fiscal Studies, *System for Funding Special Educational Needs is Broken* (2024).
- 4 L Sibieta and D Snape, ‘England’s SEND crisis: costs, challenges and the case for reform’, *Institute for Fiscal Studies*, <https://ifs.org.uk/articles/englands-send-crisis-costs-challenges-and-case-reform> (3 October 2025); ‘Reform SEND system now or face billions in extra costs, ministers warned’ *BBC News* (3 October 2025).
- 5 ‘Nearly 20 councils in England “at risk of insolvency” due to SEND costs’ *The Guardian* (30 March 2025).
- 6 Department for Education, *SEND Reform: Putting Children and Young People First* (CP 1509, 2026).
- 7 Department for Education, ‘£3bn investment to end postcode lottery for children with SEND’ (11 December 2025), <https://www.gov.uk/government/news/3bn-investment-to-end-postcode-lottery-for-children-with-send>

of problems experienced by families, typically including delays in EHCP assessments and annual reviews, and failure in delivery of the provision detailed in an EHCP. The key underlying cause is often one of system failure.

Many complaints are resolved on a one-off basis. The LGSCO finds fault and recommends a personal remedy for the injustice caused, such as an apology and a financial payment, and recommends corrective action. The LGSCO also often issues service improvement recommendations to the council concerned in order to highlight what actions it needs to take to prevent the same problem from recurring. Often, the investigation of one complaint identifies wider problems within the overall system that will affect other people, but who may not complain. The LGSCO therefore issues service improvement recommendations to enable councils to learn from complaints and to highlight how they could improve their services.

## THE SEND PROCESS

Families must apply for SEND provision. Councils must decide whether to undertake an Education, Health and Care (EHC) needs assessment within six weeks of receiving a

parental request. The overall EHCP process, which includes councils seeking professional advice from educational psychologists, should take up to 20 weeks from the request date. If an EHCP is issued, the council is legally required to ensure that the child or young person receives the stated provision.

Councils must also arrange for annual review of an EHCP to make sure it is up to date. Where the council proposes to amend an EHCP, it must send the child's parent or the young person a copy of the existing (non-amended) Plan and an accompanying notice providing details of the proposed amendments, including copies of any evidence to support the proposed changes. This should happen within four weeks of the date of the review meeting. The final EHCP must be issued as soon as practicable and within a further eight weeks of an amendment notice. The SEND duties placed upon councils are mandatory and non-delegable duties. Councils must fulfil these duties and sufficient funding must be available to discharge them.

The overall SEND system is large, and comprises a collection of many local SEND systems. To illustrate its size, consider the following data from Surrey County Council for 2024-25.<sup>8</sup>

## SEND DATA FROM SURREY COUNTY COUNCIL FOR 2024-25

### **16,000 CHILDREN WITH EHCPs**

One of the highest numbers in the country. The council also supports over 25,000 other children with additional educational needs or disabilities in schools.

### **16,207 EHCPs MAINTAINED** as of the end of March 2025.

### **3,270 NEW ASSESSMENT REQUESTS**

This figure for Education, Health and Care (EHC) Needs

Assessments reflects the continuing high demand for formal assessment to identify and meet individual pupil needs.

### **2,488 NEW EHCPs ISSUED**

This indicates the additional number of pupils who received a legally binding plan to support their education, health and care needs.

### **16,480 EHCPs CURRENTLY OPEN**

This represents an increase

of over 10 per cent from the previous year and a continued year-on-year increase therefore in the ongoing support managed by education, health and social care providers.

### **21,101 STUDENTS WITHOUT AN EHCP REQUIRING SEN SUPPORT**

As recorded in the School Census (maintained schools only) in January 2025 – a slight increase from 21,044 students identified in January 2024.

<sup>8</sup> Surrey County Council Audit and Governance Committee, *Annual Complaints Performance Report 2024-25* (17 September 2025).

# 3 SEND complaints and the LGSCO

Many families experience problems with the SEND system. The most prominent and recurrent faults include:

- › delays in completing EHCP needs assessments and issuing a final EHCP
- › failure to secure provision once an EHCP has been finalised
- › failures to meet target dates for key stage transfers
- › failures and/or delays in completing annual reviews or issuing decisions to maintain, amend or cease to maintain a plan following reviews
- › children without a school place, or out of school with no alternative education or SEND provision arranged.

Complaints about SEND services can be escalated via a tiered system, with initial complaints made to the local authority (which comprises a two-stage process) and then escalated to the LGSCO.

No national data exists on the number of SEND complaints handled by councils. However, data is available for complaints to the LGSCO. In 2023-24, the LGSCO investigated 980 SEND complaints and 1,318 in 2024-25. In 2023-24, SEND accounted for 26 per cent of all complaints received by the LGSCO and 42 per cent of all upheld complaints. The LGSCO found fault in 92 per cent of the complaints investigated.<sup>9</sup> In 2024-25, Education & Children's complaints, in particular SEND complaints, accounted for up 27 per cent of cases received during the year. The LGSCO found fault in 91 per cent of complaints.<sup>10</sup>

The number of SEND complaints to the LGSCO varies between councils. Figure 1 shows the number of SEND complaints to the LGSCO by council for 2024-25.<sup>11</sup> The numbers of complaints fluctuate from one year to the next.

Note: a high number of decisions were upheld against Essex County Council in 2024-25. Most were SEND assessments and reviews decisions that were predominantly upheld at the LGSCO's assessment stage. None of these have service improvement recommendations. For a typical example, see: <https://www.lgo.org.uk/decisions/education/special-educational-needs/24-004-247>

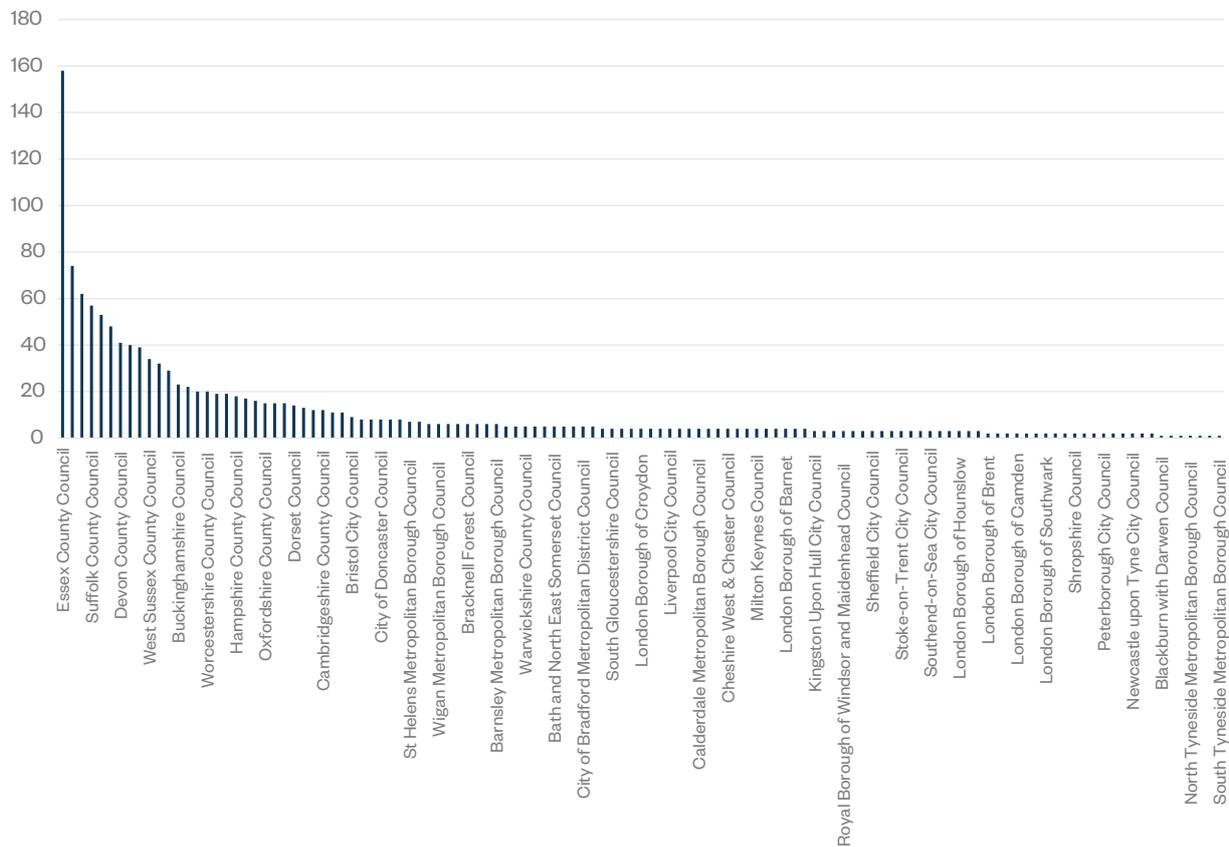
<sup>9</sup> LGSCO, *Local Government and Social Care in 2024 and Beyond: Time to Rebuild. Triennial Review by the Local Government and Social Care Ombudsman and Commission for Local Administration in England (2024)* 7.

<sup>10</sup> LGSCO, *Annual Review of Local Government Complaints 2024-25 (2025)* 1.

<sup>11</sup> LGSCO data.

FIGURE 1:

LGSCO SEND complaints, 2024-25



The LGSCO's service improvement recommendations are conditioned by the types of faults it finds. Similar faults arise across many local authorities, and the majority of 'standard' service improvement recommendations concern matters such as:

- councils ensuring they comply with the timescales for the EHCP needs assessments and annual reviews
- ensuring parents are kept appropriately informed about the progress of EHCP assessments and annual reviews and any amendments
- staff training and councils having to remind staff of the need to follow the SEND code of practice
- councils reminding staff of the council's duties to arrange alternative education under section 19 of the Education Act 1996
- ensuring that schools deliver the special educational needs provision set out in EHC plans
- producing an action plan to deal with delays.

Categorising these recommendations further is difficult, as they both vary and overlap with each other (see [appendix 3](#)).

The LGSCO also issues a smaller number of more 'systemic' service improvement recommendations, typically through its public reports, which must be considered by a council committee. For instance, when the LGSCO found huge backlogs and delays by councils in undertaking annual reviews of EHCPs, it recommended that the council produce an action plan

detailing the steps it would take to ensure that it could meet its statutory timescales.<sup>12</sup> The LGSCO also recommended what an action plan should involve and that it be subject to oversight by the relevant council committee.

Other examples of more systemic service improvement recommendations include a council introducing or revising a policy to ensure it complies with statutory responsibilities or that it deals with a backlog of complaints.<sup>13</sup> For more detail and examples of public reports, see [appendix 2](#).

The LGSCO's approach is usually to put the focus on the council to come up with a solution to the fault identified. The LGSCO identifies the problem (e.g. delay) and then invites the council to solve it. The LGSCO does not generally design solutions itself as its expertise lies in administrative justice, not SEND. However, the LGSCO issues service improvement recommendations to councils to try to prevent the repetitive cycles of injustice arising from faulty administration.

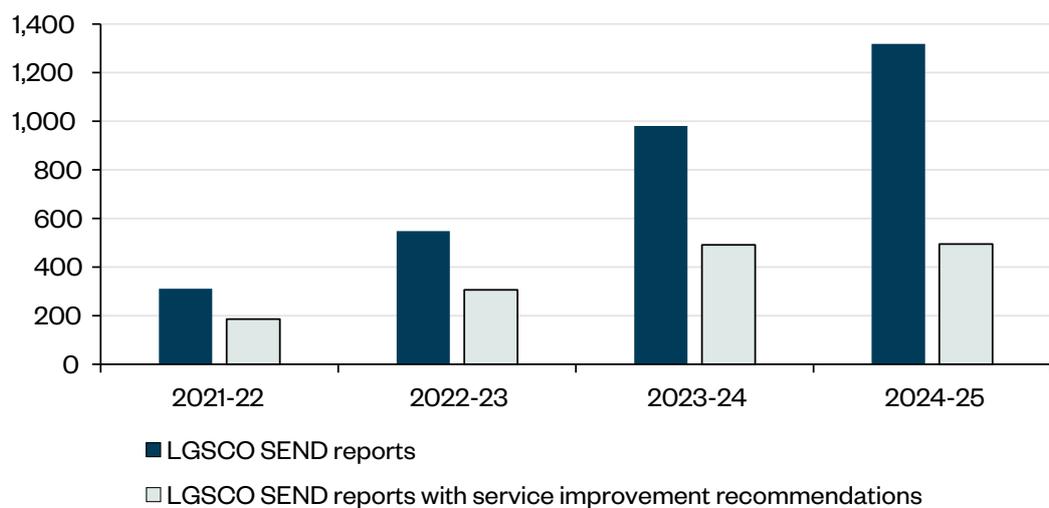
In short, good administration matters. Not following good administration can have significant harmful consequences for children,

young people and their families who rely on councils and other bodies to administer and deliver SEND services effectively. The LGSCO therefore seeks not just to find and criticise maladministration, but also to recommend ways of improving services and thereby promote adherence to good administration.

The number of service improvement recommendations issued by the LGSCO has increased over recent years. In 2021-22, the LGSCO investigated 311 SEND complaints and issued 186 service improvement recommendations. In 2024-25, the LGSCO investigated 1,318 complaints and issued 495 service improvement recommendations. Many LGSCO investigations result in more than one service improvement recommendation. Figure 2 shows the number of LGSCO SEND reports and those with service improvement recommendations for the period 2021-25.<sup>14</sup>

The LGSCO monitors compliance with the agreed actions that come out of service improvements. If the LGSCO recommends that a council review its EHCPs within three months, it will check with the council whether or not this has

**FIGURE 2:**  
LGSCO SEND investigations and service improvement recommendations, 2021-2025



12 LGSCO, Tameside Metropolitan Borough Council (24 000 621); Stockton-on-Tees Borough Council (24 013 122); Leeds City Council (24 010 011); Rochdale Metropolitan Borough Council (24 010 066).

13 See, eg, Kent County Council (22 003 403).

14 Source: LGSCO data

happened. However, the LGSCO lacks capacity to consider the issue of the longer-term impact of service improvement recommendations and what difference they make over more extended timescales. This research fills that gap by providing data and evidence in this respect.

An important issue concerns the volume of complaints escalated to the LGSCO. This depends upon a range of variables: the quality of a council's SEND services, the propensity of affected people to complain, which complaints are resolved through the council's own complaint-handling and which are escalated to the LGSCO, which complaints the LGSCO takes up for detailed investigations and their outcomes.

Complaints are affected by the number and size of the public bodies concerned. Around 152 local authorities are engaged in SEND delivery – some with larger populations than others. All things being equal, a low number of complaints may indicate that a council's services are performing relatively adequately and, conversely, a high number of complaints may suggest that a council is failing.

However, this is not always the case. People may not escalate their complaint to the LGSCO due to social and demographic factors. Some families may have greater social capital and confidence than those from lower socio-economic backgrounds. SEND services are not necessarily equally available to all sections of society owing to such factors. Some families may not know about SEND and therefore may not apply for it. Others might lack the ability and confidence to complain. On the other hand, some council officers noted increasing demands from some parents for expensive provision, including one-to-one tutoring, independent private schooling and shooting lessons. Some councils may receive more complaints – and also more receive service improvement recommendations – than others.

Under its section 26D power, if, when investigating a complaint, the LGSCO finds that that other

people may be experiencing similar problems, then it can investigate the general problem even though other people experience similar problems. For instance, in 2023-24, Rochdale Metropolitan Borough Council received 54 complaints to the LGSCO, almost all of which concerned the delivery, reviews, delays or communication relating to the EHCP. In one investigation, the LGSCO uncovered other families who had experienced similar delays but had not complained to the LGSCO.<sup>15</sup> Using its section 26D power, the LGSCO identified a larger backlog of nearly 1,500 EHCPs waiting to be reviewed.<sup>16</sup>

The LGSCO recommended that the council devise an action plan detailing the specific steps it would take to meet its statutory timescales. In summary, the LGSCO was able to investigate and uncover a wider systemic problem of delays and recommend appropriate action by the council, far beyond the number of people who complained to it. The problem would not have been identified and addressed had the LGSCO not intervened. The LGSCO can also issue general guidance to all councils through its Focus Reports.<sup>17</sup>

Service improvement recommendations previously issued by the LGSCO condition and influence the future recommendations it makes. In some reports, the LGSCO recognises that a council is already responding to service improvements or that such recommendations have been issued, and it is therefore appropriate to give the council time to ensure that those improvements become embedded within its practices. The LGSCO also takes account of recently issued service improvement recommendations and other developments including councils' responses to Ofsted investigations resulting in a Local Area SEND Partnership Improvement Plan, with improvement actions to be monitored through the council's governance structures.<sup>18</sup>

The next section considers the impact of the LGSCO on councils and their perspectives.

<sup>15</sup> Rochdale Metropolitan Borough Council (23 001 456)

<sup>16</sup> LGSCO, "Rochdale's systemic SEND issues highlighted in Ombudsman report" (13 March 2025); Rochdale Metropolitan Borough Council (24 010 066)

<sup>17</sup> <https://www.lgo.org.uk/information-centre/reports/focus-reports>

<sup>18</sup> LGSCO, Surrey County Council (23 009 459); LGSCO, Wirral Metropolitan Borough Council (24 010 539) para.58; LGSCO, West Northamptonshire Council (25 000 190); LGSCO, Leeds City Council (24 017 027)

# 4 Impact of the LGSCO on councils

This section presents and considers the research data and findings concerning the impact of the LGSCO on councils, along with their perspectives and experiences.

## CHALLENGES IN THE SEND SYSTEM: COUNCILS' PERSPECTIVES

The SEND system is under intense pressure. This leads to faults in how councils administer SEND and conditions how they respond to the LGSCO's service improvement recommendations. Council officers emphasised the scale and depth of the crisis as follows. There are "some fundamentally broken parts of the SEND system."<sup>19</sup> "The whole SEND system, and the way it is set up, unfortunately, is bust. It does not work."<sup>20</sup> "This is a national crisis. We are helpless to it at the moment."<sup>21</sup>

Another officer noted: "Councils are short of resource. Schools are underfunded. No-one is winning. The LGSCO's investigations – I totally get that they are about an individual child, and that's the most important thing, the child at the centre – but the child is there within the context of a wider system. Until we see some kind of fundamental change, I do not think anyone is going to win."<sup>22</sup>

Officers explained that SEND is a really difficult system nationally, which had not been designed to cope with a mass explosion in demand. Councils neither planned for the increased demand, nor did they have the resources to cope with it. "We've got a national SEND policy and system that isn't actually workable. I have been in Children's Services for 35 years, and this is the worst piece of legislation in terms of unintended consequences from the Department

for Education. Unbelievable dysfunction. This has not happened before during my time."<sup>23</sup> Another officer noted: "The real frustration with SEND is that the lack of recognition of what happens with it long-term. It keeps getting worse. The resources keep dwindling. What is the answer?"<sup>24</sup>

These points illustrate and confirm the conventional 'SEND-in-crisis' narrative. By contrast, one SEND director offered a more nuanced perspective:

"SEND does *feel* toxic. That has just become the received way of everyone thinks about it now, but it is not like that most of the time. We issued more EHOPs last year than before, which suggests that for many parents, the system is not completely broken. But because the voice of those that genuinely are being failed is amplified, then that becomes the overwhelming narrative – 'everything's broken, the system is in crisis. Nobody gets good outcomes'. I cannot suggest that there are not plenty of children who do not get good outcomes, but there is also a sizeable number who do get good outcomes. That is an important point of balance because the narrative from the campaign groups and also on the media is wholly negative, but that is not the case across the board."<sup>25</sup>

19 Council 3 (Senior SEND officer)

20 Council 19 (Senior SEND officer)

21 Council 16 (Senior SEND officer)

22 Council 3 (Senior SEND officer)

23 Council 1 (Senior SEND officer)

24 Council 10 (Senior SEND officer)

25 Council 5 (Senior SEND officer)

Whichever perspective is preferred – and there is no objective answer – deep contradictions and tensions exist within SEND delivery. There is a real need for SEND services to support children and young people who require them and who are often in vulnerable circumstances. Delays in EHCP assessments or educational provision have significant adverse impacts upon children and young people, thereby generating injustice. The longer the delays, the greater the injustice caused.

However, councils do not have the resources to meet the increased demand and can only devote what resources they have. Moreover, even if or when councils have the requisite resource, the capacity may not exist. For instance, there is a national shortage of educational psychologists. A council may have the financial resource to employ educational psychologists, have difficulty doing so due to the national shortage.

“Other councils get far, far higher numbers of complaints to the LGSCO than us. I think that might be our demographic, though. We have got a lot of disadvantaged families. They are not sharp-elbowed, upper middle class and educated. I have thought about how to help people get involved – but I have not got any money to pay for it. There is a massive disadvantage when you think about people’s confidence to challenge the system and to use the LGSCO.”<sup>26</sup>

Other officers noted a contingent of “quite pushy parents” who pushed to get what they wanted. “I appreciate parents have the right to feel that way, but I have to protect the resources for the most vulnerable. So, some decisions I have to uphold are really difficult, because I would like to give families everything they want, but we are not in that world, are we?”<sup>27</sup>

**“ Other councils get far, far higher numbers of complaints to the LGSCO than us. I think that might be our demographic, though. We have got a lot of disadvantaged families.”<sup>26</sup>**

In addition to a lack of resources, there may also be some misapplication of resources. Further, SEND is a complex and fragmented system of which councils are only a part – they rely upon the other public bodies involved to deliver provision. The system works on the basis of collaboration, rather than the ability of councils to direct schools and health bodies, for example. A child may not receive the provision they require – not just because of failures by councils, but also due to failures by other public bodies.

These tensions create problems for families, leading to complaints to councils and subsequently to the LGSCO. At the same time, some people do not complain even though they might have good grounds to do so. As SEND council officers explained:

Another issue is that some councils have not been well-managed and have experienced acute local problems around SEND, in addition to national challenges. One senior SEND officer explained that his council had experienced 14 years of “incredible mismanagement and financial constraint” with a SEND team of eight staff that was producing four EHCPs a month but receiving 30 requests per month. This led to the situation “spiralling out of control” with plans of variable quality being produced and no operational procedures in place at all. Despite SEND being a mandatory service, the department was woefully underfunded to the point that it only had about a third of the money required to run it. This led to all sorts of issues going forward.<sup>28</sup>

<sup>26</sup> Council 1 (SEND officer)

<sup>27</sup> Council 1 (SEND officer)

<sup>28</sup> Council 19. A mandatory service is one that a council is legally required to provide – as opposed to discretionary services, which have now mostly disappeared.

Issues of scale and complexity can vary from one council to another, depending on the population size. A Director of Children's Services noted that they received a high number of complaints – she expected the volume to be significantly higher than social care complaints. The volume of complaints was seen as a good test of whether it is just the size of the council area or whether there is a real problem nationally.

“We have more than 15,000 children with an EHC plan and we have more than 25,000 children with school support. So, when you take that volume and look at the fact that we had 160 complaints to the LGSCO, I think, well, okay, I do not want 160 complaints. I really, really don't. But ... I think out of the total number of parents we are working with ... it is probably comparable to some other local authorities given the difference in population size.”<sup>29</sup>

The acute challenges within SEND are played out on a day-to-day basis for both families and councils. These challenges condition what councils can and cannot do. They also affect those complaints escalated to the LGSCO and how councils respond to them. Many council officers view problems in delivering SEND as an inherent feature of their work.

An important and distinctive feature of SEND when contrasted with other local services is that the SEND timescales for EHCP assessments and annual reviews – laid down in the SEND code of practice – are mandatory, meaning councils are legally obliged to comply with them. Failing to comply will therefore be maladministration or service fault.

Councils are also legally required to ensure that the provision contained in an individual EHCP is actually provided to the child or young person concerned.<sup>30</sup> This contrasts with other public services in which there is usually some degree of flexibility in the assessment of whether the amount of time taken amounts to an unreasonable delay (and therefore maladministration), and other factors will be taken into account in determining whether the amount of time taken was unreasonable.

By contrast, in the SEND context, the LGSCO's approach is that the statutory, mandatory nature of the timescales means that no such balancing process may be undertaken. Consequently, councils are much more likely to be found to have acted with maladministration. With legislation and/or guidance prescribing not only what needs to happen but when and how, this conditions the LGSCO's approach to finding service failure. It becomes much more likely that complaints will be upheld.

Consequently, there is a fine line between matters of maladministration and the resourcing of councils. A council can engage in maladministration by not undertaking EHCP assessments within the required timescales. However, the ability of councils to comply with those timescales will be a function of the number of applications received and their resources and capacity to undertake assessments, and whether they are adequately resourced to meet the demands being placed upon them.

Council officers emphasised the difficulties of complying with their responsibilities, such as EHCP assessment timescales:

“Often, the issues are did we, the council, do it on time? Well, no, we didn't, because we did not have a cat in hell's chance of doing it on time. And here are all the national reasons why. It's absolutely impossible to be compliant with the law and timescales. So often, when complaints go to the LGSCO, there are things that we could not really help, such as doing assessments and annual reviews within the timescales. That makes it quite difficult, because the Ombudsman is applying the letter of the law and ... not really considering the landscape that we are operating in. There is a national shortage of educational psychologists. The law says it should take six weeks for an educational psychologist, but there aren't any. ... The LGSCO records that delay as a service fault, and that has a massive impact on team morale.”<sup>31</sup>

29 Council 7 (Director of Children's Services).

30 Children and Families Act 2014 s 42.

31 Council 12 (Director of Children's Services)

“There are lots of things that lead to complaints to the LGSCO. Some things are outside of our control, such as timescales, sufficiency of provision and of places.”<sup>32</sup>

“Some of the timescales in the SEND code of practice are just not realistic. And sometimes they are missing in terms of having really clear guidance on what a local authority should do and when.”<sup>33</sup>

A related issue concerns the caseloads of SEND caseworkers. The number of cases per SEND caseworker varies between councils. A sectoral norm is that caseworkers should have around 250 cases each. However, caseloads are often higher owing to increased demand and limited resources.

One council recorded 300 cases per caseworker – “an extremely high workload, and because the legal thresholds are so low, it is inevitably going to get higher, and obviously we’re working to limited financial resources, so it’s harsh ... sometimes ... we make mistakes and don’t do things properly, and that’s absolutely accepted, but a lot of it is the national context and pressure.”<sup>34</sup>

Another SEND officer noted: “Because of the way the SEND system is set up, the national pressures and sufficiency issues, it is likely that kids are going to be waiting a little bit longer than they want to for a school place. And even when we are doing everything we can, the record-keeping is probably not ... as tight as it could be if our caseworkers each had a caseload of 200 instead of 300 each.”<sup>35</sup>

In another council, casework officers still had caseloads of over 350 children each, which was considered “absolutely untenable, and we do not have a case management system either.”<sup>36</sup> One council highlighted that the number of requests for EHCP assessments had increased

by 46 per cent with the consequence that SEND officers were unable to keep up with the demand. One officer noted a public perception that “a lot of money is invested in SEND services, but this was absolutely not the case given the increased demand.”<sup>37</sup>

One council with 220 cases per caseworker had previously been at 320 per caseworker. The council’s Director of Children’s Services recognised that this was “a challenge ... a large volume, and I wouldn’t ever play that down at all ... you have an annual review for all of those children on your caseload, but we’re really clear we can’t attend every annual review. We have to devolve that responsibility to the schools and only attend annual reviews that schools invite us to, because those are the ones that they think are the priority annual reviews, i.e. have the child’s needs changed significantly?”<sup>38</sup>

A general theme emerging from the interviews was that the underlying national structural problems with SEND have led to significant challenges for councils and generated an increase in complaints. Such structural issues also constrain the ability of councils to respond effectively to service improvement recommendations. Consequently, almost all officers interviewed noted that councils have been “set up to fail” by central government.

While the LGSCO investigates complaints against local authorities, it has, on occasion, criticised central government. For instance, in 2024, the LGSCO stated: “This crisis has been ten years in the making. Both councils and the government could have anticipated the issues and planned for the future when the Children and Families Act 2014 was brought in and demand for EHC Plans started to increase. Educational psychologists cannot be trained overnight and so this situation will not be resolved without significant input on a national scale.”<sup>39</sup>

32 Council 7

33 Council 9 (SEND officer)

34 Council 4 (Senior SEND officer)

35 Council 10 (SEND officer)

36 Council 8 (Senior SEND officer)

37 Council 14 (Senior SEND officer)

38 Council 11 (Director of Children’s Services)

39 LGSCO, ‘National specialist shortage having profound impact on children with SEND and their families’ (Press release, 1 February 2024).

## COUNCIL COMPLAINT-HANDLING

Someone can only escalate matters to the LGSCO after they have gone through the council's own complaints process. These complaint procedures typically comprise two stages. Stage one is the initial consideration of a complaint. If the complainant is dissatisfied, they can go to stage two for a review. Complaints can then be escalated to the LGSCO. The volumes of complaint-handling by councils far exceed that of complaints to the LGSCO.

Councils' internal complaints-handling performs an important role. In addition to the formal structure of council complaint systems, there is the more substantive reality of how they operate in practice. In this respect, the following issues arise: how council officers view their complaints process, the degree to which they take account of the LGSCO's approach and decisions when handling complaints, and whether complaints are used by councils to improve their services.

Officers highlighted that the LGSCO affects and conditions how councils approach their own complaint-handling in some positive ways. One theme from the interviews was that it is best to handle complaints so as to prevent things from escalating to the LGSCO. Complaints officers made the following points:

- **They aim to deal with complaints to reduce the need for matters to be escalated to the LGSCO.**
- **They use LGSCO decisions as a guide and write complaint responses with the LGSCO in mind.**
- **They issue financial remedies in accordance with the LGSCO's guidance.**
- **Some councils use complaints to identify service improvements.**

Officers explained that they pay attention to the LGSCO's decisions when handling complaints to ensure that the themes and messages coming from the LGSCO are considered and taken into account. Several council officers stated that, when handling complaints, they

took account of the LGSCO's recently decided investigations concerning other councils. Officers also highlighted the value of the LGSCO's website, which is used to access its decisions as guidance.

Some council officers explained that they approach complaint-handling as a preventative, restorative role and looked to put in place any change, service improvement or remedy at stage two of the complaints process.

"The LGSCO helps us to better understand the lived experience of children and of families in our area, which is invaluable. We should decide on those cases anyway, because they have to go through our complaints process before they get to the Ombudsman. As we have been getting better with the complaints process, we are seeing fewer complaints going to the Ombudsman – certainly a lot less than when we were a lot more dysfunctional."<sup>40</sup>

"We take note of the LGSCO recommendations, because obviously we do always learn from them ... As a result of their recommendations, particularly in relation to remedy and costs, we have made the decision that, where we are delayed and a parent makes a [stage one] complaint, ... then we will remedy it prior to it going to the LGSCO, even if it does go. We would like to be a responsible local authority and seek to make a remedy in line with recommendations prior to it going to the LGSCO. We do not get a lot of complaints because we try to work with families."<sup>41</sup>

"We keep an eye on what the LGSCO does in other SEND reports for other councils. We get a monthly email update with key Ombudsman decisions in SEND that have been made regarding other local authorities. The Ombudsman's findings are really significant for us. So, when it comes to, for example, children not being placed in education – how is the LGSCO viewing that if we have found a place for the child,

40 Council 1 (Director of Children's Services)

41 Council 16 (Complaints manager)

but the parent does not want to send them to that place because they are holding out for somewhere else? How does the Ombudsman interpret that? Did they say that we have met our statutory duties?"<sup>42</sup>

One council officer noted that, when dealing with a complaint, it was usually better to have a conversation and arrange to meet the person rather than "having emails pinging backwards and forwards, or if someone doesn't get a response in a tiny way, then that can quickly exacerbate the situation a lot. We don't want to get to the level of the Ombudsman. So, what can we do at that stage one [or] stage two level to stem the complaint and try and deal with that in a way which makes the person complaining ... [feel] that we've listened and we've actually done something in response to that."<sup>43</sup>

Another council noted that it had responded constructively and positively to previous complaints by creating new roles within the council to enable parents/guardians to better understand how the SEND system works. The council had introduced 'SEND navigators' and a resolutions officer following many complaints of poor communications. The SEND navigators act as a first point of contact, helping families understand the services available and to provide advice to families and help them navigate the system. This function extended to advising families whether to appeal or complain.<sup>44</sup>

The council also changed its approach to complaint-handling. It no longer deals with complaints in a traditional manner of writing a letter to a parent to explain the reasons why something did or did not go wrong, but instead focuses on helping people with resolutions and finding a pragmatic solution that puts things right.

The LGSCO has also engaged directly with some councils to assist them. As a Director of Children's Services explained:

"Personal interaction with and support from the LGSCO has helped loads ... One of the big challenges with the Ombudsman is a real time lag. Some of the issues coming out now actually happened a couple years ago. The interface with someone from the LGSCO is good, because it gives us a current flavour of what they are seeing, what's happening – a general pulse check. [It's] a useful addition. We genuinely want to improve and don't want to keep seeing these decisions, so [we] give ... the opportunity to be a bit more honest."<sup>45</sup>

Another Director of Children's Services noted:

"Some parents tell me that they didn't feel heard until we went to the Ombudsman. That's a really impactful thing, and it's helping us reflect on why they did not feel heard by ourselves. It is more complicated than the local authority just doing what the Ombudsman tells them to do. I think it's about that understanding of how we're working with our children and families, and that's helpful to the managers who are liaising with the Ombudsman when they do their investigation."<sup>46</sup>

The LGSCO engages with councils directly to build a stronger relationship with them. Both Suffolk and Surrey County Councils, amongst others, have experienced a high number of upheld SEND complaints and have engaged with the LGSCO to improve their SEND services.

Surrey County Council has received a high volume of complaints and has been significantly criticised. Inevitably, much depends upon practical implementation. It should also be noted that the LGSCO gives credit to councils that have recognised they have been at fault and then offered a suitable remedy via their own complaint procedures. This is highlighted for each council on the LGSCO's map of councils' performance.<sup>47</sup>

42 Council 6 (Complaints manager)

43 Council 14 (Complaints manager)

44 Council 8 (Director of Children's Services)

45 Council 18 (Director of Children's Services)

46 Council 1 (Director of Children's Services)

47 <https://www.lgo.org.uk/your-councils-performance> - under the heading of 'satisfactory remedy provided by the Council'.

In 2024-25, Surrey County Council strengthened its relationship with the LGSCO through regular engagement to support early resolution of cases, encouraging shared learning and improving how the Council responded to and learns from complaints. The council undertook LGSCO-led training to improve staff skills in complaint handling and resolution. It was also officially part of the LGSCO's national pilot programme aimed at developing and embedding best practice in complaints handling and learning from upheld decisions to improve transparency, accountability and continuous service improvement.

The council was also a member of the LGSCO's Complaint Handler Network, which shares practices, questions and advice with National Complaints Managers and a direct link with the LGSCO to help inform a consistent approach.

The council also committed itself to 'targeted improvement' in high-volume areas: deep-dive complaint reviews into service areas with consistently high complaint volumes, including SEND, to identify underlying causes and implement targeted service improvements.<sup>48</sup>

Overall, the interview data suggested that councils take account of the overall approach of the LGSCO in relation to their own complaint-handling. This can include:

- › **taking account of LGSCO decisions when handling initial complaints**
- › **councils introducing their own service improvement recommendations through their own complaint-handling**
- › **councils introducing new roles in response to previous complaints – both to the council itself and also the LGSCO.**

## COUNCILS' PERSPECTIVES ON THE LGSCO AND ITS SCRUTINY

What, then, do councils think of the LGSCO? In general, councils accepted and recognised the importance of the LGSCO, saying they take it seriously and welcome its scrutiny. The LGSCO enables councils to know whether or not they are getting things right, and also possesses a degree of authority. A SEND officer noted: "It is good to know that the Ombudsman is there as a moral backstop."<sup>49</sup>

A Director of Children's Services noted that, when the council demonstrated putting significant effort into improvement of its SEND service, it did not keep receiving public reports from the Ombudsman. "So, in that sense, the Ombudsman is doing very sensible things, although I am not sure that the Ombudsman necessarily understands the pressure that a local SEND system might come under."<sup>50</sup>

Other officers explained that the Ombudsman was very helpful in highlighting injustices, although there was also concern that individual injustices could become hidden by the wider situation of delays and problems. The LGSCO was needed because of the risk of council staff becoming desensitised – it is a safety net. Councils noted that the personal connection with LGSCO investigators had been really helpful.

Without the LGSCO, many local authorities would be getting away with doing things wrong because of their financial pressures. Councils would try to "fob people off and avoid doing things they should be doing."<sup>51</sup> The LGSCO also identified some problems that councils themselves did not know about. One of its public reports identified a problem with a young person attending a school in another local authority area and the need for councils to coordinate with each other. The council explained that the report was helpful and had led to a comprehensive piece of work to address the issue.<sup>52</sup>

48 Surrey County Council Audit and Governance Committee, *Annual Complaints Performance Report 2024-25* (17 September 2025).

49 Council 6 (SEND officer)

50 Council 7 (Director of Children's Services)

51 Council 19 (Head of SEND service)

52 Council 20 (SEND officer)

Councils valued the LGSCO's independence and objectivity, along with its examination of whether councils had completed their statutory requirements and whether any gaps existed. Acting on service improvements was a high priority, although councils emphasised that many problems, such as the timeliness of EHCPs, were national issues.<sup>53</sup> By contrast, one council felt that the LGSCO was "just beating us with a big stick, as SEND is now a central government issue" and described its actions as detrimental, by requiring lots of money to be spent on financial remedies.<sup>54</sup> All of the councils accepted and recognised the role, purpose and importance of the LGSCO.

## HOW COUNCILS RESPOND TO SERVICE IMPROVEMENT RECOMMENDATIONS

Councils have various internal means of responding to service improvement recommendations. In some councils, the head of service or another senior officer will respond to the Ombudsman, detailing how service improvement recommendations have been acted upon. One council had a fortnightly departmental management team meeting which, on a quarterly basis, considered learning from complaints and tracked the actions and outcomes from it.

One Director of Children's Services explained that a weekly leadership team meeting focused on learning the service could glean from internal audits and the LGSCO.<sup>55</sup> One council had a special unit to address processes and procedures in planning and to monitor what happens with service improvement recommendations.<sup>56</sup>

In another council, the monitoring officer had oversight of those LGSCO findings which were seen as raising reputational and financial risks.<sup>57</sup> One council circulated all adverse LGSCO decisions internally to its chief executive and lead councillors.<sup>58</sup> In another council, a committee considered all LGSCO decisions.

One officer stated that the Ombudsman's reports were quite useful: "Where it is not a piece of work that we are already doing – and because we would like to be aware of most of the flaws in our system and do something about it – we have coordination oversight groups, improvement working groups, and most of the complaints will fit into an existing group." Complaint reports were taken into those groups, solutions worked up and the recommendations actioned and operationalised. The LGSCO's work was seen as "very worthwhile".<sup>59</sup>

The LGSCO's investigations and service improvements are just one part of a larger picture of scrutiny and the improvement process. One council had had a recent Ofsted inspection from which various improvements had to be made. Despite good ongoing work, the demand coming in and the backlog meant that complaints would arise and people would become frustrated about the timelines and progress of EHCPs. Improvements were in hand through a very significant improvement plan, although it was "a massive piece of work, and our transformation is moving things on in a different spectrum."<sup>60</sup>

A wider point is that, for the LGSCO's service improvement recommendations to be effective, councils need to have effective internal oversight and supervision of their operations.

53 Council 14 (SEND officer)

54 Council 18 (SEND officer)

55 Council 1 (SEND officer)

56 Council 21 (Senior SEND officer)

57 Council 11 (SEND officer)

58 Council 15 (SEND officer)

59 Council 20 (SEND officer)

60 Council 14 (SEND officer)

## IMPLEMENTING SERVICE IMPROVEMENT RECOMMENDATIONS

While the LGSCO's recommendations are not legally binding, councils universally accept them. The research did not encounter any instances of councils rejecting a LGSCO report. Instead, the key issue is whether councils have the capacity to implement service improvement recommendations in substance.

One point made by many councils is that some recommendations are easier to implement than others. A Director of Children's Services explained that some service improvements simply could not be easily actioned, if at all, owing to all of the interlocking parts and resources. The more complex recommendations cross over from councils into health and schools, over which councils have no control.

Other recommendations, such as training, are easier to implement. As one SEND officer remarked: "Generally, service improvement recommendations are deliverable, because it is generally about reviewing timescales for responses. Although we can crack that now, it has been interesting, because we were in a place of real dysfunction".<sup>61</sup> Other officers noted that the LGSCO's recommendations are nothing new to councils, as they were aware of which areas required improvement.<sup>62</sup>

**“ Any LGSCO recommendation and action – and anything we do at our end to put things right – will only be as good as the operational teams overseeing it and putting it into action.”<sup>64</sup>**

On occasion, the LGSCO has identified matters that needed more work. "The Ombudsman spurs the completion of a task that actually then prevents further fault and further issues going forward ... having a deadline from the Ombudsman saying they needed something produced by a certain date was really helpful for our purposes".<sup>63</sup>

A senior SEND officer at another council emphasised: "Any LGSCO recommendation and action – and anything we do at our end to put things right – will only be as good as the operational teams overseeing it and putting it into action. The churn in SEND staff is quite significant. We have inexperienced people being trained by other people who are themselves fairly inexperienced, delivering complicated areas of policy and working with very vulnerable children and sometimes quite challenging parents."<sup>64</sup>

Councils also noted that, while they had actioned some service improvement recommendations, this was not necessarily having the desired impact because of national pressures and constraints, such as processing annual reviews to timescales. "We have a project team, a backlog team, and we have all the processes in place, but the volume is just insurmountable."<sup>65</sup> The improvements were not having the desired impact because increased demand was surpassing the resources being put into the service.

Some councils reported having sometimes pushed back on some service improvement recommendations from the LGSCO. On occasion, councils considered that they were being asked to deliver a recommendation that was not quite a service improvement, but "more of a utopian" recommendation concerning, for instance, the insufficiency of places in special schools.

61 Council 1 (SEND officer)

62 Council 16 (SEND officer)

63 Council 10 (SEND officer)

64 Council 5 (Senior SEND officer)

65 Council 10 (SEND officer)

The council's position was that such a problem was not a service failure, but part of the wider national context that needed to be addressed. "It is not something that we alone can fix by sufficiency planning, unfortunately, because of the volume. But the LGSCO have taken that on board."<sup>66</sup>

One council had received a service improvement recommendation from the Ombudsman relating to the shortage of educational psychologists and the need to devise an action plan to deal with it. Although the council had the resource available to fund this need, no educational psychologists were available to be appointed. In other words, the council had the required funds, but no capacity was available. Therefore, the recommendation made little difference to what the council could achieve, because of the wider national shortage of educational psychologists.

Another officer noted that some service improvement recommendations were "incredibly broad ... and that makes it really difficult". For instance, a recommendation to review communications involved reviewing some 12,000 EHCPs. "The Ombudsman has to realise the impact on a local authority and the Integrated Care Board of what they're asking to be done, because in the end, everybody's stretched, particularly given the resources we haven't got. We can't necessarily complete those really wide-ranging things."<sup>67</sup>

It is easier for a council to action a service improvement recommendation to train its staff than it is to address the national shortage of educational psychologists. Councils also emphasised the superficial nature of some recommendations, such as reminding staff of EHCP timescales – something that council staff know about, but which they lack sufficient capacity to fulfil. Another issue is the time lag between the fault occurring and the LGSCO's report with, for instance, increased demand in the meantime and consequently "councils are struggling with what they do have. So, requiring them to do more and more is almost setting them up to fail in one way."<sup>68</sup>

## THE IMPACT AND INFLUENCE OF THE LGSCO

Councils respond to the LGSCO's service improvement recommendations in various ways. They reported learning by drawing upon LGSCO reports about their councils and others. The reports were "very useful for learning."<sup>69</sup> Another officer noted that the LGSCO's recommendations were very helpful in highlighting issues and prioritising them. The LGSCO could back up what a Director of Children's Services was already saying to others within the council, thereby bringing matters to the attention of senior leaders:

"As a driver for service improvement, the Ombudsman has got to be a good thing. I think we have to acknowledge the challenging circumstances, and by and large, the cases that go to the Ombudsman and get investigated are the most difficult. In the time that I have been dealing with Ombudsman enquiries, they have been the very trickiest of cases with no obvious easy solutions. So, we are often coming up against not just our own shortcomings, but also shortcomings in the SEND system in general, in terms of the availability of provision and so on. With the best will in the world, we cannot give what we do not actually have."<sup>70</sup>

66 Council 10 (SEND officer)

67 Council 15 (SEND officer)

68 ICB 2 (ICB officer)

69 Council 12 (SEND officer)

70 Council 13 (SEND officer)

The scale of the problems and challenges of limited resources inevitably affect the capacity of councils to implement service improvement recommendations effectively. A head of SEND services explained that most complaints concerned timeliness and needs assessments:

“And that, in itself, is almost entirely down to not having enough educational psychologists. So, what can the Ombudsman do about that? Nothing. What can the Ombudsman make us do about that? Absolutely nothing. Yes, there is an improvement plan in place, but it is difficult. The improvement plan [states] that more educational psychologists [need to] be trained, but I do not see that impacting particularly quickly. So, we have put things in place. I would say the odds are that it will likely have very little impact on that area.”<sup>71</sup>

Other SEND officers noted that prioritising EHCPs has led to less of an emphasis on annual reviews in terms of the council’s performance. As a result of internal findings and the Ombudsman’s service improvement recommendations on annual reviews, the council introduced dedicated annual review officers and delays reduced.<sup>72</sup> Another officer noted that “the pressure of the LGSCO is probably the most useful thing for the SEND department, because councils do not always understand the statutory nature of SEND...”<sup>73</sup> While councils take learning from the LGSCO, there was frustration because it did not resolve the challenges arising from the national requirement for specific professionals to deliver against councils’ statutory duties.<sup>74</sup>

Another perspective was that the LGSCO usually does not require enormously difficult changes, but “recommends realistic things that can get done. That is actually quite a good thing, because councils can make incremental movements towards a better system, rather than trying a wholesale overhaul. When you put

together all the various things the LGSCO is asking local authorities to do, you get a gradual, bit-by-bit push in the right direction.”<sup>75</sup>

Councils also noted the repetitive nature of LGSCO recommendations, such as reminding staff of timescales, but “of course, all staff are aware of that, and all I’m going to do is send an email to the whole service to remind them that plans should be done in accordance with the relevant legislation ... reminding a SEND service of a 20-week statutory deadline is a little bit facetious.”<sup>76</sup>

In one council, the LGSCO found delays in EHCP assessments. It recommended that relevant staff are reminded to respond to complaints in line with council’s procedure and to provide the Ombudsman with a plan to improve compliance with the EHCP needs assessment timescales.

The council officer explained that her council was at about 16 per cent timeliness for the 20-week timescales whereas one year previously, it had been at one per cent compliance. The council had increased its output fourfold, caseworkers were delivering more and getting through the backlog and waiting times were reducing, but they were still not below 20 weeks for the majority of our children. There was a significant action plan. “A real challenge is [engaging] educational psychologists, especially as we are a council in a remote geographical location and other councils are offering them £1,000 to £1,500 for a day’s work. It is a real challenge.”<sup>77</sup>

One officer noted that merely following guidance and procedures alone was insufficient; wider cultural changes were required:

“We have elaborate systems for ticking the boxes to confirm that we take the Ombudsman’s recommendations on board. But in reality, it does not necessarily always

71 Council 5 (Head of SEND officer)

72 Council 20 (SEND officer)

73 Council 2 (Senior SEND officer)

74 Council 11 (SEND officer)

75 Council 19 (SEND officer)

76 Council 4 (SEND officer)

77 Council 11 (Director of Children’s Services)

change the culture and work practices. Cultural shifts are much harder to achieve. When I [handle] a SEND complaint and make a recommendation, I would really like to be able to follow it up by working with the managers over a longer period of time, explaining to them the rationale of why this is an effective change, and then dipping in to find out that they are actually implementing that change. If they are not, what are the barriers to that? But that is a long-term transformation project, which we are not resourced to do. And likewise, I don't think the Ombudsman is resourced to do it either.<sup>78</sup>

It took the council 12 months to bring the timeliness of EHCP assessments into line, although timely assessments are only one part of the work. The problem is not just timeliness of EHCPs, but also their quality.<sup>80</sup> Another challenge is ensuring that educational provision is in place for a child – some types of provision are more readily available than others.

One Director of Children's Services explained the challenges involved in improving a large and complex SEND service. While its EHCP timeliness had been brought back on track (and was indeed better than many other local authorities), it would take years to improve the overall service, especially given the challenges

**“ When I [handle] a SEND complaint and make a recommendation, I would really like to be able to follow it up by working with the managers over a longer period of time<sup>78</sup> ”**

One SEND officer explained that the LGSCO was responsive when a council had taken action to address problems by not issuing service improvement recommendations:

“We just wrote to the Ombudsman and said: ‘we have done all of this about timeliness and this is what we're doing, but you will still get complaints about timeliness’. And we stopped getting any further recommendations from the Ombudsman because the improvement work had been put in place.”<sup>79</sup>

with securing specialist local provision by building new schools and the partnership nature of SEND. By comparison, getting EHCP timeliness figures back on track was relatively straightforward once it could be resourced.<sup>81</sup>

In general, councils recognised the need to take action when problems arise and to implement the LGSCO's service improvement recommendations. They also emphasised resource constraints. Further, there is a time lag between taking action to improve services and when this bears fruit. Complaints will likely continue to arise in the meantime.



78 Council 18 (Complaints manager)

79 Council 7 (Complaints manager)

80 Council 2 (SEND officer)

81 Council 7 (Director of Children's Services)

## THE LGSCO AS A LEVER FOR ACTION WITHIN COUNCILS

Councils operate within a political and financial context. In this respect, LGSCO reports can serve a useful political purpose for the SEND service within a council. Critical LGSCO reports can be used as a potential lever to influence councillors, council leaders and finance officers by highlighting the challenges that a service is operating under and to thereby seek additional resource. In other words, the benefit of the LGSCO for senior SEND officers was that its reports could be used as leverage to seek additional investment:

“Issues like fulfilling statutory responsibilities and managing risk and performance in a council are significant arguments that can be used to secure investment by the local authority for its SEND service. So, there is some value in that, because it concerns public exposure and public risk ... The Ombudsman provides the basis to reinforce the position that we were already putting forward to the council: these are really vulnerable children and families ... and there are risks to the local authority if we do not manage this properly.”<sup>82</sup>

One senior SEND officer explained that, when he took over, the SEND service was “woefully underfunded to the point that it had only about a third of the money required to run it”. This led to complaints and “all sorts of issues going forward”. However, pressure from the LGSCO around statutory responsibility was “quite helpful internally”, as it was used to secure more resources from the council:

“We took it to the right people in the council and said ‘SEND is a statutory responsibility. We have to get this done, otherwise we are going to be in real trouble here’. They understood that the LGSCO could cause the council a big problem. It is quite helpful to have that internal stick to beat the powers that be with. The money is not there, and all the rest of it. Until the penalties for not doing it become more severe, councillors will continue to ignore it. And that is just the reality of it. So, in that sense, I quite often welcome the LGSCO judgements.”<sup>83</sup>

Another senior officer explained:

“The biggest impact of the Ombudsman has been as a result of political scrutiny and political embarrassment. There has been quite a lot of public exposure in our council area. As a result – and no-one is going to admit this – there was some significant investment in securing additional educational psychologist capacity from an independent company.”

The officer added that, even so, securing additional external capacity from an independent company was not necessarily going to deliver, as the quality was not necessarily the same.<sup>84</sup>

Another officer noted: “LGSCO reports focus the attention of our leaders. Sometimes, the Ombudsman is helpful because it almost endorses what we as management are saying to council leaders about a specific area. Somebody external, someone quite neutral, has also seen ... a service failure that needs to be addressed.”<sup>85</sup>

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82 Council 11 (Director of Children’s Services)

83 Council 2 (Director of Children’s Services)

84 Council 5 (SEND officer)

85 Council 18 (Senior SEND officer)

## DRAWBACKS OF LGSCO INVESTIGATIONS FOR COUNCILS

Redress and scrutiny systems have both positive and negative aspects. The positives include the Ombudsman's role as an independent and expert complaint-handling body that identifies people's grievances; the public recognition of injustice and maladministration; and remedies, financial payments and service improvements. The drawbacks include the time and monetary costs to councils of handling LGSCO investigations and paying financial remedies, and delays to complainants.

There is an overall benefit in terms of identifying problems and prompting action to improve matters – otherwise the errors identified would remain uncorrected. At the same time, council officers raised the following concerns about LGSCO investigations:

**1. The amount of time officers spend handling complaints and investigations could be spent delivering SEND services.**

One council officer expressed frustration at “the sheer amount of time operational teams spend responding to LGSCO reports. The very people doing EHCP needs assessments spend much of their time responding to complaints.”<sup>86</sup>

**2. The length of time LGSCO investigations take, and the time lag between a fault and the LGSCO issuing its report.**

This is typically several months, if not a year or two. As SEND delivery and administration is in flux, things can move on in the meantime, potentially weakening the usefulness of the Ombudsman's reports and service improvement recommendations. “In the meantime, things change, demand goes up, but basically councils are struggling to cope with what they do have. So, requiring

them to do more and more is almost setting them up to fail in one way.”<sup>87</sup> Another officer noted: “At the most basic level, while the LGSCO's recommendations are sensible and helpful. They do make sense quite often. What tends to happen is, by the time we get the recommendation, is that the service improvement has already been looked at.”<sup>88</sup> It was also noted that while the LGSCO often criticises councils for their delays, it has itself experienced delays in handling its own casework.<sup>89</sup> Such effects can be moderated by direct interactions with ombudsman staff.<sup>90</sup>

**3. Although councils can formally action service improvement recommendations, these may not actually improve SEND delivery.**

The formalistic or repetitive nature of recommendations can make them superfluous and superficial, whereas more weighty recommendations would require significant work and improvements.<sup>91</sup>

**4. The LGSCO often identifies problems that councils already know about, but lack the resources and capacity to address.**

As one SEND officer put it:

“The Ombudsman often recommends that we remind staff about the annual review process and statutory timelines. But we are all experts [who] know what the EHCP statutory timescales are. We are in these jobs because we want to help children and young people. We have really committed members of staff who work extraordinary hours to try and deliver in a really short timescale ... When set against what we all know nationally about the SEND system, those kinds of recommendations are unhelpful.”<sup>92</sup>

86 Council 5 (SEND officer)

87 Council 10 (SEND officer)

88 Council 15

89 Council 10 (Senior SEND officer)

90 Council 1 (SEND officer)

91 Council 13 (SEND officer)

92 Council 13 (SEND officer)

- 5. The LGSCO does not properly take account of the wider pressures under which councils operate.** Officers noted that in some instances, the LGSCO has found fault, but realistically, the council could not have done otherwise.<sup>93</sup> “It feels like some service improvement recommendations are made irrespective of the local context.”<sup>94</sup>
- 6. Perceived inconsistency of approach by different LGSCO investigators.** Some

council officers noted that “the LGSCO’s investigations feel very subjective” and sometimes appear to be inconsistent:

“I see Ombudsman decisions for our own local authority which feel inconsistent between different investigators. That’s when you look at another local authority and think: ‘Hang on, this is the same situation, but you dealt with it slightly differently here.’”<sup>95</sup>

## FINANCIAL REMEDIES

The purpose of the LGSCO’s financial remedies is to put complainants back into the position they would have been in if the fault had not occurred. However, this is often not possible to achieve when, for instance, a child or young person has been out of school for an extended period of time – many months or years – or they have not received the provision to which they are entitled. The next best option is then for the LGSCO to recommend a financial remedy to the child and their family as a form of redress.

The LGSCO’s guidance on financial payments in SEND cases states that, where fault has resulted in a loss of educational provision, it will usually recommend a remedy payment of between £900 to £2,400 per term to acknowledge the impact of that loss. The figure should be based on the impact on the child and take account of various factors including:

- › the severity of the child’s special educational needs as set out in their EHCP
- › any educational provision – full time or part time, without some or all of the specified support – that was made during the period
- › whether additional provision can now remedy some or all of the loss
- › whether the period concerned was a significant one for the child or young person’s school career – for example the first year of compulsory education, the transfer to secondary school, or the period preparing for public exams
- › lost or delayed right of appeal to tribunal.<sup>96</sup>

Council officers commented on the high levels of financial redress. It is not uncommon to see financial remedies within the range of £6,000 to £10,000.

National statistics on financial remedies are unavailable. However, it is possible to find data concerning particular councils. The three largest individual financial remedies for Surrey County Council in 2024 were £11,650, £8,900 and £8,353 (all of which were missed educational provision).<sup>97</sup> Such levels arise because of the time children have spent out of school due delays in EHCP assessments or the lack of specialist educational provision.

<sup>93</sup> Council 12 (SEND officer)

<sup>94</sup> Council 13 (SEND officer)

<sup>95</sup> Council 18 (Complaints manager)

<sup>96</sup> LGSCO, *Guidance on Remedies: Part 5 Subject Specific Guidance - Children and Education* (2025).

<sup>97</sup> Surrey County Council Audit & Governance Committee, *6 Month Complaints Update Report 2024/25* (20 November 2024), para.33.

In 2023-24, Surrey County Council paid out £330,359 for complaints relating to Children's Services and Education, 61.4 per cent of which was to reimburse for missed SEND provision.<sup>98</sup> In 2023-25, Surrey County Council paid out more than £1m, the majority of which was for failures within its education services.<sup>99</sup> In 2024, the leader of Surrey County Council publicly apologised for failures in the council's SEND service while also announcing an investment of £240m in SEND, including creating nearly 6,000 specialist school places and dealing with EHCP assessments more quickly.<sup>100</sup>

In 2025, Surrey's financial redress totalled £480,798 – an 11 per cent reduction compared to the previous year.<sup>101</sup> SEND accounted for £447,528.45. Of this, some £291,099 was paid out directly by the council through its own complaints process and £156,429 as a result of LGSCO investigations.

Surrey Council has previously received a high number of SEND complaints and its pay-outs are likely to be at the upper end. Other smaller councils will have paid out less. Nonetheless, these figures illustrate the types of amounts involved, and highlight that councils can pay out fairly significant financial payments through their own complaint-handling as well as a result of the LGSCO investigations. Such financial payments come out of council resources, typically the particular service concerned.

What, then, do councils think about having to pay financial remedies recommended by the LGSCO? The council officers interviewed accepted that complainants were entitled to financial payments. However, they raised five concerns as follows:

**1. High-value financial payments affect council budgets.** As one SEND officer noted:

“The LGSCO is almost always going to suggest a financial remedy and that can be quite difficult. It is that vicious cycle – not having enough money to provide a good service, but then constantly being fined for not providing a good service.”<sup>102</sup>

**2. Concern about how financial payments are used** – in particular, not knowing whether financial payments are actually used for the benefit of the child or young person adversely affected:

“As a local authority, we would completely accept where we were at fault. In terms of a financial remedy, my preference would be that it goes towards progressing the child's delayed education. But there are no parameters around how that resource is used to benefit the child ... Am I confident that the money will benefit the child or the outcome? I cannot always say ‘yes, I am always confident that the child will actually benefit.’”<sup>103</sup>

“Although the Ombudsman may advise that the money is used for the child's education, that is often not the case. Families may well not use the financial payments in the way that they are expected to.”<sup>104</sup>

Another officer noted that the council had significant concerns about how a financial remedy payment would be used and whether it would actually benefit the child. “There is no monitoring of that money spent – whether it might get paid into the young person's bank account and then immediately withdrawn by the parent.”<sup>105</sup>

98 Surrey County Council, Audit & Governance Committee, *The Local Government and Social Care Ombudsman's Annual Review Letter for Surrey County Council 2023/24* (11 September 2024), para.43.

99 ‘Council pays out £1m for education failures’, *BBC News* (16 September 2025).

100 ‘Council apologises to families over SEND provision’, *BBC News* (9 October 2024).

101 Surrey County Council Audit and Governance Committee, *Annual Complaints Performance Report 2024-25* (17 September 2025).

102 Council 10 (SEND officer)

103 Council 6 (Senior SEND officer)

104 Council 4 (SEND officer)

105 Council 5 (SEND officer)

- 3. A perception that, given the levels of financial payments recommended, some complainants were motivated by potential financial gains.** A perception existed amongst some council officers that this was possibly the principal reason why some families complained, and that the phenomenon had become ‘networked’ as people became aware of the significant financial payments potentially available.<sup>106</sup> The result was a compensation culture in which people use the LGSCO to secure financial payments. “Unfortunately, what I am seeing is some parents utilising the LGSCO to try and get financial compensation from local authorities.”<sup>107</sup>

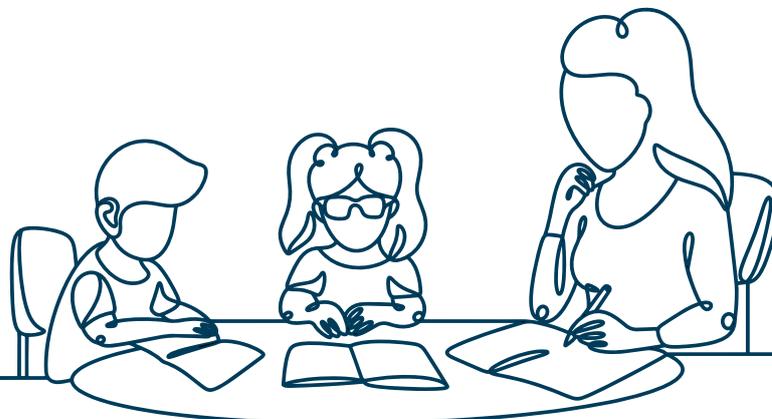
An alternative way of delivering financial remedies would be for a family with a child who has missed out of education, for instance, to be able to invoice the council in order to pay for tutoring up to the amount involved – as opposed to the council paying a significant lump sum to the family. This would be a means of ensuring that the money paid out by way of a financial remedy would be spent for the benefit of the child, rather than for other purposes.

- 4. A perception of subjectivity.** Some council officers felt that the outcome of Ombudsman investigations and recommended financial remedies depended on the individual investigator. “The judgments of the Ombudsman can be very subjective, subjective, particularly in relation to distress and harm, incredibly subjective.”

- 5. Financial remedies are required of councils, although the underlying fault often lies with the school, not the council.** The wider issue is considered below. As one officer explained:

“We’ve recently had a couple of fines which I thought were excessive. The bit that is missing – and the Ombudsman acknowledged it when we met – is their inability to hold schools to account. Several of our larger fines have been because a young person has not been in school, but the school has not told us that. But of course, the council is ultimately responsible, so the fine is imposed upon on us. That sometimes seems a bit harsh.”<sup>108</sup>

In addition, there are wider questions around the LGSCO’s financial remedies, their purpose, whether to issue them at all, and if so, how they are funded, resourced and administered in practice. In this respect, practice varies between different ombudsmen. For instance, the Scottish Public Services Ombudsman and the Public Services Ombudsman for Wales adopt a different approach by issuing fewer financial remedies. The LGSCO is currently undertaking a review of its approach to financial remedies, and our research findings have fed into that review.



106 Council 16 (SEND officer)

107 Council 19 (SEND officer)

108 Council 5

## SCHOOLS IN THE FRAGMENTED SEND SYSTEM

SEND is a complex and fragmented system. It involves not just councils, but also schools, health bodies, the police and other services. Councils are legally responsible for securing SEND provision, but significant parts of SEND delivery and provision are undertaken by other bodies. The system is intended to work on a partnership basis and collaborative working between councils and these other public bodies. They should work together to assess a child's special educational needs and secure the required provision. However, this may not always happen in practice.

The LGSCO's position is as follows.<sup>109</sup> Councils have a statutory duty to ensure that the child or young person receives the specified provision set out in an EHCP.<sup>110</sup> The courts have ruled that the duty to arrange this provision is owed personally to the child or young person and that the duty is non-delegable. If the council asks another organisation to deliver the provision and it then fails to do so, the council remains accountable.<sup>111</sup>

The LGSCO accepts that it is not practical for councils to keep a 'watching brief' on whether schools and other bodies are providing all the special educational provision for every pupil with an EHCP. Instead, councils should be able to demonstrate appropriate oversight in gathering information to fulfil their legal duty.

At a minimum, the LGSCO expects that councils to have systems in order to:

- **check the special educational provision is in place when a new or amended EHCP is issued or there is a change in educational placement**
- **check the provision at least annually during the EHCP review process**
- **quickly investigate and act on complaints or concerns raised that the provision is not in place at any time.**

However, it is not apparent that all councils always have such systems in place as a matter of practice. Nor is it apparent that all schools cooperate with councils.

When children and young people do not receive their required provision, families can complain to the school and then seek a review of the school's handling of that complaint by the Department for Education. The complaint cannot be escalated to the LGSCO, which has never been able to investigate complaints about what happens within schools.<sup>112</sup>

The LGSCO's jurisdiction only concerns local government and social care. Its legislation dates from the mid-1970s and has long since been overtaken by fundamental changes in the structure of education, in particular the reduction in the number of local authority-maintained schools and the expansion of academies and free schools. The LGSCO's statutory framework is therefore out of date and unsuited to the complex and fragmented partnership landscape of SEND.

The problem is accentuated by the fact that local authorities have little real substantive power over other bodies, such as schools, when they do not deliver SEND provision. This constitutes a weak link in the chain of delivery and accountability, and creates a real risk that the problems in this regard are more likely to increase, given the government's announcement that it will seek to increase specialist placements in mainstream educational settings, as opposed to specialist schools.

Council officers made the following points. While the SEND delivery framework is based on partnership between councils, schools and health and social care, the LGSCO is focused on councils. This gap in the LGSCO's remit enables

109 This position is repeated in many decisions, eg Derby City Council (24 006 025).

110 Children and Families Act 2014 s 42.

111 *R v London Borough of Harrow ex parte M* [1997] ELR 62; *R v North Tyneside Borough Council* [2010] EWCA Civ 135.

112 Further, the ability of the LGSCO to complain about school admission appeals and school exclusion panels depends on whether or not the school concerned is either a local authority-maintained school (in which case, the Ombudsman can investigate) or an academy or free school (in which case the Ombudsman cannot investigate).

other partners – particularly health bodies and sometimes schools – to get away with poor practices because the Ombudsman cannot investigate complaints against them. Councils report on such poor practice, but such other bodies can just carry on doing what they are doing without being held accountable.

There is a mismatch between which body is being held accountable by the Ombudsman. The local authority remains legally responsible to ensure the provision of an EHCP is delivered, but it has very limited levers with respect to schools deliver the required provision. Council officers expressed frustration that councils are held accountable for something that is largely outside their control owing to the lack of levers available to them to ensure good practice by schools. Councils do track the delivery of provision by schools, although they are reliant on schools providing them with information. For these reasons, schools have no exposure to the LGSCO and its service improvement recommendations. Consequently, the LGSCO has little influence over schools and other bodies.

“I have had some complaints where the parents are saying the school are not delivering the provision. Most schools I have worked with have been great, but ultimately, it is a bit of a negative that the council is responsible regardless. So, academies can do what they want with the money we give them to support.”<sup>114</sup>

“What we see ... is other partners – particularly health, sometimes schools – almost getting away with bad practice, because we feel the impact of that recommendation or decision. We report on it. And other bodies can just carry on doing what they are doing. If schools and health partners started to experience the Ombudsman in a way that we do, then that would result in meaningful change and training pretty quickly. Or certainly, we would see less bad practice.”<sup>115</sup>

Another officer noted that he had encountered real problems with schools accepting placements for SEND children:

**“What we see ... is other partners – particularly health, sometimes schools – almost getting away with bad practice, because we feel the impact of that recommendation or decision.”<sup>116</sup>**

Council officers noted:

“Councils have the responsibility, but they have no real levers. If an academy school does not provide provision, there is very little that the council can do about it. SEND decisions might seem like isolated incidents, but sometimes the fault can lie with another body, so it can be a bit misleading. Many people are concerned about this. The Ombudsman has suggested that its remit be extended to include investigating schools. I can see how that could improve localised provision in schools. We would welcome that.”<sup>113</sup>

“We are having to fight with schools for things that other councils would not be fighting for because their schools know what they should do. In our area, the schools very much run the show because they had to in the past, because no-one else was doing it for quite a long time.”<sup>116</sup>

When a child or young person does not receive provision, the council is legally responsible. If it is the school or the Integrated Care Board that does not deliver provision, then the LGSCO holds the council accountable. However, councils have few levers to force other bodies to deliver. “So essentially, you have a really difficult situation where you have to keep pushing and

113 Council 8 (SEND officer)

114 Council 17 (SEND officer)

115 Council 5 (SEND officer)

116 Council 2 (SEND officer).

putting pressure on the schools to do their bit. But if they do not, then the local authority is the one who has to sort it out, because we have the legal accountability for it. It is a pain and bad for children.”<sup>117</sup>

Another senior officer noted:

“Before academies, local authorities were in a far stronger position to enforce rights to place children in schools to actually protect rights, but there has been a shift of power away from the local authorities. Our role has turned into being more of a system influencer. I do not feel that the Ombudsman always appreciates that. If we [have a] system [of] collaboration with and within the schools, then that is great, but when there is antagonism and [a] power battle, things become much more difficult.”<sup>118</sup>

The LGSCO has repeatedly argued that its jurisdiction should be extended to include SEND provision in schools. This is necessary to investigate complaints concerning how EHCPs are delivered by schools and how schools provide support to those children and young people with additional learning needs who do not meet the threshold for a plan. This would strengthen accountability, increase satisfaction and drive improvement in schools and in the SEND system.<sup>119</sup>

Council officers supported the Ombudsman’s desire to extend their remit to investigating schools. Similarly, the House of Commons Education Committee has concluded that the inability of the LGSCO to investigate how a school implements EHC plans or SEN support represented a significant gap in accountability, particularly for children and young people who do not meet the threshold for an EHC plan but who would nonetheless benefit from the additional support that schools are legally required to provide under SEN support.

The Committee recommended that the government extend the LGSCO’s powers to cover complaints against schools, multi-academy trusts and other education settings in their delivery of EHCPs, SEN support and other appropriate inclusive education for children with SEND. This would strengthen accountability, provide families with a clearer route to redress, and help ensure that statutory responsibilities are met consistently across the system. Without this change, serious shortcomings in support will continue to go unaddressed.<sup>120</sup>

In its white paper, the Department for Education has proposed that it would introduce a clear legal duty on schools (and other educational settings) to ensure children and young people receives timely, high-quality and effective support.<sup>121</sup> This would address the problem for councils by taking away the current legal duty on them to ensure provision.

The white paper also proposes to strengthen school and college complaint processes. This would be undertaken by setting clear expectations and timeframes, improving guidance and support for schools and introducing independent complaint panels, which would provide a second stage to which complaints could be escalated. The white paper also proposes to strengthen the scrutiny of complaints data. This could be used to identify patterns about provision by an education setting.<sup>122</sup>

These are both positive developments. However, the white paper makes no mention of the role of the LGSCO. Contrary to the LGSCO’s recommendations, there is no proposal to extend its jurisdiction so that it could investigate complaints about what happens within schools (and other educational settings), such as the failure to ensure SEND provision to a child or young person.

117 Council 2 (SEND Officer)

118 Council 8 (SEND Officer)

119 LGSCO, *Local Government and Social Care in 2024 and Beyond: Time to Rebuild - Triennial Review by the Local Government and Social Care Ombudsman and Commission for Local Administration in England (2024)*, p.12

120 House of Commons Education Committee, *Solving the SEND Crisis (HC 492 2024–25)* para.128

121 Department for Education, *SEND Reform: Putting Children and Young People First (CP 1509, 2026)* 97

122 Ibid 103-104

## THE LGSCO, THE PHSO AND HEALTH BODIES

SEND delivery also includes health bodies, such as Integrated Care Boards (ICBs) and hospital trusts. Complaints against health bodies are investigated by a joint investigation team comprised of both the LGSCO and the Parliamentary and Health Service Ombudsman (PHSO). The LGSCO and the PHSO have together investigated complaints and issued service improvement recommendations to health bodies.

For instance, in one case, a council and an ICB did not appropriately respond to the SEND Tribunal's non-binding recommendation concerning an EHCP.<sup>123</sup> This led to the young person missing occupational therapy support at college, causing uncertainty, frustration and distress. It was recommended that the organisations apologise, review their processes and make a symbolic payment to remedy the injustice.

One ICB official explained that the investigation highlighted important matters and learning for the ICB. Further, the LGSCO could direct the ICB to be financially responsible for their faults. However, there have been relatively few complaints about ICBs investigated by the LGSCO and PHSO.<sup>124</sup>

One interviewee at an ICB queried awareness levels of amongst families of this redress route:

“How aware are families are of it? That's another matter. I think they absolutely would know how to do an appeal through the tribunal system. But I don't necessarily think that the Ombudsman is very ... visible or approachable. I've worked here a long time, and I've probably had less than a handful of cases that have gone to the Ombudsman. We had a bit of a spur a few years ago. We've got one outstanding still, but there's not very many complaints.”<sup>125</sup>

**“ How aware are families are of it? That's another matter. I think they absolutely would know how to do an appeal through the tribunal system. But I don't necessarily think that the Ombudsman is very ... visible or approachable.”<sup>125</sup>**

The small number of complaints suggests low public awareness of this route of redress amongst the public and health bodies themselves. It was also noted that ICBs may well have limited understand or exposure to SEND and also the LGSCO. It is also possible that families may be more reluctant to complain against health bodies compared with local authorities.

Overall, certain problems arise from the limitation of the LGSCO's jurisdiction principally to local authorities. Joint PHSO-LGSCO investigations into health bodies are a positive development. They open up health bodies to scrutiny, accountability and service improvements. However, the number of such investigations has been quite small, below ten. It seems likely that public awareness of this complaint mechanism is limited. One could make a strong argument that the PHSO and the LGSCO should seek to raise awareness of this complaint route – for both families and health bodies.

<sup>123</sup> Council 20 (Senior SEND officer)

<sup>124</sup> LGSCO, Humber Teaching NHS Foundation Trust (21 006 452a). See also LGSCO, Royal Wolverhampton Hospital NHS Trust (21 010 968a); LGSCO, Wokingham Borough Council (21 013 840).

<sup>125</sup> ICB 1 (ICB officer)

## THE LGSCO'S PUBLIC REPORTS

In addition to routine 'statements', the LGSCO also issues more systemic public reports, which are publicised and must be considered by a senior council decision-making body such as a committee or the full council. This enables transparent democratic oversight and scrutiny of the council and its behaviours. It places council officers under the spotlight and requires them to explain whether or not they accept the LGSCO's findings and, if so, what actions have been or will be taken to address the faults identified. The LGSCO issued eight SEND public reports in 2024-25.

For instance, Rochdale Metropolitan Borough Council admitted to the LGSCO that it had a backlog of nearly 1,500 EHCPs to review for children with SEND, meaning long delays for families.<sup>126</sup> Whereas councils are required to issue a final plan within 12 weeks of an annual review meeting and within eight weeks of sending the amendment notice, the council had hundreds of cases that had been delayed.

The children and young people affected by the delays should still have been receiving the provision detailed in their existing EHCPs. However, the purpose of an annual review is to ensure that the contents of an EHCP reflect the current needs of the child or young person. By delaying annual reviews, the council may not have been meeting a child or young person's needs or know that those needs have changed or that their placement may no longer be suitable. Such delays exacerbate the injustice caused. As the LGSCO explained: "The longer the passage of time before the Plan is amended and finalised to address the issues identified in a child or young person's annual review, the greater the likelihood for ongoing and increasing injustice for each child or young person concerned."<sup>127</sup>

In response, the council was taking significant steps to improve its SEND service. The LGSCO recommended that the council produce an action plan to meet its statutory timescales for issuing decisions after an annual review meeting, issuing EHCPs after annual reviews and reducing the time families have to wait for a final EHCP. The council needed to identify specific further steps to ensure it:

- **provided families with its decisions within four weeks, and final EHCPs within 12 weeks of the annual review meeting**
- **looked at the impact of the measures it said it has put in place already and assess whether these are working**
- **looked at what steps it could take to specifically progress its oldest cases – those which have been open for over six months without a draft EHCP.**

Further, the council needed to give oversight of the action plan produced to the relevant committee and provide quarterly progress updates to the committee, giving explanations and reasons if objectives or timescales have not been met. The action plan, quarterly updates and committee minutes all needed to be published in the SEND section of the council's website to enable those affected to track the progress. The council responded by publishing an action plan.<sup>128</sup>

Another public report found that nearly 60 per cent of eligible Tameside children had waited more than eight months for a EHCP update. The council was routinely taking too long to complete annual reviews.<sup>129</sup> The LGSCO recommended that the council produce an action plan for how it aims to address its failure to meet the statutory timescales for EHCP reviews and overcome its significant backlog

<sup>126</sup> LGSCO, "Rochdale's systemic SEND issues highlighted in Ombudsman report" (13 March 2025); Rochdale Metropolitan Borough Council (24 010 066).

<sup>127</sup> Ibid., para.28.

<sup>128</sup> Rochdale Health, Schools and Care Overview and Scrutiny Committee, Special Educational Needs and Disability (SEND) Educational, Health and Care (EHC) Annual Review Backlog and Local Government and Social Care Ombudsman (LGSCO) Action Plan (23rd July 2025).

<sup>129</sup> LGSCO, "Nearly 60 per cent of eligible Tameside children waited more than eight months for education support plan update, Ombudsman reports" (27 February 2025).

of EHCP reviews.<sup>130</sup> **Appendix 3** gives more examples of recent LGSCO public reports and councils' responses.

Council officers recognised that public reports contained more weighty service improvement recommendations, affecting a larger population, that resulted in more meaningful improvement than other repetitive service improvement recommendations to, for instance, remind officers of EHCP timescales.

"I think some of the challenge of this is that [we see] a lot of cases where someone has unfortunately been really let down. And I have no doubt families with SEND children have seen a repeat failure. It is almost like you can put the best processes in the world in place, [but] sometimes, when you are dealing with an issue, particularly at such scale as we are here, we have a repeat failure. There is turnover of staff. Things get missed. There is an oversight. Something goes wrong, or whatever."<sup>132</sup>

**“ I think some of the challenge of this is that [we see] a lot of cases where someone has unfortunately been really let down. And I have no doubt families with SEND children have seen a repeat failure. <sup>132</sup>**

At the same time, officers noted that public reports can attract political heat through protests. One Director of Children's Services noted that appearing before a committee was "an exercise in public humiliation" and that public reports can also mobilise public protests. "We have lost staff who do not want to work in that environment because they consider it really toxic." The officer noted that while the LGSCO's public reports can highlight systemic problems, they do not necessarily contribute to faster or better service improvements.<sup>131</sup>

There is also the risk of a repeat failure, that is, the same fault recurring. Public reports bring the Ombudsman's reports to greater prominence and to the attention of councillors, but they do not necessarily change the pace at which that any service improvement recommendation can be adopted, or how it can be resourced. A public report might create an expectation that the same problem does not recur, but then it might happen again, which can be frustrating. As one council officer explained:

Other officers explained that they did not want to receive a public report because of the adverse publicity and reputational damage.<sup>133</sup> At the same time, a senior SEND officer explained that a public report involved reviewing some 1,600 EHCPs. This brought a considerable amount of work, but was also helpful in confirming that the council knew it was focusing on the right issues.<sup>134</sup> "Overall, and in hindsight, it was positive. It was ... a kickstart for us to do something quite radical about how we delivered our services and to improve them. So, it was useful in that sense. It was a helpful piece of work, and it did help us on our improvement journey."<sup>135</sup>

Following another public report, which identified unacceptable shortcomings, senior council officers informed the committee that they had taken the LGSCO's service improvement recommendations "extremely seriously and we have been implementing the changes".<sup>136</sup> Collaboration and communications between the two council departments were improved to prevent the problem from recurring.

130 Tameside Council, Executive Cabinet (26 March 2025)

131 Council 7 (Director of Children's Service)

132 Council 18. (Complaints manager)

133 Council 12 (Complaints manager)

134 Council 9. (SEND officer)

135 Council 9 (SEND officer)

136 Devon County Council Standards Committee (14 October 2024)

The service improvement recommendations in public reports tend to be more wide-ranging and deeper than the more routine improvement recommendations in ordinary statements. Precisely because of this, public reports are likely to generate a greater need for councils to take effective corrective action. At the same time, and again precisely because of the wider-ranging and deeper nature of service improvement recommendations in the LGSCO's public reports, it may be more difficult and challenging for councils to implement those recommendations. It is not guaranteed that a public report will necessarily lead to quicker and more effective improvements.

The additional publicity and scrutiny that public reports attract – sometimes including ongoing scrutiny by council committees – means that the issues raised are more likely to retain their currency within a council's SEND service and are therefore less likely to be put to one side and forgotten about. For instance, in one public report, the Ombudsman noted that a council had adopted an incorrect approach to EHCP reviews – “something we have seen being taken in council areas across the country. I would urge those doing this to check their processes to ensure they follow statutory timelines correctly.”<sup>137</sup> The council agreed to issue guidance to staff advising that councils must review EHCPs in line with statutory guidelines when a child is changing a phase of education.

Highlighting problematic issues for the attention of councillors and the public is beneficial in terms of drawing councillors' attention to the matter and recommending service improvements. At the same time, council

officers noted that they do not welcome a public report, because of the risks of reputational damage and critical media and public attention. It is also the case that, on occasion, public protests prompted by a public report can make the working environment somewhat toxic.

While council officers interviewed explained that they did not want their own council to receive a public report, they also noted that they took account of the LGSCO's public reports regarding other councils. The public reports considered in [Appendix 2](#) demonstrate that councils do take action following public reports to implement service improvements.

From the LGSCO's perspective, it must strike a balance with regard to how it uses its power to issue public reports and how many it publishes. If the LGSCO significantly increased the number of public reports it issues, then this could well likely dilute their effect and impact.

If a council is conscientiously doing all it can to implement improvements recommended by a public report, then it is unlikely that issuing another public report on the same or similar problems will be helpful and effective in terms of driving improvements or conducive to the Ombudsman's relationship with that council. Familiarity might breed contempt. It might also prompt resistance from councils and/or weaken the cooperative and consensual system of administrative justice which the LGSCO embodies. While the Ombudsman has a range of tools at its disposal in order to prompt councils to improve, there are also limits as to what it can do.

<sup>137</sup> LGSCO, “Ombudsman reminds councils to review SEN needs before Key Stage transfers” (24 July 2025); Warwickshire County Council (24 006 216)

## FEEDBACK TO CENTRAL GOVERNMENT

The LGSCO can only issue service improvement recommendations to local government, not central government. However, it has highlighted key messages for central government. It has emphasised that the SEND system “is simply not working for children, families or local authorities: the money available is not sufficient to provide the services that children are entitled to, many organisations are severely understaffed and in many areas suitable and affordable support does not exist ... The government must get a strong and comprehensive grip of this issue, right from reviewing the 2014 legislation through to ensuring the resources are in place, and retained, to support children how and when they need it. Special educational needs provision is an existential threat for the local authorities that provide children’s services and, most importantly, affects the lives of thousands of children having long term effects on their aspirations and contribution to society.”<sup>138</sup>

The overall position of councils is that a significant amount of maladministration is largely the downstream consequence of the insufficiency of resources they receive from central government. Consequently, many may well feel that they have been set up to fail and that they receive the blame and criticism for matters often beyond their control. The issue then arises as to whether or not central government takes all of this into account. Council officers noted that they wanted the LGSCO to speak directly to central government more explicitly.

A further issue is the degree to which central government takes these messages on board and acts upon them. Scrutiny has also been undertaken by the National Audit Office, the House of Commons Education Select Committee, the media and SEND campaigners. The problems within SEND can realistically only be resolved through reform and/or additional funding from central government. This will not, of course, mean that there will not be any routine complaints – they will always arise, although it might possibly reduce the level of complaints. Such reforms are, though, costly and there would likely be different views on their effectiveness and desirability. As one council officer explained:

“What would it take to enable councils to do better? Lots more money ... also changing the legislation is a massive issue. It is written in a way that is very centred around parental preference, and we need to give families what they want, not what they need ... the evidence burden is on us at every point, and there is so much challenge available.

“So, it is not just the LGSCO. We also have pre-action judicial review letters all the time. We have a whole complaints process. We also have calls and emails. We have tribunals, mediations, disagreement resolution meetings, we have points of challenge, and that is at every decision letter stage. That is every decision we make. Even internal decisions are challenged in certain ways ... and that takes up so much time. And it does not really improve the process and that issue underlies everything.”

# 5 Implications of this research and recommendations

We now consider the implications of the research findings and recommendations for policy and practice. The SEND system is in a state of both crisis and change, and this research illustrates and confirms the scale and depth of challenges in this system.

These include severe funding, resource and capacity challenges, along with maladministration and service failures by councils and other bodies when handling individual cases. There are also wider national issues which cannot be resolved by the LGSCO, but which require a national policy response from central government.

Council officers repeatedly noted that they feel they have been “set up to fail” by central government. The combined effect of increased demand and inadequate resourcing means that councils often struggle to administer the system effectively. The blame for this is then often shifted from central government to local authorities for the inevitable wide-scale maladministration that people experience.

It is in this context that the LGSCO and its service improvement recommendations are to be understood. The LGSCO investigates complaints and issues service improvement recommendations to encourage and help councils to address their faults and to prevent them from recurring. However, councils’ ability to respond effectively to such recommendations is also conditioned by the same underlying systemic problems.

Councils recognised and welcomed the independence of the LGSCO and the need for its accountability. They highlighted the value and impact of the LGSCO’s service improvement recommendations. The LGSCO has a positive impact on councils in various

respects. Local authorities take the LGSCO seriously. It provides oversight and scrutiny of SEND delivery. Councils cannot ignore the Ombudsman. They must respond to its investigations and findings which make councils accountable.

Councils also accept the LGSCO’s service improvement recommendations, taking account of its decisions and how it deals with complaints in their own handling of complaints. Councils seek to embed the LGSCO’s approach in their complaint-handling. Councils expressed their intention to ensure that complaints can be resolved effectively without the need for people to escalate them to the LGSCO.

While councils criticised the repetitive nature of some LGSCO service improvement recommendations, they universally accept and act upon those recommendations. Councils also recognised the value of more systemic recommendations made through public reports, although they do not necessarily welcome the adverse publicity. LGSCO investigations sometimes identify gaps and problems that councils were unaware of and which provide them with useful learning.

Further, the LGSCO’s reports can be used by senior SEND officers as a political lever within their councils to argue for more resources. Both this and the LGSCO’s public reports illustrate a wider point. Ombudsmen rely upon persuasion and public exposure of maladministration and service failure to get councils to improve services. Such persuasion can be through councils’ own willingness to improve, although it can also be political – councils may want to avoid external criticism and adverse reputational damage. The LGSCO also prompts councils to undertake service improvements in a shorter timeframe from what would otherwise have been the case.

All of the above points must be understood in the context which councils emphasised, namely that the administrative problems in SEND delivery are symptoms of a wider problem: the national challenges in SEND funding and resourcing, which is the responsibility of central government. There will always be a greater or lesser degree of maladministration and service failure in any public service. Public bodies will make mistakes and errors. However, the national problems in the SEND system exceed what could be expected from an 'ordinary' level of maladministration. Both the need for the LGSCO, and also its influence and impact, are created and constrained by these wider forces.

Councils highlighted various criticisms and reservations with regard to the LGSCO, namely:

- › **the repetitive nature of some of its service improvement recommendations**
- › **the time lag between the problems complained of and the LGSCO issuing its investigation reports**
- › **the perceived (in-)consistency of and justification for financial remedies**
- › **service improvement recommendations which tell council SEND officers what they already know, but lack the resources and capacity to implement**
- › **the LGSCO not taking account of the wider national pressures under which councils operate.**

As regards the final point, the LGSCO's position is that it can legitimately criticise councils for failure to deliver their statutory responsibilities.

There are no easy answers to the challenges in the SEND system. At the same time, the research demonstrates that, despite those challenges and constraints in the SEND system, the LGSCO does make a difference. Given maladministration in the system, the LGSCO's investigations and recommendations play an important role in holding councils to account and recommending service improvements. Despite facing difficulties and limitations, the LGSCO still performs an important role.

There is, and needs to be, a public debate about potential changes to SEND and also the role of the LGSCO. The County Councils Network would like to see a reformed SEND system that would limit individual choice and entitlements, remove the role of the SEND Tribunal and enhance the role of non-judicial mechanisms, such as the LGSCO.<sup>139</sup> This would have significant implications for the LGSCO. On the other hand, many families feel let down and frustrated by the system. It can be a real struggle for families to secure SEND provision and they often have to devote considerable time and energy trying to battle for such provision.

A related issue is whether ensuring delivery of EHCP provision should continue to be a legally binding responsibility on councils. Replacing this legal duty on councils with a more discretionary approach would affect the role of the LGSCO. This would be a significant weakening of entitlements for families.

The view of the House of Commons Education Committee is that, while current levels of EHCPs are unsustainable, the solution is not to remove statutory entitlements. Instead, the Department for Education should strengthen the ability of local authorities to meet these obligations by ensuring that the necessary levers are in place to compel other services, such as ICBs. This would likely increase the role of the LGSCO when problems arise.

Matters such as the funding and design of the SEND system involve political choices and go beyond the scope of the current research. Nonetheless, the research suggests potential areas for improvement and reform which could usefully enhance the system.

<sup>139</sup> County Councils Network, *Special Educational Needs & Disabilities in England: How we Got to Crisis Point and Why we Need Reform of the System* (2025).

## RECOMMENDATION 1

### Expand the role of the LGSCO to investigate complaints against schools

First, the LGSCO's remit should be extended so that it can investigate complaints against schools. The LGSCO's inability to investigate complaints against schools concerning the provision of education is a significant gap in its jurisdiction. Schools are tasked with delivering SEND support and EHCPs, but if they do not, then problems can arise.

The current remedy is to complain to the school and then to the Department for Education, or to complain to the LGSCO. Councils then experience considerable difficulties in trying to persuade schools to deliver the required educational provision because they lack the levers required. Councils are legally accountable to secure provision, but lack the responsibility and capacity to secure provision in practice.

The solution is to extend the LGSCO's remit to include investigating complaints against schools concerning failure to secure provision. The LGSCO has repeatedly recommended that its jurisdiction include complaints against schools. This would enable the LGSCO to hold schools accountable, widen redress for families and enable it to issue service improvements to schools. This is important for both children and young people with an EHCP, as well as for those who do not meet the threshold for an EHCP

but who would nonetheless benefit from the additional support.

The need to extend the LGSCO's remit in this way is likely to increase as the Department for Education is placing greater emphasis on specialist provision in mainstream settings.<sup>140</sup> Consequently, the need for independent redress to the LGSCO will become more important and necessary. Expanding the role of the LGSCO to investigate complaints against schools would enhance redress for aggrieved people.

This extension of the LGSCO's remit has been strongly supported by the LGSCO itself, the House of Commons Education Committee and the council officers interviewed. The latter were concerned about how councils are legally responsible for the failures and shortcomings by other bodies (schools, health bodies etc), but which they councils have limited capacity to address and correct. The inability of the LGSCO to investigate such complaints is a major gap. Enabling the LGSCO to investigate complaints against schools would enhance redress for families, extend accountability to schools and enable the LGSCO to issue service improvement recommendations to schools. This represents a significant gap which could be closed relatively easily through an amendment to the Local Government Act 1974.

## RECOMMENDATION 2

### Raise public awareness of the ability to complain about health bodies

Joint investigations by the LGSCO and the PHSO into health bodies – such as Integrated Care Boards and hospital trusts – should be better publicised. The research found that these investigations are important and can be impactful. However, the small number of such investigations gives cause for concern. This could be attributed to the lack of problems and failures by health bodies and grievances against them. However, it is more realistic to suppose that the low number of complaints may well arise as a result of low public awareness of this redress route.

Council and ICB officers interviewed raised concerns with regard to ICBs and health bodies not delivering provision. It is likely that a volume of unremedied injustice arising from fault and service failure is not being escalated to the LGSCO. The relatively low number of complaints means that the ability of the LGSCO to hold health bodies accountable and to issue service improvement recommendations is correspondingly reduced. It is therefore recommended that the PHSO and the LGSCO consider how to better publicise the ability of people to complain about health bodies.

140 Department for Education, "£3bn investment to end postcode lottery for children with SEND" (11 December 2025), <https://www.gov.uk/government/news/3bn-investment-to-end-postcode-lottery-for-children-with-send>

### RECOMMENDATION 3

#### More personal interactions between the LGSCO and councils

The LGSCO could have more personal interactions with councils. Whenever LGSCO officers have engaged personally with councils that receive a high number of SEND complaints, the council officers have welcomed such personal interactions as a means of obtaining a better understanding of the LGSCO's position on key issues. It has also helped to reduce the time lag between a fault arising and the LGSCO issuing its report. Officers explained that such personal interactions had been very much welcomed and useful.

It is more direct and effective for council officers to engage with the LGSCO in person than through the usual and more impersonal methods of reading LGSCO decisions. Personal interactions can clarify important points of detail and refine the LGSCO's key messages. There are clearly capacity issues for the LGSCO in this regard. It has tended to focus its resources on those local authorities with the highest volume of complaints. This is sensible and should continue. Nevertheless, if the LGSCO was able to find the resource to allow for more personal interactions with councils, then would be beneficial.

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### RECOMMENDATION 4

#### Overhaul the LGSCO's approach to financial remedies

The research has identified concerns by council officers relating to the LGSCO's financial remedies. At present, it is difficult for anyone to know how financial remedy payments are used in practice and whether they are actually benefit the child or young person concerned. A large number of high-value financial remedies have financial implications for council budgets as the money comes from the service concerned. This potentially disadvantages other groups of people who rely on the SEND system.

One option is to adopt different methods by which councils could pay a financial remedy. Instead of a direct cash payment, councils could purchase tutoring, for example, or families could invoice the council for the cost. Some consideration would have to be given to how such a proposal could be administered in practice.

Another issue concerns the wider role and purpose of the LGSCO's financial remedies. There are potentially other ways of putting children back on track other than by way of issuing a financial remedy.

The LGSCO's approach contrasts with that of the Scottish Public Services Ombudsman and the Public Sector Ombudsman for Wales, both of which issue fewer and lower financial remedy recommendations than the LGSCO. They tend to recognise injustice caused by maladministration and to issue service improvement recommendations, but they only rarely recommend a financial remedy. The LGSCO is undertaking a review of its financial remedies and the research findings presented here been fed into that review.



## RECOMMENDATION 5

### Government should consider redress rights during SEND reforms

Another implication from the research concerns the wider design or reform of the SEND system in England. It is important that central government has sufficient awareness of independent rights of redress and the role of the LGSCO when designing the SEND system and the implications for such rights of redress. If the government introduces a shift of focus with SEND toward greater use of mainstream educational settings, then this will reinforce the need to extend the LGSCO's remit so that it can investigate complaints against schools.

## RECOMMENDATION 6

### The LGSCO should publish up-to-date guidance

A final recommendation is that the LGSCO could usefully issue up-to-date guidance for councils by drawing upon the service improvement recommendations it has made over recent years. The LGSCO last published a Focus Report on SEND in 2019.<sup>141</sup> It has also suggested scrutiny questions for councillors.<sup>142</sup>

The LGSCO has since investigated many SEND complaints and issued many service

improvement recommendations. However, these recommendations are scattered across a large number of LGSCO investigation reports. They are easily accessible. Given the volume of SEND complaints, it is suggested that the LGSCO could usefully update these materials by outlining the core features and attributes of a good quality SEND service and re-issuing the suggested scrutiny questions for councillors.

<sup>141</sup> LGSCO, *Not Going to Plan? Education, Health and Care Plans Two Years On* (2019).

<sup>142</sup> LGSCO, Scrutiny questions: Suggested questions to help councillors scrutinise their local services, SEND, <https://www.lgo.org.uk/information-centre/reports/scrutiny-questions>

# Appendix 1

## RESEARCH METHODS

Data was collected as follows:

1. **27 interviews with council officers from 21 English local authorities (which represents 14 per cent of all English local authorities with SEND responsibilities) and two Integrated Care Boards (ICBs)**
2. **a case-file analysis of 70 LGSCO SEND investigation reports, which included both statements and reports and the latter's consideration by a council scrutiny committee and the councils' accompanying responses**
3. **analysis of other data supplied by the LGSCO.**

### 1. Interviews with SEND officers at councils and ICBs

The research data draws heavily upon interviews with council officers. This is inevitable in some respects. For instance, in relation to the handling of complaints by councils, it is not possible, or at least not easily possible, for an external researcher to examine individual case-files because of privacy and confidentiality considerations. It is also difficult to collect data about how the LGSCO's service improvement recommendations are implemented. It was therefore necessary to rely on what council officers stated and this is likely to be combination of objective information and also more subjective views about their experiences, duties and the pressures they work under.

The research collected data from interviews with council officials as opposed to families, because the focus was on how local authorities respond to the LGSCO's service improvement recommendations which are directed to councils. The project did not interview the families and people who use the SEND system and who then complain – either to councils or then to the Ombudsman.

Councils were contacted through the public list of Directors of Children's Services and the email addresses on council websites, such as those of councils' monitoring officers and complaints staff. All English local authorities with

responsibility for SEND were contacted. Some 21 local authorities and two ICBs responded positively. A total of 27 officers were interviewed.

Some interviews included just one officer; other interviews included two or three officers. Interviewees included a mix of officials of different of positions: Directors of Children's Services, council SEND officers and team leaders, and complaints staff. All the officials interviewed had experience of and worked in SEND services. The interviews were recorded and transcribed through Otter AI transcription software.

The sample of local authorities was dependent on the consent and willingness of both councils and council officers to be interviewed. The sample contained a mix of different types of local authorities: county councils, metropolitan borough councils and London borough councils. It comprised a mix of smaller city and urban councils and more geographically larger rural councils. The sample of 21 local authorities represented 14 per cent of all English local authorities with SEND responsibilities.

### 2. Case-file analysis

A sample of LGSCO SEND investigation reports was selected from the decisions published on its website. The LGSCO now publishes almost all of its decisions on its website. Councils' websites were accessed for video recordings of council committee meetings which considered the LGSCO's public reports and the responses of council officers to those committees.

The LGSCO's public reports must be considered by the relevant council committees and then the council reports back to the LGSCO. The public report is usually as one agenda item amongst others, although very occasionally, a single committee meeting may be devoted solely to a single LGSCO public report. The length of such consideration by committees varied widely from between four minutes to more than an hour, depending on the number and depth of questions asked of council officers by councillors. Data was also collected from council meetings that considered the LGSCO's annual review of complaints for that council.

# Appendix 2

## LGSCO PUBLIC REPORTS AND COUNCIL RESPONSES

### Stockton-on-Tees (24 013 122)

On 24 July 2025, the Local Government and Social Care Ombudsman (LGSCO) issued a Public Interest Report concerning Stockton-on-Tees Borough Council's handling of a young person's Education, Health and Care Plan (EHCP). The Ombudsman determined that this case merited a public report because of its seriousness and the wider implications for service delivery and statutory compliance.

The Ombudsman found that the council failed to secure the special educational provision set out in the young person's EHCP and did not carry out the required annual review, despite sending correspondence to the family stating that a review had taken place. This resulted in the young person missing significant education and caused distress and uncertainty for the family. The investigation also revealed that this was not an isolated error: 99 other families had been sent similar letters stating that annual reviews had been completed when no meeting or consultation had in fact taken place.

The issue came to light during an Ombudsman's investigation, after a mother complained her teenager had missed out on a significant amount of support and had been out of school for a long period because their EHCP had not been maintained properly. The mother was concerned the council had not correctly followed the annual EHCP review process, which meant information about the support the teenager needed was out of date. She said the council had sent her letters for two years stating it had carried out an annual review of the plan, when in fact it had not done so.

On one occasion, the date the council untruthfully claimed the review had taken place was a Saturday. The letter also referenced consulting with the teenager's school before deciding it did not need to change the EHCP when they were not in school at the time. During the Ombudsman's investigation into the mother's complaint, the council admitted nearly 100 other children and young people had also received a letter which incorrectly stated

annual reviews had taken place.

Ms Amerdeep Somal, Local Government and Social Care Ombudsman, said:

"Annual reviews are designed to ensure EHCPs still meet the child or young person's needs, and measure how they are achieving against their targets. Without carrying out an annual review, councils have no way of knowing whether they are fulfilling their requirements. I am alarmed that the council would send such mendacious letters to nearly 100 families of vulnerable children saying review meetings have taken place when the council was aware they haven't.

"The council told me it issued the letters to comply with its statutory duties – but its duty is to carry out the yearly reviews, not to untruthfully say it has done so. We recognise councils are under increasing pressure to complete the various stages of the EHC process in the timescales required by law, given the significant increase in children and young people with EHCPs. Nevertheless, we must hold councils to account. We welcome the council's openness to telling us about the letters it sent to other families. I hope both Stockton-on-Tees and other councils can learn lessons from this case and the changes the council has agreed to make will ensure it has a firmer grip on the EHCP review process in future."

To remedy the injustice, the Ombudsman required the council to apologise formally to the young person and parent, to make a payment of £5,700 to recognise the lost education and a further £200 for the distress caused by misleading correspondence, and to repeat its earlier offer of £1,800 for the period prior to May 2023. The total redress of £7,700 has been funded from the SEND budget. The council issued the apology on 14 August 2025 and completed the payments on 18 August 2025. The Ombudsman also required the council to write to the 99 affected families to explain the error, to apologise and to invite any concerns about their child's provision.

The LGSCO also recommended that the council take the following actions to improve its services in future:

- › **Develop an action plan which aims to ensure that every child/ young person has an annual review every year. The council should set out specific actions, timescales and any additional resources required to achieve this statutory requirement as quickly as possible. The action plan should be agreed by the relevant council committee and progress should be monitored by that committee as well as senior officers. This should include ensuring that annual review outcome letters are only issued when a review meeting has taken place.**
- › **Review its procedures for delivering Education Otherwise Than at School (EOTAS) provision in EHCPs, to ensure it properly assesses what provision is required and develops processes to check the provision is in place and act on any concerns.**
- › **Review its processes for finding post-16 placements for young people with EHCPs to ensure the Council identifies a placement and completes the process within the statutory timescales.**

The council has accepted all of the Ombudsman's recommendations in full. Considerable progress had already been made. The practice of issuing 'no change' letters was stopped. All families who may have been affected had a full annual review. A strengthened annual review process was introduced in September 2025, with clear responsibilities and escalation points, and with regular oversight through the SEND Service Improvement Board. Revised procedures for EOTAS and post-16 placements were implemented.

The Council Cabinet was asked to note both the seriousness of the Ombudsman's findings and the substantial steps already taken to put matters right. The Ombudsman's findings related to failings that caused significant distress to families and denied children educational opportunities. The council acted to restore confidence by apologising, offering redress and strengthening systems so that statutory duties are met.

## Trafford Council (23 019 685)

A child had missed months of education despite the council identifying a suitable tutor within a fortnight of them leaving mainstream school, a Local Government and Social Care Ombudsman report has revealed. The child had an EHCP because of their special educational needs and was no longer able to attend their mainstream school in September 2023.

The school found a tutor within two weeks and within two months Trafford council found two special schools with places immediately available. However, instead of putting arrangements in place as soon as it could, the council delayed looking at the child's case at funding panel meetings for months. And when it did tackle the case, it only looked at funding for the tutor, despite the school placement being available immediately. The council waited another month to look at the placement option but then decided to investigate more local options, including a special class at a mainstream school which had already been unsuccessful.

The LGSCO stated:

"42. We recognise that the special school place is more expensive than a mainstream placement and that the council must spend public money carefully. However, in this case, its decision to consult with another small specialist class before approving the placement was fault. The review meeting, attended by all those who knew Y best, agreed that an SSC was not suitable for Y. The panel had this information as part of the referral. The records of the panel's decision making are too brief, comprising only one line and no minutes to reflect the discussion, to demonstrate why it nonetheless considered a small specialist class to be appropriate for Y.

43. The panel's repeated delays meant the council failed to meet the statutory timescale for issuing an amended EHCP after a review. It should have issued the plan within 12 weeks of the review meeting. It missed this deadline by more than six weeks. This was fault.

48. It is for the council to decide how to

use its resources and structure its decision making. However, reserving all decisions to a panel does not extend the statutory timeframes for EHC decisions. Nor does it remove or diminish the expectation that it be able to demonstrate the reasons for its decisions. It must not get in the way of providing an effective service.

49. The evidence shows that the council's internal bureaucracy was the cause of the delay in this case. This delay was avoidable and it caused significant injustice to Mrs X and Y. It is likely other children have and are experiencing similar injustice.”

In response to the draft report, the council told the LGSCO that it was improving the timeliness of its decision making and provision of education to children who cannot go to school. Measures included:

- › **Staff training by an independent expert on the section 19 duty – the council is currently redrafting its policy to reflect this training.**
- › **In addition to adding new panels, the council provided training for panel members to ensure the terms of reference are clear and decision making is transparent.**
- › **New posts within a restructured EHC team from January 2025.**
- › **Developing practice standards to make sure all staff are clear about their responsibility and to promote consistent decision making.**
- › **Setting up a Learning and Improvement Steering Group which included parent representatives.**
- › **The LGSCO also recommended that the council take the following action to improve its services:**
- › **Share a copy of this decision with staff in the relevant departments to consider the lessons to be learned from this case.**
- › **Refer the learning outcomes and this decision to the relevant scrutiny committee.**
- › **Review current arrangements for making decisions about EHC assessments and**

**plans to ensure the Council can make the decisions required within the statutory timescales and without causing avoidable injustice to children with SEN.**

- › **Ensure that the council's records contain sufficient detail to demonstrate its decision making in individual cases.**

The council accepted the recommendations, considered the report in a council committee and was taking the following actions:<sup>143</sup>

### **1. An independent expert delivered training to in relation to the council's duties under Section 19 of the Education Act 1996.**

In July 2024, relevant officers from the council's SEND Services, including the Head of SEND and Inclusion, attended a training session delivered by Special Educational Needs Expert Training & Advocacy Ltd (SENETA) as arranged by the Greater Manchester partnership. This was a half-day training course which focused on the Section 19 Education Act 1996 legislation and the duties of the local authority. It also enabled a range of cases to be shared and discussed to support scenario planning and recommendations for local authorities. The materials were also shared across other teams including Attendance and Alternative Provision Officers. As part of staff and team development, this training will be presented during team meetings and will form part of the induction process for new officers to support consistency of decision-making and practice.

The Department for Education (DfE) updated its own guidance for schools and local authorities on the arrangement for the organisation of Alternative Provision on 5th February 2025, and these details have been shared with relevant officers to ensure that the council's systems and processes reflect any amendments. This will be monitored through performance clinics, the Learning and Improvement Group and at a strategic level through the SEND and AP Strategic Partnership Board which is chaired by the Corporate Director of Children's Services.

<sup>143</sup> Trafford Council, Report to Executive Committee (17th March 2025) from the Director of Education Standards, Quality and Performance and Director of Legal and Governance, Monitoring Officer.

## **2. The council's policy was refreshed to reflect this learning.**

Following consultation through the council's SEND Steering Group including representatives from Trafford Parent Carer Forum and the SEND Independent Advisory Support Service, together with oversight from the council's Legal Services, the council's Section 19 Policy has been refreshed. This will be made available on its website, on the SEND Local Offer and shared through the SEND Link newsletter. The SEND communication and Engagement group will ensure there are steps in place to ensure families and partners are aware of the refreshed policy. The council was aiming to publish this by the end of March 2025.

## **3. New panels were established and training provided to panel members to ensure that they are clear on their role and remit.**

There have been a number of changes to the panel structures within the council's SEND Services to ensure that cases are heard in a timely manner and to avoid drift and delay. The council has separate decision-making functions so there is clarity about what information is required at panels and why. The Moderation and Resources Panel has increased capacity and effectiveness as a result of the introduction of new panel arrangements including Post 16 and Educated Other than at School (EOTAS) Panel and an Independent Non-Maintained Special School Panel (INMSS) which take place weekly. This is ensuring that more timely decisions are made following annual review. The council now has a specialist panel administrator and improvements in data reporting and analysis is resulting in more accurate tracking to prevent unnecessary delay and drift. EHC coordinators now attend panel to take part in the discussion, which will result in fuller information regarding panel discussions being shared with families ensuring a more fully transparent process.

To support the implementation of the council's Section 19 duties, a newly-formed Access to Education Panel takes place weekly through the Attendance Team, to determine if the Section 19 duties apply and issue appropriate instruction and guidance to the relevant teams.

## **4. New posts within a restructured EHC team from January 2025 have created additional capacity and resilience.**

Following an extensive review of systems of working and in consultation with the team and wider stakeholders, the EHC team has been restructured. It has moved from a model of plan writers and coordinators based on a geographical footprint, to a structure which is divided into an assessment and review function. The council has increased the management capacity to ensure that there is senior oversight of the assessment and the review functions. It has also increased the number of coordinators and redistributed the workload of the team.

Four assessment coordinators are responsible for the production of new plans. The council planned to move towards undertaking coproduction meetings as a way of writing plans and this was piloted from May 2025. The review team have a caseload of schools across primary, secondary and special. The council has worked to improve the quality of annual reviews and to improve annual review compliance with statutory timescales. Positive progress has been made, although there is further scope for improvement. This work includes a review of the annual review paperwork in May 2025, following feedback from parents and schools. Practice standards will then have been created and embedded across the system.

## **5. The council is developing practice standards to make sure all officers are clear about their roles and responsibilities and to promote consistent decision-making.**

The SEND Improvement Lead has been working with the managers across education, health and social care on the improvement plan since this was published in February 2024. This includes the development of practice standards linked to SEND. It will also include embedding clear expectations around roles and responsibilities, supporting officers to fulfil those expectations, delivering against the statutory SEND duties, ensuring high-quality advice, EHCPs and communication standards. These are being co-produced with partners across education, health and care and shared through the relevant SEND governance with a view to finalising all aspects by summer 2025. These standards reflect issues that are important to parent carers which have

been raised through engagement activity and ongoing feedback through Trafford Parent carer forum and the council's Special Educational Needs and Disabilities Information Advice and Support Service (SENDIASS).

These standards support internal accountability processes, support training and supervision and feed into the Learning and Improvement Steering Group reporting.

**6. The council has established a Learning and Improvement Steering Group, which includes parent representatives.**

The Learning and Improvement Steering Group is chaired by the SEND Improvement Lead and the membership comprises of representatives from education, health, social care, Trafford Parent/Carer Forum and SENDIASS. The half-termly meetings receive reports which focus on quality, performance and learning. Outcomes from audit activity based on the quality assurance framework are shared, as are reports from families and the Advisory Service.

More recently, findings from complaints, Ombudsman cases and tribunals have been shared and have been integral to improving practice and strengthening accountability. The Quality Assurance Framework was signed off through SEND governance in December 2023. Auditing takes place across the system on quarterly basis comprising of a cycle of multi-agency auditing, audits of annual reviews and auditing of plans by the SEND Improvement Lead. Other agencies also have their own quality assurance processes relating to the quality of advice provided. Themes have included preparing for adulthood, children in special schools and Year 6/7 transition. In addition to dissemination through the Learning and Improvement Steering Group, the SEND Improvement Lead regularly attends and gives feedback to the EHC Team on audit findings.

**Lancashire County Council (23 012 082)**

A mother complained about the council's handling of her son's EHCP. The Council had failed to issue a final EHCP or plan her son's post-16 transition placement in 2022. It had then failed to make a decision following an annual review in 2023 and again failed to issue a final EHCP. Further, the council had not dealt with the mother's complaints to it properly. The shortcomings caused significant distress and uncertainty and deprived the right to appeal to a Tribunal.

The council was taking too long to respond to complaints about EHCP delays and currently had 160 overdue complaints. The council reported monthly to its Chief Executive on overdue complaints, and this was shared with the council's Lead Member for Education and Skills. The relevant Director within the council was overseeing a working group to improve the collection, monitoring and reporting of data about complaints. The council had recruited a permanent officer for SEND communication, and temporary staff are supporting the officer to reduce the backlog. The council was improving its communication with parents and carers with a dedicated helpline and is reviewing this to improve the helpline's effectiveness.<sup>144</sup>

The council responded and the case was considered by a council committee. In response to the EHCP delays, the council had increased staffing in its SEND teams and its oversight of this work was improving. There was a considerable backlog of reviews and EHCP assessments, but officers were working through these as quickly as possible. The council did not have the staff to complete all the reviews necessary. The severe delays had shown that the council did not have adequate monitoring to make sure it met its legal duties, and delays worsened.

The council recognised that there should have been oversight of the case, but there had been a lack of staff capacity. Recruitment into the team had taken place and further recruitment continued to build the team so they had the capacity to review, amend and issue plans in a

timely manner. While there were still significant delays, the council was working through a process to address these.

As regards complaint-handling, the council had appointed two complaints and correspondence officers to ensure that complaints are dealt with in a timely way and was working through the complaints as quickly as it could. There were currently 100 overdue complaints being dealt with by the team, so this is improving. The council now had two staff to deal with these complaints and there was a business case asking for more staff. There is a piece of work around the SEND Helpline to triage calls and make this more effective and helpful to parents. This should be complete by the end of September and improvements should be seen following this.

As regards the reviewing of EHCPs, in August 2023, as a result of a separate LGSCO investigation,<sup>145</sup> the council had agreed with the Ombudsman that it would improve its review procedure so that it met the statutory timescales. By October 2023, the council had adopted a recovery plan and had started to implement it. There had been significant investment to increase resources in this area, and plans to restructure the SEND service. As an interim measure, the council had recruited temporary staff to work through the backlog alongside the team. A Director for the service area was having weekly meetings to track the actions of the recovery plan. According to the council, over 7,100 EHCPs are overdue as of March 2024. It cannot ascertain the longest overdue review. Delays continued, largely owing to the difficulties in recruiting enough educational psychologist capacity to process the applications. Even though the council had recruited more case managers to ensure reviews are completed, queries answered etc, there would still be delays in issuing and reviewing EHCPs until there were more educational psychologists.

### **Birmingham City Council (23 005 051)**

The complainant, Miss X, alleged that the council had not properly dealt with Y's Special Educational Needs (SEN) because it has failed to: communicate with her since November 2021; arrange and hold annual reviews to Y's EHCP as required; consider whether/how his SEN have changed since November 2021; and deal with her complaint about this.

Y had lost educational opportunities, missed SEN provision and suffered avoidable distress. The council accepted fault because: it did not respond to Miss X's request for information in April 2022; Y should have received an annual review of his EHCP in 2022; it was unable to consider Y's pathway and options once he had completed his course; it was unaware that Y had started a subsequent college course; and it did not respond to her complaint.

This was fault by the council. Y should have received an annual review of his EHCP which would have enabled the council to know his future educational pathways and ensure that provision was made for him. Y did not receive any special educational needs provision at his subsequent college course. On the balance of probabilities this contributed to him being unable to continue his placement there. Y missed special educational provision which contributed to lost educational provision through loss of his college course and he suffered avoidable distress.

To remedy the faults identified, the council had proposed to: make a decision following Y's annual review based on the current information no later than 23.02.2024; if the decision was to amend his EHCP, then the council would send a draft amended EHCP (Notice of Amendment) to Y and Miss X; the council would reconsult with the college and Y would also be provided with the opportunity to express a preference for a different placement (should he wish to) and the council would consult with any other settings identified. It would also apologise and make a financial payment.

<sup>145</sup> LGSCO, Lancashire County Council (22 008 561).

The council stated: “its SEN departments are currently on an improvement journey, overseen by the DfE Commissioner. As part of this improvement journey, the council has established working groups to review, improve and embed policies, procedures and good practice across the service in line with its legal obligations. Through these groups, the council has produced Standard Operating Procedures and we enclose the annual review procedure which was implemented from October 2023. The council is confident that the faults identified in this complaint will be prevented from happening again due to the improved procedures and practices across the SEND teams.”

The LGSCO did not agree that the council’s proposals are an appropriate personal remedy in respect of Miss X and Y. As regards service improvement recommendations, the LGSCO had seen the practitioner guidance and action plans for the council’s services in relation to annual reviews of EHCPs, and considered this to be an appropriate partial remedy in respect of service improvements.

The agreed action was that to remedy the outstanding injustice caused by the fault identified, the council agreed to pay Y £2,400 for the loss of two terms educational provision. The council would also provide the LGSCO with evidence that it had complied with the service improvements.

### **Bury Metropolitan Borough Council (21 011 785, 23 005 479, 22 011 825, 23 006 024)**

In two previous investigations, the LGSCO had found fault by the council. In one case, the council had failed to provide appropriate free transport to enable a family’s adult son to attend the college named in his EHCP.<sup>146</sup>

The LGSCO had found fault and recommended that the council:

- **review its post-16 transport policy to ensure it clearly sets out the difference in its duties between sixth form and**

**adult learners, including the council’s responsibility to provide free-of-charge transport where it is considered necessary for relevant young adults with an EHCP**

- **review its procedure for determining applications and appeals from adult learners for transport to ensure the council decides whether transport is ‘necessary’, and if not, whether the council has decided to provide transport support under its discretionary powers**
- **when naming a post-19 setting in an EHCP, ensure it properly considers whether the placement is appropriate and suitable and ensures the individual and/or their family are made aware of the council’s transport policy and the likelihood of the provision of transport. This should allow them to make informed decisions, and ensure the Transport Team appropriately signposts applicants to ASC to consider whether support for disabled adults to attend post-19 education should be provided under the Council’s Care Act duties.**

The Council made the financial payment to the complainant but failed to consult on and implement a revised post-16 transport to college policy within the agreed timescale. In its final report, the LGSCO found that the council was at fault in not actioning its recommendations within a reasonable timeframe, despite the council having agreed to those timescales in both earlier investigations. The council did not review its transport policy or act on the service improvement recommendations.

The Ombudsman therefore issued a public report. The LGSCO stated: “Where we find fault and make recommendations, we expect councils to carry them out within a reasonable time. This is important because, until changes happen, other individuals might be caused a significant and unnecessary injustice by the same fault. In addition, its delays in acting on agreed recommendations following our investigations could also undermine public trust in the council’s ability to operate a fair system of redress ... The council’s delay in introducing a revised policy for post-16 learners is likely to have had consequences for other individuals,

146 LGSCO, Bury Metropolitan Borough Council (21 011 785).

especially adult learners with EHOPs. As a result, this public report will highlight to the public in its area that the post-16 transport policy is flawed. It does not differentiate between the council's duties to sixth form learners and relevant adult learners and has been incorrect for some considerable time."

In the other case, there had been failures by the council concerning a girl's lack of education in her first year at secondary school.<sup>147</sup> The LGSCO noted: "We had found fault causing injustice. The council had it failed to provide alternative education and it failed to ensure its fair access panel decisions were properly recorded. The council agreed to remedy the complaint in the way we had recommended. However, the council failed to comply with the agreed actions within the timescale required." The Ombudsman expressed concerns about the council's failure to implement remedies within a reasonable timeframe. The council adopted a new policy on elective home education.

Both cases were considered by a Council Committee. What was notable is that the LGSCO had required the council to consider the two reports by a committee because of the council's delay and failure to implement the service improvement recommendations it had previously made to the council. This point was highlighted by a councillor:

"These [reports] are pretty damning, aren't they? When we have public reports that say that recommendations are having to be made to address the systemic problems in the council and implementing recommendations it agrees to, that is particularly damning, isn't it? ... We're hearing from the Local Government Ombudsman that there are significant and unacceptable delays. These are really powerful statements which go to trust in the council, as the Ombudsman says. ... I understand that these are failings which clearly will be addressed, but where is the political accountability in all these matters? Because there really does need to be some."<sup>148</sup>

In addition to adopting relevant policies, the council also introduced some internal administrative changes to systems and processes to ensure that Ombudsman recommendations were not overlooked again. The council had introduced an internal tracker and a council-wide tracker on responding to the LGSCO as supported by an additional assurance mechanism comprising three monthly meetings between the Director of Children's Service, the monitoring officer, the chief executive and the LGSCO to ensure that the council was on track with responding in a timely and effective way to any further recommendations.<sup>149</sup>

### **Oxfordshire County Council (18 009 005, 2019)<sup>150</sup>**

Oxfordshire County Council apologised to a teenager and her family and paid them more than £2,000 after she missed months of schooling during her GCSEs because it did not find her a secondary school place. The girl had spent 14 months without formal education after she left her school because of anxiety and other mental health problems. The council said it could not force schools in its area to admit the girl because they were academies, and the special school the girl's parents wanted her to attend said it could not admit her without her being on roll at one of the academies.

The Ombudsman found that the council had delayed finding a school for the girl and should have required the special school to admit her without being on roll at an academy, as it had the power to do so. The LGSCO emphasised that councils have a duty to provide alternative education to children who are out of school for whatever reason. In this case, Oxfordshire County Council left a vulnerable teenager without any education at a crucial time in her schooling. The council agreed to keep her educational provision under review to ensure the number of hours tuition she is currently receiving is a suitable level of support and pay a financial remedy.

147 LGSCO, Bury Metropolitan Borough Council (22 002 824) and (23 006 024).

148 LGSCO, Bury Metropolitan Borough Council Cabinet 14 February 2024.

149 LGSCO, Bury Metropolitan Borough Council, Cabinet 14 February 2024.

150 See also LGSCO, "Oxfordshire teen left out of school for 14 months because of council delay" (25 July 2019).

The LGSCO also recommended that the council carry out an audit of children missing from education from September 2016 to December 2018 for whom it has a statutory duty to provide suitable full-time education under section 19 of the Education Act 1996. The audit would identify the number of children brought to its attention by schools/academies as missing education, and the outcome for each child in terms of provision of education.

This should include the amount of time each child was out of school and the level of alternative education they received; whether any child was refused a referral to School H because they were not on roll at another school; the number of occasions the council did not name a school after a Panel failed to place a child. Also, submitting the findings of the audit to the relevant Children's or Education Scrutiny Committee together with advice about whether the council is complying with its statutory duties and has made the service changes found in previous investigation; and provide evidence to the LGSCO that the audit has been completed.

There had been a strategic failure in relation to children missing from school. The council undertook a huge exercise of looking through the records of some 3,000-4,000 children to make sure that it knew where every child in the county was. Following that exercise, the council received virtually no complaints about missing children and them not being picked up by the council.<sup>151</sup>

### **Oxfordshire County Council (21 009 723)**

The LGSCO found that the council had (a) failed to make alternative provision for the complainant's son, Y, when he was unable to attend school due to anxiety caused by the school not meeting his needs; (b) delayed completing an EHCP needs assessment; and (c) delayed dealing with her complaints about the council's failure to make alternative provision and delay in completing the needs assessment.

The LGSCO found that the council was at fault for failing to comply with its legal duty

under section 19 of the Education Act 1996 to ensure Y received suitable education. The LGSCO recommended that the council ensure, by training or other means, that officers are aware of the council's duty under section 19 of the Education Act 1996 to provide suitable education to children unable to attend school, and the factors they should consider when deciding whether alternative provision should be made. The council also needed to ensure it has procedures for tracking pupils who require alternative provision, including for absences other than for medical reasons, to ensure that provision is regularly reviewed to meet their education and special educational needs.

To action the service improvement recommendations, the council had briefed schools in the county on section 19 duties through the Head Teachers' remote meeting. This briefing had also been shared at the Head Teachers and Chairs of Governors sessions. Training of social workers and early help workers has included section 19 duties. Reminders have been posted in the weekly Schools News publication which had a distribution of in excess of 3,000 recipients. The SEN Casework Team has also received a briefing on section 19 duties and it has been included as part of new officer induction and ongoing CPD. To ensure that it had procedures for tracking pupils who require alternative provision, the council had invested in a new information management system, which received twice daily live attendance information for each enrolled pupil from each school, thereby allowing for identification of medical/illness absence from day 15.

As regards the EHCP delay, the council had departed from the statutory timescales to gather advice and complete the process. This was attributable to the national shortage of, among other professionals, educational psychologists. Given increased demand for EHCP assessments in Oxfordshire and the lack of capacity in the Educational Psychology Service locally, the council had commissioned external resource.

## Oxfordshire County Council (22 000 090)

The council had delayed the annual review process, not provided a child with suitable education, delayed finalising an EHCP and poor complaint-handling. The Ombudsman recommended that the council discuss the findings of the case at an appropriate committee or cabinet meeting to ensure that council leaders were aware of the faults identified and could consider if actions are needed.

It was also recommended that the council review its school planning and commissioning arrangements to ensure the special educational provisions available were sufficient to meet the needs of children and young people with special educational needs in its area. If gaps in provision are identified, then the council should produce an action plan for how it will address any shortfall.

Following the intervention by the LGSCO, the council addressed the handling of the request for the child's school place and identified points of learning and service improvement opportunities which are identified later in this report.<sup>152</sup> The council had been delivering its SEND sufficiency plan, which included additional provision, a rolling programme of special school expansion, rebuilding two schools, specialist provision and new schools.

Between January and May 2023, the council had processed almost 500 new requests for an EHC needs assessment. During that period, timeliness in undertaking the assessments improved from 13 per cent to 34 per cent and this continues to improve. In 2022 the national figure was 60 per cent. There was still further improvement to be delivered to ensure the Oxfordshire service to children and families at least equalled or exceeded the nationwide service measure.

The service had started to improve in this area and further plans for utilising additional funding for improvement had been agreed by Cabinet and received initially in February 2023. The

focus was on improved staffing levels, retention of experienced staff, workforce remodelling and improved processes and timeliness.

The SEND department had used team, service and department-wide meetings to deliver training that highlighted the duty under section 19 of the Education Act 1996. New standard operating procedures to address section 19, co-produced by all teams with the involvement of children not accessing education, had been rolled out within the department. As regards complaint-handling, the SEND service had been working closely with the Customer and Culture Team to improve response times in order to meet corporate timescales. Wider service improvements would mean fewer families making complaints. Providing additional school places in more and better locations throughout the county would facilitate access to suitable placements and reduce the home to school journey.

## Kent County Council (22 003 403)<sup>153</sup>

This case involved delays in EHCP assessment and in complaint handling. Kent County Council (KCC) had not issued the notice to amend the EHCP or the updated plan following the annual review in June 2021 within the statutory timescales. It had not held an annual review since June 2021. There was a lost opportunity to address the lack of SALT provision. The child's plan was not up to date with his current needs and the council had not issued an updated EHCP for seven months. This had frustrated Mrs X's appeal rights to the Tribunal. Mrs X had no means to challenge the contents, or the placement named in the plan if she was dissatisfied with either. The Ombudsman had also uncovered a backlog of 170 unanswered complaints.

The LGSCO had previously identified recurrent fault by the council in a number of decisions over the last two years about SEN provision and EHCP delays, and the council had agreed to make service improvements – reminding relevant staff of the duty to deliver special educational provisions; reminding officers of

<sup>152</sup> Oxfordshire County Council Cabinet 20 June 2023 SEND Sufficiency and LGSCO findings Report.

<sup>153</sup> See also LGSCO, 'Ombudsman investigation reveals 170 delayed complaints in Kent' (6 July 2023).

the timescales and duties to notify parents of decisions to reassess and decisions following reviews; reminding staff of the importance of attempting to resolve complaints at the earliest opportunity; and training for officers to ensure reviews of EHCPs took place promptly after 12 months and of the timescales required for issuing final plans.

The LGSCO took the view that “the council should have been aware of these continued issues internally through its own measures of performance and complaints handling. We would have expected the Council to have made improvements itself, not acting only after continuous recommendations from us.” The Ombudsman also noted:

“The fault in this case indicates lessons are not being learnt, issues are not being addressed appropriately and service improvements are not being fully or adequately embedded. We acknowledge the council says it is implementing service improvements which require ongoing work and training. We are issuing this report to draw attention to these past failings and to highlight moving forward, that EHCP timescales, provision, communication and complaint handling needs to be improved as a priority, with meaningful improvements having a long-term effect.”

The Ombudsman recommended that the council write to each of the 170 people it has identified to apologise for its delay in responding to their stage one and two complaints. The apology should explain they have been identified following an investigation by the Ombudsman and set out the steps the council has already taken to reduce its stage one and two complaint backlog. It should also explain that, in line with our recommendation, the council will consider what further steps it should take to prevent a future backlog; and include the fact that, once they receive the stage two response, families have the right to complain to the LGSCO if they remain dissatisfied with the council’s response to the substantive matter they complained about. It should say that if the LGSCO chooses to investigate the main issue they complain about, it can also consider the Council’s complaint handling.

To improve its services, the council had to:

1. **review its EHCP annual review procedure to ensure it follows statutory timescales set out in the SEND regulations. Ensure decisions about maintaining, amending or discontinuing plans are communicated clearly and promptly to the young person and their family to enable appeal rights to the SEND Tribunal to be engaged**
2. **develop an action plan to show how it intends to address ongoing delays with EHCP annual reviews and complaints about them. This report should be taken to the relevant committee for democratic scrutiny**
3. **update the LGSCO on the backlog in its complaint process for stage one and two responses and its timeliness. The council needed to take action to improve the quality of its services as a matter of priority and demonstrate it has learned from previous findings in recent years, as well as our findings in this report.**

The council’s response was as follows.<sup>154</sup> The council had received an improvement notice from the Department for Education which required the development of a plan within six months on the sufficient capacity of the SEND case work team to enable the effective delivery of the EHC needs assessment and review system, and to improve both the timeliness and quality of EHCPs. The council also had in place an Accelerated Progress Plan, which addressed matters such as the inconsistent quality of the EHC process; a lack of up-to date assessments and limited contributions from health and care professionals; and poor processes to check and review the quality of EHCPs.

The action plan had been agreed and was provided to the Ombudsman as evidence of the council’s actions and proposed actions going forward. Specific actions included:

- **involving parents and young people in developing the revised communications sent by KCC in the EHC processes**
- **developing and implementing quality**

**assurance for EHCPs before issuing in draft format, to ensure draft plans are of high quality before they are issued**

- › **process improvements for annual reviews**
- › **development of an annual review best practice model and dissemination to frontline teams**
- › **reviewing timescales and workload of EHC needs assessments**
- › **reviewing staffing capacity required to ensure compliance with statutory review timescales**
- › **co-design/co-production with parents and carers of a simple feedback form which works for them relating to the EHCP process.**

The Accelerated Progress Plan had also set out the actions being taken to address ongoing delays with EHCP annual reviews and developing an action plan to show how the council would address ongoing delays with EHCP annual reviews and complaints about them.

The council would strengthen the annual review backlog team and establish a complaints backlog team and EHCP backlog team. Recruitment to the complaints backlog team was underway. Once recruited and trained, they would work through the complaints to ensure that all are responded to. In addition, work would be undertaken to ensure that managers and officers within the service are equipped to deal with feedback going forward, avoiding escalation of issues wherever possible and excessive wait times for families and carers. A manager would oversee this team to ensure that the quality and regularity of communication with families is of a high standard.

Additional training materials would be provided to support case officers. Once fully established, the team would drive a significant acceleration in the number of outstanding complaints that are satisfactorily resolved each month. This will work in conjunction with improved the processes for new complaints outlined above, which will ensure that new complaint backlogs do not develop.

The council had actively sought speech and language therapy, although there were waiting lists as a result of a national and local shortage of speech and language therapists. Ultimately, the local authority was responsible for the delivery of Section F EHCP provision and it was responsible for sourcing provision. The council said: “Due to the national shortage of therapists which is affecting the NHS we are also experiencing significant delays in sourcing suitably qualified providers.” The council was seeking to address the situation by establishing a list of qualified providers who have been quality assured through its commissioning team.

As regards the complaints backlog, the council wrote and apologised to the 170 complainants for the delay. It had put in place an action plan to reduce the backlog. This work was ongoing and was considered at a council meeting,<sup>155</sup> which concluded that the high level of SEND complaints investigated by the Ombudsman was not exclusive to Kent, but a national issue. Significant progress had been made over the last 13 months to address the backlog in issuing EHCPs within the statutory timescales.

The Ombudsman found in favour of many complainants when reviewing applications for EHCPs owing to the fact that an answer from the council had not been supplied within a 20-week timeframe. This was not a reflection of any judgment error. Kent currently was 27 per cent over and above the national average for dealing and issuing EHCPs. An extra £2 million had been invested in building SEND capacity during this year’s budget to deal with the backlog to get back on to sustainable footing.

During 2024, the complaints backlog had reduced from impacting 618 individuals to 213, as additional funding allowed the number to be reduced. Work had been carried out around staff training, systems and technology, expectation of frontline staff to work on both quality of response and timeliness of response. Effective leadership had worked on the basis that performing a professional job and dealing with complaints are one in the same.

<sup>155</sup> Kent County Council, Annual Customer Feedback Report 2023/24 and Kent County Council Governance and Audit Committee (9 October 2024).

## Worcestershire County Council (23 008 082)

The council had delayed reviewing a child's EHCP for 18 months and the child had missed four and a half terms of education. The council had also inadequately consulted and delayed with schools and not secured provision. The LGSCO found fault in these respects. When the family complained to the council, it responded that it did not offer financial payments as a result of complaints, contrary to the LGSCO's guidance on financial remedies.

The council provided a financial remedy to the complainant and also amended its complaints policy to bring it into line with LGSCO guidance. The council decided not to offer financial compensation retrospectively for other previous complainants because that would have been "rife with potential confusion and contradiction" about how far back and what level of complaint. In any event, the LGSCO did not recommend this.

The specific faults about delay and consultation with schools fed into the council's improvement plan and priority action plan. The key issues were the timeliness and quality of EHCPs and annual reviews, ensuring they were happening and that they also reflected the young person's current, not historic, needs and also ensuring that young people were receiving the right provision, rather than provision based on an outdated EHCPs. While the council had information about the particular young person, it did not have current information. A related issue was ensuring that provision was available to meet that need. As regards consultation with schools, the council had taken this on board.

Further, it was also apparent that the public report process – which must be considered by a council committee – had a wider impact. The council had publicly accepted that an injustice had taken place and remedial action had been implemented as a result. As the council's Director of Education explained:

"It isn't just about the financial penalty against the local authority. It's that here I am sat in public, overview and scrutiny, holding my hand up, which is the right thing to do on behalf of the council with regard to a manner in which the council operated that the local government ombudsman is saying is incorrect and needs to be addressed. Great that we've addressed that. It's now business as usual, but needless to say, it's not an exercise I relish, and not one I want to repeat."<sup>156</sup>

The council also made use of the LGSCO's focus report 'Out of school, out of sight?' (2023), which concerned ensuring children out of school receive a good education. The report contained suggested scrutiny questions. The council used the LGSCO's report and suggested scrutiny questions to structure its report, 'Children Missing Education', which was presented to the council's Children and Families Overview and Scrutiny Panel.<sup>157</sup> Worcestershire had some 80,000-85,000 school aged children who at any point may be at risk of missing education. The council had reorganised its services, put in more resource, and highlighted to schools the need for them to report children missing education to the council.

The council presented a report which considered the matter in more detail and which included a section on learning that followed the LGSCO's proposed structure for public scrutiny. The report noted that: "Complaints predominantly relate to the local authority's section 19 (Education Act 1996) duties to provide suitable education for children who cannot attend school. Issues raised have been regarding the speed at which suitable education was provided. In response to this, the Children who Cannot Attend School (CCAS) process and panel was introduced in September 2023."

Overall, the council's use of the LGSCO's focus report and the suggested scrutiny questions aided accountability to councillors. The council used the findings from the LGSCO's focus report for learning and reflection across all Children's Services management teams.

<sup>156</sup> Worcester County Council, Children and Families Overview and Scrutiny Panel Monday, 18th November 2024.

<sup>157</sup> Worcester County Council, 'Children Missing Education', Children and Families Overview and Scrutiny Panel, 17 December 2024 <https://worcestershire.moderngov.co.uk/documents/s56170/01%20item%205%20Children%20Missing%20Education.pdf>

# Appendix 3

## THE LGSCO'S SERVICE IMPROVEMENT RECOMMENDATIONS

The LGSCO issued some 1,840 complaint investigation reports from 2021 to 2024. These were classified by the LGSCO as follows:

	Category of SEND complaints	Number of reports
1	Alternative provision	185
2	SEND	240
3	SEND assessments and reviews	431
4	SEND personal budgets and direct payments	17
5	SEND provision and EHCPs	963
6	SEND transition to EHCP	3

The following is a sample of the LGCO's service improvement recommendations:

### 1. Alternative provision

- a) Review its processes to ensure annual review decisions and any draft EHCPs following that decision are issued within the timescales set down by the code of practice
- b) Consider whether its procedures are robust enough to enable it to take prompt action when it has a duty, under section 19 of the Education Act 1996.

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Reflect on the issues raised in this decision statement and identify any areas of unresolved service improvement. The council should prepare a short report setting out what the council intends to do to ensure similar problems not reoccur. This report should be sent to the Ombudsman.

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The council will remind relevant staff of its duty to ensure that suitable alternative educational provision is made for children who are deemed 'otherwise' unable to attend school, in addition to those who are medically unable to attend school.

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The council will remind its relevant staff of the need to make appropriate records of its decision making, in particular recording how it has assessed the alternative provision is suitable and if it is not full-time, why it considers this suitable

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The council will review lessons learned from this complaint about the provision of education to a child out of school due to illness, and draw up and implement a plan, with timescales, to ensure so far as possible that the faults identified by this investigation do not recur.

## 2. SEND

The council was at fault for failing to provide the educational provision contained in a child's EHCP. The council has agreed to develop an action plan for the delivery of the outstanding provision, review how it monitors the educational provision it provides to children with special needs and also to provide training to council staff to ensure they are aware of the council's non-delegable duty to secure provision in a child's EHCP.

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The council has agreed to circulate a reminder to relevant staff of the time limits for complying with SEND Tribunal decisions, including that the council should issue the final amended EHCP within five weeks of a SEND Tribunal decision to change a Plan.

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At a senior level, the council will undertake a detailed review of this case. The review exercise will focus on why the complainant's child was not provided suitable alternative education when he was unable to attend his mainstream primary school. Moreover, the council will review why an EHCP review was not undertaken to inform what provision child needed to make a transition to secondary school viable. The purpose of the review is to adopt measures to inform service improvements for each area of fault identified in this statement. The council will then provide training to all staff involved in EHCP arrangements relating to the Code, specifically when an annual review of an EHCP should be commenced and finalised and issued.

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The council will send a memo to officers dealing with children not attending school to remind them it remains the council's responsibility for ensuring education provision is in place if a school fails to make alternative provision even if the child remains on the school's roll.

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The council will review how it monitors children who are due to attend a new school to ensure they are on roll, including in year placements.

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Within six weeks the council to review all other young people with EHCPs who are due to transition to post-16 education in September 2022 to ensure they all have final amended EHCPs in place.

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The council has agreed to review the way it structures the content of section F (for example the use of headings and sub-headings to identify and separate the specified provision from strategies) with a view to making it clear to parents and all those working with the child which part of section F sets out the specified provision and which the strategies.

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The council will provide the Ombudsman with the procedural changes it said it has made internally, and with schools, to ensure it meets the statutory timescales for reviewing EHCPs and issuing amended EHCPs to parents.

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The council will also share this decision with the officers in its SEN department as well as the corporate complaints team and emphasise the difference between complaints challenging the contents of the EHCP, and the council's delays in the EHCP statutory procedure.

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The council to issue written reminders to relevant staff to ensure they are aware of the council's duty to review EHCPs annually. The council's duties under section 19 of the Education Act 1996 to provide provision or suitable education for children of compulsory age who cannot attend school because of exclusion, medical reasons or otherwise.

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The council was at fault for delays in the annual review process, for not providing suitable education, and for poor complaint handling. The council will discuss the findings of the case at an appropriate committee or cabinet meeting. This is to ensure the council's leaders have awareness of the delay finalising the EHCP and its failure to provide a child with suitable education and can consider if actions are needed to improve its services.

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The council was at fault for failing to respond to a complaint in December 2021. It will review how it missed responding to the complaint and take action as needed to prevent recurrence of the fault. It will also remind its staff to adhere to the complaint handling timescales set out in its policy.

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The council will provide training / guidance to staff to ensure compliance with the duty under section 42 Children and Families Act 2014 to secure special education provision in an EHCP.

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The council has agreed within to review its procedures to ensure in cases where children are not accessing education, make it a priority to identify the cause of the problem, providing alternative education in accordance with its statutory duties and obtain medical evidence to support decisions where appropriate.

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Provide updated training or guidance to relevant officers on the correct procedures and legal requirements for conducting annual reviews of EHCPs.

### **3. SEND assessments and reviews**

The council has agreed to remind all staff in relevant positions within four weeks of the date of this decision that, when the council decides not to amend an EHCP after an EHCP review, that is an appealable decision and officers must inform of parents of the decision and of their right of appeal.

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Remind relevant staff of the importance of complying with the statutory timeframes for the EHCP process.

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The council was at fault for failing to review an EHCP. It will remind the school in this case of its role and responsibilities in the annual review process, including that it is able to suggest amendments to a child's EHCP.

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The council will: review its alternative education policy, paying particular attention to how it should decide whether its duty is triggered, taking account of the statutory guidance. The review should be ratified by the relevant Committee responsible for the oversight of educational provision.

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The council has agreed to review lessons learned from this complaint and draw up a plan with timescales, which should include action to be taken to address the failings identified by this investigation in respect of EHCP review timetables, to avoid recurrence of those failings.

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The council will review its training and processes to ensure social care needs are always considered as part of an EHC needs assessment, including whether parent carers have a need for support.

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The council will set up a process to ensure it can identify when schools have not provided the paperwork for annual reviews within the required timescale.

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Carry out an audit to identify any other cases where there have been delays in assessing and issuing EHCP within the last 12 months

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The council has also agreed to have in place a policy for children missing education for medical reasons. The policy should take account of current guidance and legislation.

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The council will review its processes when it receives a complaint that a school is not providing special educational provision in an EHCP to ensure it provides prompt challenge to schools, problems are resolved and it has adequate records to show it has discharged its duty under section 42 of the Children and Families Act 2014.

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The council will review its processes and training for EHCPs to ensure: statutory requests for assessment or reassessment are responded to within the statutory timeframe; all decision letters include information on rights of appeal; that where panels are used to make decisions they sit frequently enough that the statutory timescales are met; the council has robust processes and sufficient staffing levels to ensure annual reviews and plan amendments are completed in a timely way and in accordance with the Code; the restructure of the educational psychology service has addressed capacity issues or, if not, that a plan to do so is in place.

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The council will remind its staff they are able to seek new assessments if they feel it is necessary to write a child's EHCP.

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Within two months of my decision, the council should provide the Ombudsman with evidence of the changes it has put into place to reflect the remedy it offered for the complaint

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The council will review its policies and procedures to ensure the council retains oversight and responsibility for children who would not receive suitable education unless the Council makes alternative arrangements.

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The council will review its processes and take actions to ensure it carries out re-assessments of need and issues updated EHCPs in line with statutory timescales and the requirements of the SEND code of practice.

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The council will remind relevant staff to consider, and suitably record its decision about its duty under section 19 of the Education Act for children who are absent from school.

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The council will review how it records and confirms email addresses for using during statutory procedures for EHCPs and remind relevant staff of the importance of periodically reviewing and confirming the same.

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To improve its services, within two months of the final decision the Council will: a) review its processes to ensure annual review decisions and any draft EHCPs following that decision are issued within the timescales set down by the code of practice...

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The council will review its procedures for when it will agree to make changes to finalised EHCPs and how long the process should take. This is to ensure the appeal's process and SEN provision is not unnecessarily delayed.

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Within two months of my decision, the council should review its procedure to ensure there is a process in place to identify when production of an EHCP is approaching the 20 week date to ensure timescales are not breached.

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The council should instruct/train officers not to ask parents to sign transport disclaimers early in the EHC process, before school consultations have established the nearest suitable school. The council should provide us with evidence it has done this.

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The council has agreed to take action, at a senior level, to address the shortage of SALT provision in the council area. It should also take action to ensure communication with parents is improved. The council should provide a report to the Ombudsman to confirm what it proposes to do.

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The council has agreed to: review any template letters concerning decisions/notices to amend an EHCP following an annual review meeting to ensure it is clear that information on the SEND Tribunal right of appeal must be provided with the final amended EHCP. This is because this right of appeal is only engaged when the final amended Plan is issued, not before. The council will circulate any amended template letters to relevant staff with a reminder on this.

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Explain what measures it will put in place to ensure that any assessments it has scheduled are undertaken with the appropriate consent in place first

The council will provide the Ombudsman with information about the actions it is taking to resolve a lack of educational psychology resource for EHC needs assessments.

#### **4. SEND personal budgets and direct payments**

To ensure that the delays in the statutory complaint handling identified in this complaint do not occur in the handling of future complaint, the council will provide evidence that it will ensure that it has a process in place which ensures that statutory timescales are met at stage two of the complaints procedure.

Provide evidence of new procedures put in place to ensure proper oversight of EHCP review process.

The council will establish a clear policy relating to personal budgets and direct payments. This will include clear and simple statements of eligibility criteria and the decision-making processes. The policy will be published as part of the council's Local Offer and made accessible to the public in accordance with statutory guidance.

The council will remind staff within its Special Educational Needs team of the need to keep minutes of key meetings, such as annual reviews.

The council has also agreed to review its Home to School/College and Adult Learner Transport Policy to ensure it is clear to staff that the cost and suitability assessment of school transport arrangements should be clearly recorded. There should be clear guidance on the statutory guidance's requirement that for travel arrangements to be suitable, council staff must be satisfied the travel arrangement is "safe and reasonably stress free, to enable the child to arrive at school ready for a day of study".

Provide us with evidence it has complied with the actions it has already said it will take, together with evidence of any outcomes, outlined below:

- **Reviews its EHCP process to ensure there is no confusion in responsibilities.**
- **Reviews its personal budget process to ensure there is clear process for review.**
- **Ensure staff receive training on the Equality Act.**
- **Reviews its business continuity plan to ensure key performance timescales are protected when normal business is interrupted.**
- **Support staff named within the complaint to understand the limits of their role and provide appropriate training.**

Produce an action plan to demonstrate how the council will ensure that it is following the relevant legislation and guidance in relation to Electively Home Educated children and children with EHCPs. This action plan should provide details about how it will meet the following outcomes:

- a) Ensuring relevant staff are aware that a child's EHCP needs to be updated when they become Electively Home Educated and put in place a process to ensure this is completed.
- b) Ensuring relevant staff are aware that the Council has a duty to consider whether it is appropriate to continue to fund a child's EHCP provision when they become Electively Home Educated and put in place a process to ensure this is completed.

- c) Ensuring relevant staff are aware of the council's duty to either find a suitable school placement or provide education for a child when a parent confirms they no longer wish to Electively Home Educate their child.
- d) Show how it intends to address delays with EHCP annual reviews and production of EHCPs within the statutory timescales.
- e) Ensuring relevant staff are aware of the statutory requirement and timescales in issuing notification letters following a child's annual review meeting including providing information about a person's right of appeal to the SEND Tribunal.

## 5. SEND provision and EHCPs

The council will provide training to its staff responsible for EHCPs to ensure they are aware to complete planning during the EHCP process and that placements have a duty to admit once named on the EHCP; parents do not need to go through the usual school admissions process.

The council will remind staff that when they become aware a child or young person is not receiving the full provision in their EHCP, they must act promptly to secure the missing provision.

The council will provide the evidence of monitoring timeliness of annual reviews, as suggested in its response to Miss X's complaint.

The council will develop a policy for children with EHCPs who are waiting for a school place. The council will consider financial support to children entitled to free school meals as part of this process.

The council will provide training and updated guidance to staff about the Dudley test to be applied for considering eligibility for school transport when a child has an EHCP.

Issue guidance to relevant staff to ensure they are aware of the council's duties detailed in the Education Act 1996 to ensure all children receive a suitable education if they are unable to attend school.

The council will review any how it can limit any delays to the EHCP process, including steps which may be outside its control such as advice from professionals. It will also remind staff responsible for progressing and overseeing the process to adhere to the statutory timescales.

Remind staff of the timescales set out within the SEN code of practice for issuing and reviewing EHCPs.

The council will remind officers about the importance of completing EHCP annual reviews on time and of providing written decision letters with appeal rights where required.

The council should develop an action plan to show how it intends to address the ongoing lack of occupational therapy availability in its area. This should be reported to the relevant committee for democratic scrutiny and an update should be provided to the Ombudsman to set out the actions agreed to improve this area of provision.

## 6. SEND transition to EHCP

The council has agreed to review its procedures and train its staff on adopting statements of special educational need / EHCPs for children and young adults who move from one local authority area to another. It has agreed to ensure its processes and the training delivered to staff will be in accordance with the relevant statutory guidance.

The council will develop a local policy on alternative provision for children who cannot attend school because of health needs. This should outline how different services will work together to meet pupils needs.

# Appendix 4

## ACRONYMS

<b>DfE</b>	Department for Education
<b>EHC</b>	Education, Health and Care
<b>EHCP</b>	Education, Health and Care Plan
<b>ICB</b>	Integrated Care Board
<b>LGSCO</b>	Local Government and Social Care Ombudsman
<b>PHSO</b>	Parliamentary and Health Service Ombudsman
<b>SEND</b>	Special educational needs and disability

